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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis, Circuit Court Judge

Circuit Court Case No. 2020-CP-22-00373
Appellate Case No. 2023-001829

Jones Nissan, Inc.,

Respondent,

v.

THAG, LLC; Nissan of Sumter, LLC; Terry L. Holmes; and Merrill Lynch, Pierce,
Fenner & Smith, Incorporated, Defendants,

Of which THAG, LLC and Nissan of Sumter, LLC are the Appellants.

RECORD ON APPEAL – VOLUME 1 OF 2

July 10, 2024

Other Counsel of Record:
John Dwight Hudson, Jr., Esq.
William Mullins McLeod, Jr., Esq.
Nicholas A. Charles, Esq.
McLeod Law Group, LLC
1518 Richland St.
Columbia, SC 29202
(803) 451-6057

_____/s/ Christopher M. Ramsey_____
Christopher M. Ramsey
Bostic Law Group, P.A.
2236 Ashley Crossing Drive
(843) 571-2525
Fax: (843) 571-7050
cramsey@bosticlaw.com
Attorneys for THAG, LLC and Nissan
of Sumter, LLC

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STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2020-CP-22-00373

JONES NISSAN, INC.,

Plaintiff,

vs.

THAG, LLC, NISSAN OF SUMTER, LLC,
TERRY L. HOLMES, AND MERRILL
LYNCH, PIERCE, FENNER & SMITH
INCORPORATED,

Defendants.

**ORDER DISMISSING WITH
PREJUDICE PLAINTIFF'S
CLAIMS AGAINST MERRILL
LYNCH, PIERCE, FENNER &
SMITH INCORPORATED ONLY**

Pursuant to Rule 41(a) of the South Carolina Rules of Civil Procedure, the Consent Motion dismissing Plaintiff Jones Nissan, Inc.'s claims against Merrill Lynch, Pierce, Fenner & Smith Incorporated with prejudice and in their entirety is GRANTED. Each party shall bear its own attorneys' fees and costs. This Order does not dismiss Plaintiff's claims against any other Defendant.

IT IS SO ORDERED.

The Honorable William H. Seals, Jr.
Chief Administrative Judge, Fifteenth Judicial
Circuit

_____, 2022



Georgetown Common Pleas

Case Caption: Jones Nissan Inc VS Thag Llc , defendant, et al
Case Number: 2020CP2200373
Type: Order/Dismissal

IT IS SO ORDERED

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

Electronically signed on 2022-12-12 14:01:17 page 2 of 2

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200373

Jones Nissan Inc
PLAINTIFF(S)

Thag Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

Plaintiff's Motion for Summary Judgment is Granted and Actual Damages in the Amount of \$389,555.98 against THAG, LLC and Nissan of Sumter LLC.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/19/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Georgetown Common Pleas

Case Caption: Jones Nissan Inc VS Thag Llc , defendant, et al

Case Number: 2020CP2200373

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2023-09-19 15:44:51 page 3 of 3

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC; Terry L.
Holmes; and Merrill Lynch, Pierce, Fenner &
Smith, Incorporated,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

ORDER

This matter comes before the Court on Plaintiff's motion for summary judgment as to its claims for (1) breach of contract, (2) breach of the implied covenant of good faith and fair dealing, (3) conversion, and (4) piercing the corporate veil as well as to Defendants' counterclaims. For the reasons set forth below, the Court grants Plaintiff's motion as to its claims for breach of contract and conversion. The Court denies Plaintiff's motion as to its claim that it is entitled to pierce the corporate veil. The Court also grants in part and denies in part Plaintiff's motion for summary judgment as to Defendants' counterclaims.

FINDINGS OF FACT

Plaintiff Jones Nissan, Inc. ("Plaintiff") owned and operated the Jones Nissan automobile dealership ("the dealership") in Sumter, South Carolina from 1990 until early 2017. In July 2016, Plaintiff entered into an "Asset Purchase Agreement" ("the contract") with defendant THAG, LLC ("THAG") pursuant to which THAG agreed to purchase the dealership for \$2,250,000.00 cash along with other considerations. The contract was amended multiple times by the parties prior to the transaction closing in early 2017. At all relevant times, defendant Terry Holmes ("Holmes") was the sole member of THAG.

Pursuant to the contract's third amendment, Plaintiff, at THAG and Holmes' request, agreed to owner-finance \$650,000.00 of the \$2,250,000.00 purchase price. The terms and conditions of the financed portion of the sale price were memorialized through a combination of documents, namely a promissory note, a "Pledged Collateral Account Control Agreement," and a "Pledge Agreement," all of which were signed by Holmes purportedly on behalf of THAG. The parties' financing agreement required that THAG or its assigns at all times maintain a sufficient balance in Merrill Lynch Account No. XXX-XX250 ("the pledged account") to satisfy the outstanding balance of the financed portion of the purchase price of the dealership as contemplated in the third amendment to the Asset Purchase Agreement. The agreement also gave Plaintiff a security interest in the pledged account and allowed Plaintiff to issue a "Notice of Exclusive Control" to take control of the pledged account if THAG defaulted on its debt obligation. Defendants initially funded the pledged account with \$650,000.00 as required. However, Defendants, either individually or through their agents, failed to deliver the Pledged Collateral Account Control Agreement to Merrill Lynch and consequently failed to notify Merrill Lynch of the agreed upon limits on Defendants' rights to dispose of the funds in the pledged account.

THAG, via Holmes, assigned the contract to defendant Nissan of Sumter, LLC ("Nissan of Sumter") on February 28, 2017. Nissan of Sumter thus assumed THAG's obligations under the contract, including payment of the \$650,000 debt obligation.

Defendants made monthly payments of \$12,566.32 or \$12,566.33 on the \$650,000.00 debt obligation from March 2017 through July 2019. Despite still owing 31 of the 60 required payments, Defendants never made another required payment after July 2019. On August 20, 2019, Plaintiff notified Defendants of their default on the promissory note, and in exercise of its rights

under the note, demanded that the then outstanding debt of \$360,035.15 be satisfied in full.¹ Defendants failed to satisfy the outstanding debt.

After Defendants defaulted and failed to satisfy the outstanding debt, Plaintiff attempted to exercise its contractual rights to collect the outstanding debt from the designated, collateralized funds on deposit in the pledged Merrill Lynch account. However, the designated, collateralized funds had already been withdrawn, transferred, or otherwise disposed of by Defendants and were no longer in the account nor available to Plaintiff to satisfy the debt. Defendants, who sold the dealership in 2019, have never paid the remaining \$389,555.98 they agreed to pay Plaintiff.

In April 2020, Plaintiff filed this action and asserted ten claims against Defendants: (1) breach of contract, (2) breach of contract accompanied by a fraudulent act, (3) conversion and civil theft, (4) breach of the implied covenant of good faith and fair dealing, (5) fraud, (6) constructive fraud, (7) money had and received, (8) quantum meruit, (9) piercing the corporate veil/alter ego, and (10) accounting. Defendants answered and asserted counterclaims against Plaintiff for breach of contract and breach of the implied covenant of good faith and fair dealing.

Plaintiff subsequently moved for summary judgment on its claims for (1) breach of contract, (2) breach of the implied covenant of good faith and fair dealing, (3) conversion, and (4) piercing the corporate veil. Plaintiff also moved for summary judgment on Defendants' counterclaims and requested that the Court award Plaintiff attorneys' fees based on the parties' contract documents. In response, Defendants submitted an affidavit of Terry Holmes in which Holmes repeated the allegations in Defendants' counterclaims.

The Court heard oral argument on Plaintiff's motion on July 13, 2023.

¹ Although Plaintiff's written demand stated the outstanding debt at the time as \$360,035.15, that amount represented the outstanding principal only. The correct debt amount, with interest included, was \$389,555.98.

LEGAL STANDARD

A trial court must grant summary judgment if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. In reviewing a summary judgment motion, the court must view “the evidence and all inferences which can reasonably be drawn therefrom . . . in the light most favorable to the nonmoving party.” *Quail Hill, LLC v. Richland Cty.*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). However, “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

CONCLUSIONS OF LAW

Viewing the evidence and all reasonable inferences in the light most favorable to Defendants, the Court finds that no genuine issue of material fact exists as to Plaintiff’s claims for breach of contract and conversion against Defendants THAG and Nissan of Sumter, and therefore Plaintiff is entitled to judgment as a matter of law on those claims. Likewise, the Court finds that no genuine issue of material fact exists as to the portions of Defendants’ defenses and counterclaims that are based on (1) Plaintiff’s alleged misrepresentation of the market value of the dealership, (2) the amount of rent Plaintiff charged Defendants, and (3) Plaintiff’s alleged violation of the terms of the noncompete clause in the Asset Purchase Agreement. No evidence supports those contentions by Defendants, and the Court therefore finds that Plaintiff is entitled to judgment as a matter of law as to those contentions.

The Court finds genuine issues of material fact exist as to Plaintiff's remaining claims against Defendants and as to Defendants' remaining counterclaims. The Court further finds that an award of attorneys' fees is premature.

I. Plaintiff's Breach of Contract and Conversion Claims

A. Breach of Contract

It is undisputed that the contract between Plaintiff and Defendants required Defendants to pay Plaintiff \$650,000.00, plus interest, in 60 monthly installments. It is further undisputed that Defendants failed to make all the required payments. Defendants therefore breached the contract as a matter of law.

A plaintiff asserting a breach of contract claim must prove "the existence of a contract, its breach, and damages caused by such breach." *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 652, 780 S.E.2d 263, 272–73 (Ct. App. 2015). The breaching party is "liable for whatever damages follow as a natural consequence and a proximate result of such breach." *Id.* The interpretation and enforcement of an unambiguous contract is a question of law for the court and can be properly disposed of at summary judgment. *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012). This Court must apply the plain language of the agreement and enforce its terms according to their plain meaning. *Bardsley v. Gov't Emps. Ins. Co.*, 405 S.C. 68, 76, 747 S.E.2d 436, 440 (2013).

The contract documents at issue are clear and unambiguous. Plaintiff agreed to finance \$650,000.00 of the purchase price for the dealership in exchange for THAG's agreement to repay the \$650,000, plus interest, over the course of 60 months. THAG voluntarily entered into the Pledged Collateral Control Agreement with Plaintiff, in which it agreed that the pledged Merrill Lynch account would be maintained for the benefit of Plaintiff and that Plaintiff could exercise

exclusive control over the account under specified conditions of default with proper notice. THAG, via Terry Holmes, voluntarily executed the promissory note memorializing their commitment to pay the \$650,000 plus interest and voluntarily entered into the Pledge Agreement granting Plaintiff a security interest in the pledged account and the right to collect and satisfy the debt from the account if Defendants defaulted on the debt. When they executed the promissory note, THAG and Holmes expressly waived any rights to "demand, presentment, notice of non-payment, dishonor, protest, and notice of protest."

There is no dispute that THAG voluntarily entered into the Asset Purchase Agreement or its three amendments. In fact, Defendants admitted that THAG entered into these contracts in their answer to the amended complaint. There is also no dispute that, pursuant to the contract's third amendment, THAG was required to pay Plaintiff \$650,000 amortized over 60 months at 6% interest. Defendant Holmes also admitted this fact in a letter he wrote to Plaintiff in August 2019. Further, there is no dispute that THAG made only 29 of the required 60 monthly payments or that THAG failed maintain sufficient funds in the pledged account to cover the outstanding debt obligation in the event of default.

Defendant Holmes admitted at his deposition that he did not read the contract documents before signing them. His failure to read the contract documents is no defense to Plaintiff's claims. *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 81, 749 S.E.2d 139, 146 (Ct. App. 2013) ("[A] party who signed a contract is deemed to have read and understood 'the effect' of the contract.").

Thus, no genuine issue of material fact exists as to Defendants' breach of the unambiguous agreements. The Court therefore finds that Plaintiff is entitled to summary judgment on its claim for breach of contract.

B. Conversion

Plaintiff is entitled to summary judgment on its conversion claim because Defendants drained the pledged Merrill Lynch account despite Plaintiff's security interest and entitlement to exercise exclusive control over the account if Defendants defaulted on their debt obligation.

Conversion is "the unauthorized assumption and exercise of the rights of ownership over goods or personal chattels belonging to another, to the alteration of their condition or to the exclusion of the rights of the owner." *Mullis v. Trident Emergency Physicians*, 351 S.C. 503, 506–07, 570 S.E.2d 549, 550 (Ct. App. 2002). Money may be the subject of conversion if "it is capable of being identified and there may be conversion of determinate sums even though the specific coins and bills are not identified." *Id.* at 507, 570 S.E.2d at 551 (quoting *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990)).

The Court finds Plaintiff is entitled to summary judgment on its conversion claim. Defendants funded the Merrill Lynch account with \$650,000, agreed to maintain a sufficient balance in the account at all times to cover the outstanding debt obligation, and agreed that Plaintiff was entitled to issue a notice and take exclusive control over the account if Defendants defaulted. Nonetheless, Defendants drained the account when they still owed Plaintiff the determinative sum of \$389,555.98. Defendants therefore unlawfully converted the funds in the account, and Plaintiff is entitled to judgment as a matter of law on its conversion claim. *See Mullis*, 351 S.C. at 507, 570 S.E.2d at 551 (affirming a judgment on a conversion claim because the plaintiff identified a determinative sum improperly withheld by the defendant).

C. Damages

The Court finds Plaintiff is entitled to recover actual damages in the amount of \$389,555.98, which is the amount of the outstanding debt at the time of the breach. It is undisputed

that Defendants made only 29 of the agreed-upon 60 payments on the promissory note. Defendants have thus failed to make the 31 remaining payments due under the note, and the balance now due totals \$389,555.98 according to the affidavits of James E. Jones and Karen H. Oliver submitted by Plaintiff. This sum is comprised of the outstanding principal balance of \$360,035.15 and past due interest of \$29,520.83. Defendants have submitted no evidence calling this calculation into question. Accordingly, the Court enters judgment in Plaintiff's favor and finds Plaintiff is entitled to \$389,555.98 in actual damages.

II. Defendants' Counterclaims and Defenses

Defendants' counterclaims for breach of contract and breach of the implied covenant of good faith and fair dealing are based in part on allegations that (1) Plaintiff misrepresented material facts concerning the market value of the dealership, (2) Plaintiff charged "an exorbitant amount of rent to THAG in exchange for its use of the dealership property," and (3) Plaintiff owned and operated a car dealership next door to THAG, in direct competition with THAG and in violation of the non-compete agreement contained within the parties' contract. Defendants assert the same allegations as affirmative defenses to Plaintiff's claims. Defendants bear the burden of coming forward with specific evidence supporting these allegations. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) ("With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by "showing"—that is, pointing out to the [trial] court—that there is an absence of evidence to support the nonmoving party's case.' . . . Once [the] moving party carries its initial burden, [the] opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a *genuine*

issue for trial.” (first alteration in original)). The Court finds each of these allegations is meritless as both a counterclaim and a defense to Plaintiff’s claims.

As to Defendants’ assertion that Plaintiff misrepresented the market value of the dealership, Holmes acknowledged in his deposition testimony that he was not forced to enter into any of the agreements with Plaintiff or to pay any particular amount. The contract documents evidence that Defendants had time to conduct their own inquiry into the value of the business, and all parties were sophisticated business entities represented by counsel. The fact that Defendants may have agreed to pay too much or more than they should have is not a valid defense to Plaintiff’s claims, nor is it a valid basis for a breach of contract counterclaim. Accordingly, the Court grants summary judgment in favor of Plaintiff on this portion of Defendants’ counterclaims and defenses.

Defendants also contend Plaintiff charged too much rent pursuant to the commercial lease agreement entered into in conjunction with the Second Amendment to the Asset Purchase Agreement. Again, the deposition testimony of Holmes establishes that the rent amount was set forth in the lease agreement (presumably between MarGin Properties as Landlord and Sumter Real Estate Holdings as Tenant, as referenced in the Second Amendment to the Asset Purchase Agreement at paragraph 12(b)(viii)). Defendant Holmes specifically testified in his deposition that the \$32,500 rent “was the amount of the lease agreement” and stated “we agreed to do that to get started along the way.” Again, Defendants voluntarily entered into the lease agreement and cannot now contend that holding them to those terms was a breach of the parties’ contract. Accordingly, the Court grants summary judgment in favor of Plaintiff on this portion of Defendants’ counterclaims and defenses.

Finally, Defendant Holmes makes the bare assertion in his affidavit that Plaintiff violated the terms of the noncompete clause in the Asset Purchase Agreement by operating another car

dealership next door to the Defendants' dealership. However, the noncompete provision does not prevent Plaintiff from operating a car dealership. The noncompete clause, at paragraph 12(b)(iv) of the Asset Purchase Agreement, states that Plaintiff will not directly or indirectly "compete with the business of Purchaser *by engaging in any new Nissan brand motor vehicle sales or service dealership*" for a period of five years. Defendants have failed to set forth by affidavit or otherwise any facts showing that Plaintiff breached the terms of the noncompete. Accordingly, the Court finds no genuine issue of material fact exists and Plaintiff is entitled to judgment as a matter of law on this portion of Defendants' counterclaims and defenses.

III. Plaintiff's Remaining Claims and Defendants' Remaining Counterclaims

The Court finds genuine issues of material fact exist with regard to the remaining claims on which Plaintiff moved for summary judgment.² The Court also finds genuine issues of material fact exist as to the remaining portions of Defendants' counterclaims—specifically, the allegations in subparagraphs c, d, and e of paragraph 57 and subparagraphs c, d, and e of paragraph 61 of Defendants' Answer and Counterclaims filed on May 1, 2023.

IV. Plaintiff's Request for Attorneys' Fees

Plaintiff asserts that it is entitled to an award of attorneys' fees under the terms of the contracts referenced above, the promissory note and Pledge Agreement in particular. The Court finds that an award of attorneys' fees is premature at this stage and therefore denies Plaintiff's request at this time. Plaintiff is free to raise its request for attorneys' fees again at a later date.

CONCLUSION

² Plaintiff did not move for summary judgment on its claims for breach of contract accompanied by a fraudulent act, fraud, constructive fraud, money had and received, quantum meruit, and accounting. The Court therefore makes no ruling as to those claims.

For the reasons set forth above, the Court hereby GRANTS Plaintiff's motion for summary judgment as to its claims for breach of contract and conversion and awards Plaintiff actual damages in the amount of \$389,555.98 against Defendants THAG, LLC, and Nissan of Sumter, LLC.³ The Court further GRANTS Plaintiff's motion for summary judgment as to the portions of Defendants' counterclaims and affirmative defenses that are based upon (1) the market value of the dealership, (2) the amount of rent charged by Plaintiff, and (3) the noncompete provision in the parties' contract.

The Court DENIES summary judgment as to Plaintiff's remaining claims and as to the remaining portions of Defendants' counterclaims.

The Court DENIES Plaintiff's request for attorneys' fees as premature at this stage.

IT IS SO ORDERED.

The Honorable Kristi Fisher Curtis
Circuit Court Judge

³ Plaintiff also moved for summary judgment against Terry L. Holmes individually via its' cause of action for piercing the corporate veil. This court denied summary judgment as to that cause of action. Judgment as to the Plaintiff's causes of action for breach of contract and conversion is awarded at this time only against Defendants THAG, LLC, and Nissan of Sumter, LLC, and not against Holmes individually.



Georgetown Common Pleas

Case Caption: Jones Nissan Inc VS Thag Llc , defendant, et al
Case Number: 2020CP2200373
Type: Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2023-09-19 13:44:32 page 12 of 12

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2200373

Jones Nissan Inc
PLAINTIFF(S)

Thag Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

Defendant's Motion to Reconsider the Court's order of 9-19-23 is granted insofar as the Court clarifies that the previous order makes no ruling on the issue of whether Defendants are entitled to a setoff or credit of any amounts previously tendered by Defendant Merrill Lynch.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/22/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Georgetown Common Pleas

Case Caption: Jones Nissan Inc VS Thag Llc , defendant, et al

Case Number: 2020CP2200373

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2023-10-22 17:58:25 page 3 of 3

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC; and Terry
L. Holmes,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-_____

COMPLAINT

(Jury Trial Demanded)

The Plaintiff, by and through the undersigned attorneys, complaining of the Defendants, jointly and severally, would allege and show unto the Court the following:

JURISDICTION AND VENUE

1. The Plaintiff, Jones Nissan, Inc. ("Plaintiff"), is a domestic corporation with its principal place of business in Sumter County, South Carolina. At all relevant times, Plaintiff was in the business of owning and operating a Nissan automobile dealership in Sumter, South Carolina.
2. The Defendant, THAG, LLC ("Defendant THAG"), is a domestic limited liability company with its principal place of business in Pawleys Island, Georgetown County, South Carolina. Upon information and belief, at all relevant times, Defendant THAG was in the business of owning and operating automobile dealerships in and around South Carolina, including Pawleys Island and Sumter, South Carolina. Upon further information and belief, Defendant THAG was, at all relevant times, managed, operated and controlled by Terry L. Holmes, its sole member.
3. The Defendant, Nissan of Sumter, LLC ("Defendant Nissan"), is a domestic limited liability company with its principal place of business in Sumter County, South Carolina. At all relevant times, Defendant Nissan was in the business of owning and operating a Nissan automobile

dealership in Sumter, South Carolina. Upon information and belief, Defendant Nissan was, at all relevant times, managed, operated and controlled by Terry L. Holmes, its sole member.

4. The Defendant, Terry L. Holmes individually ("Defendant Holmes"), is, upon information and belief, a citizen and resident of Georgetown County, South Carolina. Upon further information and belief, at all relevant times, Defendant Holmes, individually, was the managing and sole member of Defendant THAG and Defendant Nissan and operated and controlled both entities for his personal benefit.

5. Venue for this action is proper in Georgetown County.

FACTUAL BACKGROUND

6. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

7. Until approximately late February 2017, Plaintiff owned and operated Jones Nissan, a longtime family-owned automobile dealership in Sumter, South Carolina, specializing in the sale and service of Nissan automobiles.

8. On or about July 25, 2016, Plaintiff and Defendant THAG entered into an "Asset Purchase Agreement" ("APA") pursuant to which Defendant THAG agreed to purchase the assets of Plaintiff as more specifically described in the APA. A copy of the APA is attached as **Exhibit A** and incorporated herein by reference.

9. The APA was subsequently amended multiple times. The first amendment occurred on or about August 25, 2016, and a copy of the "First Amendment to Asset Purchase Agreement" is attached as **Exhibit B** and incorporated herein by reference. The second amendment occurred on or about November 2, 2016, and a copy of the "Second Amendment to Asset Purchase Agreement" is attached as **Exhibit C** and incorporated herein by reference. The third amendment occurred on or

about January 20, 2017, and a copy of the "Third Amendment to Asset Purchase Agreement" is attached as **Exhibit D** and incorporated herein by reference.

10. Pursuant to the third amendment (**Exhibit D**), Plaintiff agreed to extend financing to Defendant THAG in the principal amount of Six Hundred Fifty Thousand Dollars (\$650,000.00) to be amortized over a 60-month period at an interest rate of 6% per annum. As consideration for the third amendment, Defendant THAG, on or about January 19, 2017, entered into a "Pledged Collateral Account Control Agreement" ("PCACA") with Plaintiff and Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch") to perfect Plaintiff's security interest in Defendant THAG's Merrill Lynch Account No. SLP02250, which was to maintain at all relevant times funds sufficient to satisfy the outstanding balance of the financed portion of the purchase price as contemplated in the third amendment to the APA. A copy of the PCACA is attached as **Exhibit E** and incorporated herein by reference.

11. On or about February 28, 2017, Defendant Holmes, purportedly on behalf of Defendant THAG, signed a Promissory Note ("Note") having a face value of \$650,000.00 in favor of Plaintiff. Pursuant to the Note's terms, Defendant Holmes and Defendant THAG agreed to pay Plaintiff the principal sum of \$650,000 with interest at the rate of six percent (6.00%) per annum, past due interest to bear interest at the same rate; principal and interest being payable as follows: "In 59 (fifty-nine) consecutive, equal annual installments of Twelve Thousand Five Hundred Sixty Six and 32/100 (\$12,566.32) and a sixtieth installment of the balance then due, all in accordance with the amortization schedule attached hereto and made a part hereof." A copy of the Note is attached as **Exhibit F** and incorporated herein by reference.

12. Also on or about February 28, 2017, Defendant Holmes, purportedly on behalf of Defendant THAG, executed a "Pledge Agreement" ("Pledge Agreement") in favor of Plaintiff pursuant to which Defendant Holmes and Defendant THAG pledged and granted to Plaintiff a continuing and unconditional security interest in "Merrill Lynch Account No. [SLP02250] having a

portfolio value of \$650,000 as more fully described in the Pledged Collateral Account Control Agreement....” The funds in this account were specifically designated and intended to collateralize the financed portion of the debt owed to Plaintiff by Defendants Holmes and THAG. A copy of the Pledge Agreement is attached as **Exhibit G** and incorporated herein by reference.

13. Also on or about February 28, 2017, Defendant THAG and Defendant Nissan entered into an “Assignment of Asset Purchase Agreement” pursuant to which Defendant THAG assigned all of its right, title and interest in and to the APA to Defendant Nissan, which Defendant Nissan accepted. A copy of the Assignment of Asset Purchase Agreement is attached as **Exhibit H** and incorporated herein by reference.

14. Defendant THAG, Defendant Nissan and/or Defendant Holmes (collectively “Defendants”) made monthly payments to Plaintiff in the amount of \$12,566.32 in accordance with the terms of the Note through June 2019.

15. Upon information and belief, in or about 2019, Defendants sold the Nissan automobile dealership purchased from Plaintiff in 2017.

16. Since July 2019, Defendants have failed to make any payments to Plaintiff on the Note and as otherwise required by the APA. Accordingly, Defendants are in default on the Note as well as other instruments comprising the APA, specifically the Pledge Agreement and the PCACA.

17. As a result of Defendants’ default, on or about August 20, 2019, Plaintiff notified Defendant THAG and Defendant Holmes in writing of the default status and demanded payment in full of the Note’s then outstanding balance of Three Hundred Sixty Thousand Thirty-Five and 15/100 Dollars (\$360,035.15). A copy of Plaintiff’s “Notice of Default” and payment demand is attached as **Exhibit I** and incorporated herein by reference.

18. On or about August 22, 2019, Plaintiff, pursuant to the terms of the PCACA (**Exhibit E**), delivered a “Notice of Exclusive Control” to Merrill Lynch seeking to assume control of Account

No. SLP02250 and the funds and/or securities on deposit therein to satisfy the outstanding debt owed by Defendants THAG and Holmes on the Note. A copy of the Notice of Exclusive Control is attached as **Exhibit J** and incorporated herein by reference. However, Plaintiff subsequently discovered that Account No. SLP02250 had an existing balance of only \$700.00 due to Defendants' withdrawal of the funds previously deposited therein.

19. To date, Defendants have failed to satisfy the outstanding debt owed on the Note and currently owe Plaintiff in excess of \$360,035.15.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

20. The APA, as amended from time-to-time and as memorialized by **Exhibits A - J** above, constitutes a legally binding contract between Plaintiff and Defendants.

21. Defendants materially breached the contract in one or more of the following particulars, to wit:

- a) Failing to make the required monthly installment payments to Plaintiff in the amount of \$12,566.32 in accordance with the APA in general and Note in particular;
- b) Failing to abide by the terms of the PCACA as required by the APA in general and Pledge Agreement in particular;
- c) Failing to protect Plaintiff's security interest in Merrill Lynch Account No. SLP02250 as required by the Pledge Agreement;
- d) Breaching covenant 6(c) of the Pledge Agreement;
- e) Defaulting on provisions 8(a)(i)(ii)(iii) and (iv) of the Pledge Agreement;
- f) Failing to satisfy Plaintiff's demand for payment of the entire outstanding Note balance following default in August 2019;

- g) Breaching the implied covenant of good faith and fair dealing inherent in the APA and the various other instruments comprising it, specifically the Note, Pledge Agreement and PCACA; and
- h) Such other and further ways as may be shown by the evidence at trial.

22. Defendants have no legal justification for failing to perform as required by the contract between the parties.

23. As a direct and proximate result of Defendants' breach of contract, Plaintiff has suffered actual damages in the form of outstanding monthly installments payments since July 2019 in the sum of \$12,566.32 per month now totaling in excess of \$360,035.15, consequential damages, and the costs and attorneys' fees associated with the pursuit of this action.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

24. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

25. The APA, as amended from time-to-time and as memorialized by Exhibits A - J above, constitutes a legally binding contract between Plaintiff and Defendants.

26. Defendants materially breached the contract in one or more of the following particulars, to wit:

- a) Failing to make the required monthly installment payments to Plaintiff in the amount of \$12,566.32 in accordance with the APA in general and Note in particular;
- b) Failing to abide by terms of the PCACA as required by the APA in general and Pledge Agreement in particular;
- c) Failing to protect Plaintiff's security interest in Merrill Lynch Account No. SLP02250 as required by the Pledge Agreement;

- d) Breaching covenant 6(c) of the Pledge Agreement;
- e) Defaulting on provisions 8(a)(i)(ii)(iii) and (iv) of the Pledge Agreement;
- f) Failing to satisfy Plaintiff's demand for payment of the entire outstanding Note balance following default in August 2019;
- g) Breaching the implied covenant of good faith and fair dealing inherent in the APA and the various other instruments comprising it, specifically the Note, Pledge Agreement and PCACA; and
- h) Such other and further ways as may be shown by the evidence at trial.

27. Defendants, beyond merely breaching their contract Plaintiff, did so with fraudulent intent and through one or more of the following fraudulent acts:

- a) Purposefully and furtively siphoning funds from Merrill Lynch Account No. SLP02250 for their own use – funds which Defendants knew were subject to the PCACA and specifically designated to collateralize the financed portion of the debt owed to Plaintiff;
- b) Selling the Nissan dealership, which remained subject to a collateralized debt obligation owed to Plaintiff, and absconding with the sale proceeds rather than tendering such proceeds, in whole or in part, to Plaintiff to satisfy the outstanding debt owed on the Note; and
- c) Such other and further ways as may be shown by the evidence at trial.

28. As a direct and proximate result of Defendants' breach of contract accompanied by fraudulent act(s), Plaintiff has suffered actual damages as previously described; furthermore, Plaintiff is entitled to punitive damages due to the intentional and fraudulent nature of Defendants' conduct. Plaintiff further seeks the imposition of a constructive trust on all funds withdrawn from Merrill

Lynch Account No. SLP02250 by Defendants since February 28, 2017 as well as any proceeds from Defendants' sale of the Nissan dealership in or about 2019.

FOR A THIRD CAUSE OF ACTION
(Conversion and Civil Theft)

29. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

30. On or about January 19, 2017, Defendant Holmes, purportedly on behalf of Defendant THAG, executed the Note and pledged as collateral the monies (\$650,000.00) on deposit in the aforementioned Merrill Lynch account.

31. Further, these deposited funds were specific, readily identifiable, and formed part of the valuable consideration for the sale of the Nissan dealership located in Sumter, South Carolina.

32. In exchange for and in consideration of the \$650,000 pledged to Plaintiff in Merrill Lynch Account No. SLP02250, Plaintiff sold to Defendant Holmes and Defendant THAG a thirty-year old family-owned car dealership in Sumter, South Carolina.

33. At all times subsequent to January 19, 2017, Plaintiff had title to and/or the right to possess the specific, readily identifiable funds (i.e. \$650,000) on deposit in Merrill Lynch Account No. SLP02250.

34. Subsequent to January 19, 2017, Defendants improperly and without Plaintiff's permission altered the condition of the funds by withdrawing the funds for their own use and to the exclusion and detriment of Plaintiff's rights and interest in same.

35. As a direct and proximate result of Defendants' civil theft and conversion of the aforementioned funds, Plaintiff has suffered actual and consequential damages. Furthermore, Plaintiff is entitled to interest and punitive damages as a result of Defendants' conduct.

FOR A FOURTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing against
Defendants THAG and Holmes)

36. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

37. There exists in every contract consummated in South Carolina an implied covenant of good faith and fair dealing.

38. The sale of the Nissan dealership to Defendants was the result of many months of what Plaintiff believed were good faith negotiations involving the sale of a thirty-year, family owned business.

39. The above-referenced negotiations culminated in the formation of the aforementioned APA, including the Pledge Agreement and Note, all of which were duly executed and constituted binding agreements between the parties.

40. As a result of the extended negotiations, the special relationship between the parties, and the agreements entered into by the parties, there arose in each of the agreements (i.e. APA, Pledge Agreement and Note) a duty of good faith and fair dealing.

41. As such, at all times following the execution of the foregoing agreements, Defendants THAG and Holmes owed Plaintiff a duty of good faith and fair dealing.

42. Despite the foregoing, Defendants negligently, recklessly and willfully breached the duties owed to Plaintiff by:

- a) Purposefully and furtively siphoning funds from Merrill Lynch Account No. SLP02250 for their own use – funds which Defendants knew were subject to the PCACA and specifically designated to collateralize the financed portion of the debt owed to Plaintiff;
- b) Selling the Nissan dealership, which remained subject to a collateralized debt obligation owed to Plaintiff, and absconding with the sale proceeds rather than

tendering such proceeds, in whole or in part, to Plaintiff to satisfy the debt owed; and

c) Such other and further ways as may be shown by the evidence at trial.

43. As a direct and proximate result of Defendants' negligent, reckless and willful acts and/or omissions, Plaintiff has suffered actual and consequential damages.

FOR A FIFTH CAUSE OF ACTION
(Fraud as to Defendants THAG and Holmes)

44. Plaintiff realleges and incorporates all preceding paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

45. Defendants THAG and Holmes, by and through express assurances made in the PCACA (**Exhibit E**) and Pledge Agreement (**Exhibit G**), represented to Plaintiff that specific, readily identifiable funds sufficient to satisfy the aforementioned collateralized debt obligation owed to Plaintiff would remain on deposit in Merrill Lynch Account No. SLP02250 until the debt under the Note was paid in full and satisfied.

46. These specific representations by Defendants THAG and Holmes were false when made.

47. These representations by Defendants THAG and Holmes were material insofar as they served as the basis for the third amendment to the APA, and Plaintiff would not have agreed to the said amendment but for Defendants THAG and Holmes' willingness to collateralize the debt obligation as previously described.

48. Defendants THAG and Holmes knew the representations made in the PCACA and Pledge Agreement were false at the time of their making, or alternatively, Defendants THAG and Holmes made such representations in reckless disregard of the statements' truth or falsity.

49. Defendants THAG and Holmes intended that Plaintiff act upon their representations set forth in the PCACA and Pledge Agreement, which Plaintiff ultimately did by financing \$650,000 of the purchase price for the Nissan dealership.

50. Plaintiff was ignorant of the falsity of Defendants THAG and Holmes' statements and representations.

51. Plaintiff relied upon the truth of Defendants THAG and Holmes' statements and representations.

52. Plaintiff had a right to rely upon the statements and representations made by Defendants THAG and Holmes.

53. As a direct and proximate consequence of Defendants THAG and Holmes' fraudulent statements and representations, Plaintiff has suffered actual damages as a result of Defendants siphoning off in excess of \$360,035.15 worth of collateralized funds from Merrill Lynch Account No. SLP02250 for their own use. Plaintiff further seeks the imposition of a constructive trust on all funds withdrawn from Merrill Lynch Account No. SLP02250 by Defendants since February 28, 2017 as well as any proceeds from Defendants' sale of the Nissan dealership in or about 2019. Furthermore, Plaintiff is entitled to punitive damages as a result of Defendants' fraudulent conduct.

FOR A SIXTH CAUSE OF ACTION
(Constructive Fraud as to Defendants THAG and Holmes)

54. Plaintiff realleges and incorporates all preceding paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

55. Defendants THAG and Holmes, by and through express assurances made in the PCACA (**Exhibit E**) and Pledge Agreement (**Exhibit G**), represented to Plaintiff that specific, readily identifiable funds sufficient to satisfy the aforementioned collateralized debt obligation owed to

Plaintiff would remain on deposit in Merrill Lynch Account No. SLP02250 until the debt under the Note was paid in full and satisfied.

56. These specific representations by Defendants THAG and Holmes were false when made, and Defendants THAG and Holmes should have known of their falsity.

57. These specific representations by Defendants THAG and Holmes were material insofar as they served as the basis for the third amendment to the APA, and Plaintiff would not have agreed to the said amendment but for Defendants THAG and Holmes' willingness to collateralize the debt obligation as previously described.

58. Defendants THAG and Holmes intended that Plaintiff act upon their representations set forth in the PCACA and Pledge Agreement, which Plaintiff ultimately did by financing \$650,000 of the purchase price for the Nissan dealership.

59. Plaintiff was ignorant of the falsity of Defendants THAG and Holmes' statements and representations.

60. Plaintiff relied upon the truth of Defendants THAG and Holmes' statements and representations.

61. Plaintiff had a right to rely upon the statement and representations made by Defendants THAG and Holmes.

62. As a direct and proximate consequence of Defendants THAG and Holmes' fraudulent statements and representations, Plaintiff has suffered actual damages as a result of Defendants siphoning off in excess of \$360,035.15 worth of collateralized funds from Merrill Lynch Account No. SLP02250 for their own use. Plaintiff further seeks the imposition of a constructive trust on all funds withdrawn from Merrill Lynch Account No. SLP02250 by Defendants since February 28, 2017 as well as any proceeds from Defendants' sale of the Nissan dealership in or about 2019. Furthermore, Plaintiff is entitled to punitive damages as a result of Defendants' fraudulent conduct.

FOR A SEVENTH CAUSE OF ACTION
(Money Had and Received)

63. Plaintiff realleges and incorporates all preceding paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

64. One or more Defendants presently hold money in hand that was previously on deposit in Merrill Lynch Account No. SLP02250, which was subject to the PCACA and Pledge Agreement, or alternatively, which was generated as a result of Defendants' sale of the aforementioned Nissan dealership in or about 2019.

65. For the reasons previously alleged, Defendants, in equity and good conscience, ought to pay the money over to Plaintiff in an amount sufficient to satisfy the outstanding debt obligation on the Note, pre-judgment interest, the costs and attorney fees associated with this action, and such other and further amounts as equity may require.

FOR AN EIGHTH CAUSE OF ACTION
(Quantum Meruit)

66. Plaintiff realleges and incorporates all preceding paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

67. Plaintiff alleges that it conferred a non-gratuitous benefit upon Defendants via the transfer of possession of the Nissan automobile dealership in Sumter, South Carolina for only partial satisfaction of the full purchase price as contemplated by the APA.

68. Defendants realized a significant benefit from Plaintiff's transfer of possession of the dealership – a viable going concern at the time of transfer – in that Defendants were thereafter able to sell inventory at a profit; moreover, Defendants, upon information and belief, eventually sold the dealership itself for a profit in or about 2019.

69. Defendants' retention of the proceeds generated and received from the sale of the dealership in or about 2019 under these conditions would be unjust given the significant outstanding debt Defendants have owed to Plaintiff since August 2019 – an amount now in excess of \$360,035.15.

70. Plaintiff has suffered economic damage in an amount now exceeding \$360,035.15. Additionally, Plaintiff seeks pre-judgment interest on its claim for quantum meruit.

FOR A NINTH CAUSE OF ACTION

(Piercing the Corporate Veil / Alter Ego as to Defendants THAG and Nissan)

71. Plaintiff realleges and incorporates all preceding paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

72. At all times throughout the above-referenced dealings with Plaintiff, Defendants THAG and Nissan were controlled exclusively, to the point of domination, by Defendant Holmes individually, such that Defendants THAG and Nissan were the alter ego of Defendant Holmes individually, and merely a façade for Defendant Holmes' personal actions, including but not limited to actions associated with the management of financial assets designated and secured for the benefit of Plaintiff as previously alleged.

73. In light of Defendant Holmes' domineering and indistinguishable relationship with Defendants THAG and Nissan, the liability limitations and protections otherwise available to Defendant Holmes through each entity should be disregarded and nullified, and Defendant Holmes should be personally liable for the debts and obligations of each, specifically the debt previously alleged which now exceeds \$360,035.15.

74. In light of Defendant Holmes' domineering and indistinguishable relationship with Defendants THAG and Nissan, there would be an element of injustice or fundamental unfairness that would prevail if the liability limitations and protections otherwise available to Defendant Holmes through each entity were recognized such that Defendant Holmes would be allowed to profit from the wrongful conduct alleged herein.

75. Plaintiff would show that it has suffered actual damage in excess of \$360,035.15 because of the wrongful and inequitable conduct of Defendant Holmes while acting under the guise of Defendants THAG and Nissan, for which reason the liability protections otherwise available to Defendants THAG and Nissan should be disregarded.

FOR A TENTH CAUSE OF ACTION
(Accounting)

76. Plaintiff realleges and incorporates all preceding paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

77. Plaintiff would show that it is entitled to an accounting of Defendants' assets and liabilities, personal and corporate, due to Defendants' failure to satisfy the indebtedness previously described.

WHEREFORE, Plaintiff prays for the following:

- i. Judgment against Defendants, jointly and severally, for actual, special and consequential damages as may be proven at trial;
- ii. Punitive damages in an amount to be determined by the fact finder;
- iii. All attorney's fees and costs associated with this action;
- iv. Pre-judgment interest;
- v. An accounting of Defendants' assets and liabilities;
- vi. Imposition of a constructive trust on all proceeds withdrawn or otherwise negotiated from Merrill Lynch Account No. SLP02250 since January 19, 2017;
- vii. Imposition of a constructive trust on all proceeds from Defendants' sale of the Nissan dealership in or about 2019;
- viii. That any corporate or other asset liability protections the Defendant entities might otherwise be entitled to be disregarded and nullified; and
- ix. For such other and further relief as this Court deems just and proper

MCLEOD LAW GROUP, LLC
3 Morris Street, Suite A
Charleston, SC 29403
Tel. 843-277-6655
Fax 843-277-6660

s/ W. Mullins McLeod, Jr.
W. Mullins McLeod, Jr. (14148)
mullins@mcleod-lawgroup.com
John D. Hudson, Jr. (68646)
john@mcleod-lawgroup.com

Attorneys for the Plaintiff

April 16, 2020
Charleston, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	FIFTEENTH JUDICIAL CIRCUIT
Jones Nissan, Inc.,	)	Civil Action No. 2020-CP-22-00373
Plaintiff,	)	
vs.	)	Answer and Counterclaims of Defendants
THAG, LLC; Nissan of Sumter, LLC; and	)	
Terry L. Holmes,	)	
Defendants.	)	

NOW COME THAG, LLC; Nissan of Sumter, LLC; and Terry L. Holmes, Defendants in the above-captioned action, and submit their Answer and Counterclaims to the Plaintiff's Complaint as follows:

1. Defendants admit Paragraph 1.
2. In response to Paragraph 2, Defendants admit that THAG's principal place of business was in Pawleys Island until about February 6, 2019, when it was moved to Cheraw, SC. Further, Defendants deny that THAG owns or operates a dealership in Sumter. The reminder of Paragraph 2 is admitted.
3. Defendants admit Paragraph 3.
4. Defendants deny Paragraph 4 to the extent it claims Mr. Holmes is a resident of Georgetown County, and that he operated the companies for his personal benefit. The remainder of Paragraph 4 is admitted.
5. Defendants admit Paragraph 5.
6. In response to Paragraph 6, Defendants reallege and incorporate their prior responses as if fully set forth herein verbatim.

7. Defendants admit Paragraphs 7-9, upon information and belief.
8. In response to Paragraphs 10-12, Defendants crave reference to the documents referenced therein for the terms thereof, and deny anything inconsistent therewith.
9. Defendants deny Paragraph 13 and demand strict proof thereof. Defendants would note that the Exhibit H referenced is not signed by any of the purported parties.
10. Defendants admit Paragraphs 14-15.
11. Defendants deny Paragraphs 16-19 and demand strict proof thereof.

Answering the First Cause of Action
(Breach of Contract)

12. Paragraph 20 states a legal conclusion and requires no answer from Defendants. To the extent an answer is deemed required, Defendants deny Paragraph 20.
13. Defendants deny Paragraphs 21-23 and demand strict proof thereof.

Answering the Second Cause of Action
(Breach of Contract Accompanied by Fraudulent Act)

14. In response to Paragraph 24, Defendants reallege and incorporate their prior responses as though fully set forth herein verbatim.
15. Paragraph 25 states a legal conclusion and requires no answer from Defendants. To the extent an answer is deemed required, Defendants deny Paragraph 25.
16. Defendants deny Paragraphs 26-28 and demand strict proof thereof.

Answering the Third Cause of Action
(Conversion and Civil Theft)

17. In response to Paragraph 29, Defendants reallege and incorporate their prior responses as though fully set forth herein verbatim.
18. Defendants deny Paragraphs 30-35 and demand strict proof thereof.

Answering the Fourth Cause of Action
(Breach of Implied Covenant of Good Faith and Fair Dealing)

19. In response to Paragraph 36, Defendants reallege and incorporate their prior responses as though fully set forth herein verbatim.
20. Paragraph 37 states a legal conclusion that requires no answer from the Defendants.
To the extent an answer is deemed required, Defendants deny Paragraph 37.
21. Defendants are without information sufficient to form a belief as to the truth of Paragraph 38, and thus this paragraph stands denied.
22. Paragraphs 39-40 state legal conclusions that require no answer from the Defendants.
To the extent answers are deemed required, Defendants deny Paragraphs 39-40.
23. In response to Paragraph 41, Defendants admit that they owed such duties as arose through contract or by operation of SC law, and deny anything inconsistent therewith.
24. Defendants deny Paragraphs 42-43 and demand strict proof thereof.

Answering the Fifth Cause of Action
(Fraud)

25. In response to Paragraph 44, Defendants reallege and incorporate their prior responses as though fully set forth herein verbatim.
26. In response to Paragraph 45, Defendants crave reference to the documents referenced for the terms thereof, and deny anything inconsistent therewith.
27. Defendants deny Paragraphs 46-48 and demand strict proof thereof.
28. Defendants admit Paragraph 49.
29. Defendants deny Paragraph 50 and demand strict proof thereof.

30. Defendants are without information sufficient to form a belief as to the truth of Paragraphs 51-52, and thus these paragraphs stand denied.

31. Defendants deny Paragraph 53 and demand strict proof thereof.

Answering the Sixth Cause of Action
(Constructive Fraud)

32. In response to Paragraph 54, Defendants reallege and incorporate all prior responses as though fully set forth herein verbatim.

33. Defendants deny Paragraphs 55-57 and demand strict proof thereof.

34. Defendants admit Paragraph 58.

35. Defendants deny Paragraph 59 and demand strict proof thereof.

36. Defendants are without information sufficient to form a belief as to the truth of Paragraphs 60-61, and thus these paragraphs stand denied.

37. Defendants deny Paragraph 62 and demand strict proof thereof.

Answering the Seventh Cause of Action
(Money Had and Received)

38. In response to Paragraph 63, Defendants reallege and incorporate all prior responses as if fully set forth herein verbatim.

39. Defendants deny Paragraphs 64-65 and demand strict proof thereof.

Answering the Eighth Cause of Action
(Quantum Meruit)

40. In response to Paragraph 66, Defendants reallege and incorporate all prior responses as if fully set forth herein verbatim.

41. Defendants deny Paragraphs 67-70 and demand strict proof thereof.

Answering the Ninth Cause of Action
(Piercing Corporate Veil/Alter Ego)

42. In response to Paragraph 71, Defendants reallege and incorporate all prior responses as if fully set forth herein verbatim.
43. Defendants deny Paragraphs 72-75 and demand strict proof thereof.

Answering the Tenth Cause of Action
(Accounting)

44. In response to Paragraph 76, Defendants reallege and incorporate all prior responses as if fully set forth herein verbatim.
45. Defendants deny Paragraph 77 and demand strict proof thereof.
46. Defendants deny any remaining allegations not previously answered, including but not limited to the prayer for relief.

Further Answering the Complaint
And as an Affirmative Defense Thereto
(Failure to State a Claim)

47. Plaintiff's Complaint must be dismissed because it fails to state a claim upon which relief may be granted.

Further Answering the Complaint
And as an Affirmative Defense Thereto
(Statute of Limitations)

48. One or more of Plaintiff's claims are barred by the relevant statute(s) of limitations.

Further Answering the Complaint
And as an Affirmative Defense Thereto
(Statute of Frauds/Parol Evidence Rule)

49. One or more of Plaintiff's claims fails because it relies on an interpretation of the contract in conflict with the Statute of Frauds and/or Parol Evidence Rule.

Further Answering the Complaint
And as an Affirmative Defense Thereto
(Waiver/Laches/Estoppel)

50. The Plaintiff's claims fail under the alternate doctrines of waiver, laches, and/or estoppel.

Further Answering the Complaint
And as a First Counterclaim Against Jones Nissan, Inc.
(Breach of Contract)

51. Defendants incorporate their prior allegations as though restated herein verbatim.
52. This Court has jurisdiction over Defendants' Counterclaims herein involving the same set of transactions or occurrences.
53. THAG, LLC entered into an Asset Purchase Agreement with Jones Nissan on or about July 28, 2016.
54. THAG, LLC performed its obligations under the Asset Purchase Agreement.
55. Jones Nissan breached the contract with THAG, LLC in the following particulars:
- a) Misrepresentation of material facts concerning the market value of the dealership;
 - b) Charging an exorbitant amount of rent to THAG in exchange for its use of the dealership property;
 - c) Representing to THAG that it would be allowed to rent a 1.5 acre lot, when in fact it was allowed to use only about 0.25 acres;
 - d) Not renting THAG sufficient space to display its inventory;
 - e) Not renting THAG the building on the premises, instead using it for Jones' detailing business;
 - f) Owning and operating a car dealership next door to THAG, in direct competition with THAG and in violation of the non-compete agreement; and

- g) Such other and further breaches as will come to light through discovery.
- 56. As a direct and proximate result of Jones Nissan's breach of contract, THAG, LLC has sustained actual damages in an amount to be determined by the trier of fact.

Further Answering the Complaint
And as a Second Counterclaim Against Jones Nissan, Inc.
(Breach of Implied Covenant of Good Faith and Fair Dealing)

- 57. Defendants incorporate their prior allegations as though restated herein verbatim.
- 58. As with any contract entered into in SC, the Asset Purchase Agreement contains an implied covenant of good faith and fair dealing for both parties.
- 59. Jones Nissan breached its implied covenant of good faith and fair dealing in the following particulars:
 - a) Misrepresentation of material facts concerning the market value of the dealership;
 - b) Charging an exorbitant amount of rent to THAG in exchange for its use of the dealership property;
 - c) Representing to THAG that it would be allowed to rent a 1.5 acre lot, when in fact it was allowed to use only about 0.25 acres;
 - d) Not renting THAG sufficient space to display its inventory;
 - e) Not renting THAG the building on the premises, instead using it for Jones' detailing business;
 - f) Owning and operating a car dealership next door to THAG, in direct competition with THAG and in violation of the non-compete agreement; and
 - g) Such other and further breaches as will come to light through discovery.

60. As a direct and proximate result of Jones Nissan's breach of the implied covenant of good faith and fair dealing, THAG, LLC has sustained actual damages in an amount to be determined by the trier of fact.

WHEREFORE, Defendants pray this Honorable Court for the following:

- a) Dismissal of the Plaintiff's claims with prejudice;
- b) Judgment against Plaintiff on THAG's Counterclaims;
- c) Assessment of court costs and attorney's fees against Plaintiff; and
- d) Such other and further relief as the Court deems proper.

THE BOSTIC LAW GROUP, P.A.

/s Christopher M. Ramsey
Christopher M. Ramsey
2236 Ashley Crossing Dr.
Charleston, South Carolina 29414
(843) 571-2525
Fax: (843) 571-7050
cramsey@bosticlawn.com
Attorneys for the Defendants

June 1, 2020

Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC; Terry L.
Holmes; and Merrill Lynch, Pierce, Fenner &
Smith, Incorporated,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

AMENDED COMPLAINT

(Jury Trial Demanded)

The Plaintiff, by and through the undersigned attorneys, complaining of the Defendants, jointly and severally, would allege and show unto the Court the following:

JURISDICTION AND VENUE

1. The Plaintiff, Jones Nissan, Inc. ("Plaintiff"), is a domestic corporation with its principal place of business in Sumter County, South Carolina. At all relevant times, Plaintiff was in the business of owning and operating a Nissan automobile dealership in Sumter, South Carolina.
2. The Defendant, THAG, LLC ("Defendant THAG"), is a domestic limited liability company with its principal place of business in Pawleys Island, Georgetown County, South Carolina. Upon information and belief, at all relevant times, Defendant THAG was in the business of owning and operating automobile dealerships in and around South Carolina, including Pawleys Island and Sumter, South Carolina. Upon further information and belief, Defendant THAG was, at all relevant times, managed, operated and controlled by Terry L. Holmes, its sole member.
3. The Defendant, Nissan of Sumter, LLC ("Defendant Nissan"), is a domestic limited liability company with its principal place of business in Sumter County, South Carolina. At all relevant times, Defendant Nissan was in the business of owning and operating a Nissan automobile

dealership in Sumter, South Carolina. Upon information and belief, Defendant Nissan was, at all relevant times, managed, operated and controlled by Terry L. Holmes, its sole member.

4. The Defendant, Terry L. Holmes individually ("Defendant Holmes"), is, upon information and belief, a citizen and resident of Georgetown County, South Carolina. Upon further information and belief, at all relevant times, Defendant Holmes, individually, was the managing and sole member of Defendant THAG and Defendant Nissan and operated and controlled both entities for his personal benefit.

5. The Defendant Merrill Lynch, Pierce, Fenner & Smith, Incorporated. ("Defendant Merrill Lynch" or "Merrill Lynch"), is, upon information and belief, a corporation organized and existing under the laws of Delaware with its principal place of business in a State other than South Carolina. At all relevant times, Merrill Lynch was authorized to do business, and in fact did business, in South Carolina.

6. Venue for this action is proper in Georgetown County.

FACTUAL BACKGROUND

7. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

8. Until approximately late February 2017, Plaintiff owned and operated Jones Nissan, a longtime family-owned automobile dealership in Sumter, South Carolina, specializing in the sale and service of Nissan automobiles.

9. On or about July 25, 2016, Plaintiff and Defendant THAG entered into an "Asset Purchase Agreement" ("APA") pursuant to which Defendant THAG agreed to purchase the assets of Plaintiff as more specifically described in the APA. A copy of the APA is attached as **Exhibit A** and incorporated herein by reference.

10. The APA was subsequently amended multiple times. The first amendment occurred on or about August 25, 2016, and a copy of the "First Amendment to Asset Purchase Agreement" is attached as **Exhibit B** and incorporated herein by reference. The second amendment occurred on or about November 2, 2016, and a copy of the "Second Amendment to Asset Purchase Agreement" is attached as **Exhibit C** and incorporated herein by reference. The third amendment occurred on or about January 20, 2017, and a copy of the "Third Amendment to Asset Purchase Agreement" is attached as **Exhibit D** and incorporated herein by reference.

11. Pursuant to the third amendment (**Exhibit D**), Plaintiff agreed to extend financing to Defendant THAG in the principal amount of Six Hundred Fifty Thousand Dollars (\$650,000.00) to be amortized over a 60-month period at an interest rate of 6% per annum. As consideration for the third amendment, Defendant THAG, on or about January 19, 2017, entered into a "Pledged Collateral Account Control Agreement" ("PCACA") with Plaintiff and Defendant Merrill Lynch to perfect Plaintiff's security interest in Defendant THAG's Merrill Lynch Account No. XXX-XX250, which was to maintain at all relevant times funds sufficient to satisfy the outstanding balance of the financed portion of the purchase price as contemplated in the third amendment to the APA. A copy of the PCACA is attached as **Exhibit E** and incorporated herein by reference.

12. Also on or about January 19, 2017, Defendant Merrill Lynch issued to Defendant THAG and/or Holmes a "Verification of Deposit – Credit Reference," signed by a member of its Branch Office Management Team, confirming a portfolio value of \$650,000 for account "XXX-XX250" as of that date. A copy of the Verification of Deposit is attached as **Exhibit E-1** and incorporated herein by reference.

13. On or about February 28, 2017, Defendant Holmes, purportedly on behalf of Defendant THAG, signed a Promissory Note ("Note") having a face value of \$650,000.00 in favor of

Plaintiff. Pursuant to the Note's terms, Defendant Holmes and Defendant THAG agreed to pay Plaintiff the principal sum of \$650,000 with interest at the rate of six percent (6.00%) per annum, past due interest to bear interest at the same rate; principal and interest being payable as follows: "In 59 (fifty-nine) consecutive, equal annual installments of Twelve Thousand Five Hundred Sixty Six and 32/100 (\$12,566.32) and a sixtieth installment of the balance then due, all in accordance with the amortization schedule attached hereto and made a part hereof." A copy of the Note is attached as **Exhibit F** and incorporated herein by reference.

14. Also on or about February 28, 2017, Defendant Holmes, purportedly on behalf of Defendant THAG, executed a "Pledge Agreement" ("Pledge Agreement") in favor of Plaintiff pursuant to which Defendant Holmes and Defendant THAG pledged and granted to Plaintiff a continuing and unconditional security interest in "Merrill Lynch Account No. [XXX-XX250] having a portfolio value of \$650,000 as more fully described in the Pledged Collateral Account Control Agreement...." The funds in this account were specifically designated and intended to collateralize the financed portion of the debt owed to Plaintiff by Defendants Holmes and THAG. A copy of the Pledge Agreement is attached as **Exhibit G** and incorporated herein by reference.

15. Also on or about February 28, 2017, Defendant THAG and Defendant Nissan entered into an "Assignment of Asset Purchase Agreement" pursuant to which Defendant THAG assigned all of its right, title and interest in and to the APA to Defendant Nissan, which Defendant Nissan accepted. A copy of the Assignment of Asset Purchase Agreement is attached as **Exhibit H** and incorporated herein by reference.

16. Defendant THAG, Defendant Nissan and/or Defendant Holmes (collectively "Defendants") made monthly payments to Plaintiff in the amount of \$12,566.32 in accordance with the terms of the Note through at least June 2019.

17. Upon information and belief, in or about 2019, Defendants sold the Nissan automobile dealership purchased from Plaintiff in 2017.

18. Since approximately July 2019, Defendants have failed to make any payments to Plaintiff on the Note and as otherwise required by the APA. Accordingly, Defendants are in default on the Note as well as other instruments comprising the APA, specifically the Pledge Agreement and the PCACA.

19. As a result of Defendants' default, on or about August 20, 2019, Plaintiff notified Defendant THAG and Defendant Holmes in writing of the default status and demanded payment in full of the Note's then outstanding balance of Three Hundred Sixty Thousand Thirty-Five and 15/100 Dollars (\$360,035.15). A copy of Plaintiff's "Notice of Default" and payment demand is attached as **Exhibit I** and incorporated herein by reference.

20. On or about August 22, 2019, Plaintiff, pursuant to the terms of the PCACA (**Exhibit E**), delivered a "Notice of Exclusive Control" to Merrill Lynch seeking to assume control of Account No. XXX-XX250 and the funds and/or securities on deposit therein to satisfy the outstanding debt owed by Defendants THAG and Holmes on the Note. A copy of the Notice of Exclusive Control is attached as **Exhibit J** and incorporated herein by reference. However, following delivery of the notice to Merrill Lynch, Plaintiff discovered that Account No. XXX-XX250 had an existing balance of only \$700.00 due to Defendants' transfer or withdrawal of the funds previously deposited therein.

21. To date, Defendants have failed to satisfy the outstanding debt owed on the Note and currently owe Plaintiff in excess of \$360,035.15.

FOR A FIRST CAUSE OF ACTION**(Breach of Contract as to Defendants THAG, Nissan of Sumter and Holmes)**

22. The APA, as amended from time-to-time and as memorialized by Exhibits A - J above, constitutes a legally binding contract between Plaintiff and Defendants.

23. Defendants materially breached the contract in one or more of the following particulars, to wit:

- a) Failing to make the required monthly installment payments to Plaintiff in the amount of \$12,566.32 in accordance with the APA in general and Note in particular;
- b) Failing to abide by the terms of the PCACA as required by the APA in general and Pledge Agreement in particular;
- c) Failing to protect Plaintiff's security interest in Merrill Lynch Account No. XXX-XX250 as required by the Pledge Agreement;
- d) Breaching covenant 6(c) of the Pledge Agreement;
- e) Defaulting on provisions 8(a)(i)(ii)(iii) and (iv) of the Pledge Agreement;
- f) Failing to satisfy Plaintiff's demand for payment of the entire outstanding Note balance following default in August 2019;
- g) Breaching the implied covenant of good faith and fair dealing inherent in the APA and the various other instruments comprising it, specifically the Note, Pledge Agreement and PCACA; and
- h) Such other and further ways as may be shown by the evidence at trial.

24. Defendants have no legal justification for failing to perform as required by the contract between the parties.

25. As a direct and proximate result of Defendants' breach of contract, Plaintiff has suffered actual damages in the form of outstanding monthly installments payments since July 2019 in the sum of \$12,566.32 per month now totaling in excess of \$360,035.15, consequential damages, and the costs and attorneys' fees associated with the pursuit of this action.

FOR A SECOND CAUSE OF ACTION

**(Breach of Contract Accompanied by Fraudulent Act as to Defendants THAG,
Nissan of Sumter and Holmes)**

26. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

27. The APA, as amended from time-to-time and as memorialized by Exhibits A - J above, constitutes a legally binding contract between Plaintiff and Defendants.

28. Defendants materially breached the contract in one or more of the following particulars, to wit:

- a) Failing to make the required monthly installment payments to Plaintiff in the amount of \$12,566.32 in accordance with the APA in general and Note in particular;
- b) Failing to abide by terms of the PCACA as required by the APA in general and Pledge Agreement in particular;
- c) Failing to protect Plaintiff's security interest in Merrill Lynch Account No. XXX-XX250 as required by the Pledge Agreement;
- d) Breaching covenant 6(c) of the Pledge Agreement;
- e) Defaulting on provisions 8(a)(i)(ii)(iii) and (iv) of the Pledge Agreement;
- f) Failing to satisfy Plaintiff's demand for payment of the entire outstanding Note balance following default in August 2019;

- g) Breaching the implied covenant of good faith and fair dealing inherent in the APA and the various other instruments comprising it, specifically the Note, Pledge Agreement and PCACA; and
- h) Such other and further ways as may be shown by the evidence at trial.

29. Defendants, beyond merely breaching their contract with Plaintiff, did so with fraudulent intent and through one or more of the following fraudulent acts:

- a) Purposefully and furtively siphoning funds from Merrill Lynch Account No. XXX-XX250 for their own use – funds which Defendants knew were subject to the PCACA and specifically designated to collateralize the financed portion of the debt owed to Plaintiff;
- b) Selling the Nissan dealership, which remained subject to a collateralized debt obligation owed to Plaintiff, and absconding with the sale proceeds rather than tendering such proceeds, in whole or in part, to Plaintiff to satisfy the outstanding debt owed on the Note; and
- c) Such other and further ways as may be shown by the evidence at trial.

30. As a direct and proximate result of Defendants' breach of contract accompanied by fraudulent act(s), Plaintiff has suffered actual damages as previously described; furthermore, Plaintiff is entitled to punitive damages due to the intentional and fraudulent nature of Defendants' conduct. Plaintiff further seeks the imposition of a constructive trust on all funds withdrawn from Merrill Lynch Account No. XXX-XX250 by Defendants since February 28, 2017 as well as any proceeds from Defendants' sale of the Nissan dealership in or about 2019.

FOR A THIRD CAUSE OF ACTION

(Conversion and Civil Theft as to Defendants THAG, Nissan of Sumter and Holmes)

31. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

32. On or about January 19, 2017, Defendant Holmes, purportedly on behalf of Defendant THAG, executed the Note and pledged as collateral the monies (\$650,000.00) on deposit in the aforementioned Merrill Lynch account.

33. Further, these deposited funds were specific, readily identifiable, and formed part of the valuable consideration for the sale of the Nissan dealership located in Sumter, South Carolina.

34. In exchange for and in consideration of the \$650,000 pledged to Plaintiff in Merrill Lynch Account No. XXX-XX250, Plaintiff sold to Defendant Holmes and Defendant THAG a thirty-year old family-owned car dealership in Sumter, South Carolina.

35. At all times subsequent to January 19, 2017, Plaintiff had title to and/or the right to possess the specific, readily identifiable funds (i.e. \$650,000) on deposit in Merrill Lynch Account No. XXX-XX250.

36. Subsequent to January 19, 2017, Defendants improperly and without Plaintiff's permission altered the condition of the funds by withdrawing the funds for their own use and to the exclusion and detriment of Plaintiff's rights and interest in same.

37. As a direct and proximate result of Defendants' civil theft and conversion of the aforementioned funds, Plaintiff has suffered actual and consequential damages. Furthermore, Plaintiff is entitled to interest and punitive damages as a result of Defendants' conduct.

FOR A FOURTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing against
Defendants THAG and Holmes)

38. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

39. There exists in every contract consummated in South Carolina an implied covenant of good faith and fair dealing.

40. The sale of the Nissan dealership to Defendants was the result of many months of what Plaintiff believed were good faith negotiations involving the sale of a thirty-year, family owned business.

41. The above-referenced negotiations culminated in the formation of the aforementioned APA, including the Pledge Agreement and Note, all of which were duly executed and constituted binding agreements between the parties.

42. As a result of the extended negotiations, the special relationship between the parties, and the agreements entered into by the parties, there arose in each of the agreements (i.e. APA, Pledge Agreement and Note) a duty of good faith and fair dealing.

43. As such, at all times following the execution of the foregoing agreements, Defendants THAG and Holmes owed Plaintiff a duty of good faith and fair dealing.

44. Despite the foregoing, Defendants negligently, recklessly and willfully breached the duties owed to Plaintiff by:

- a) Purposefully and furtively siphoning funds from Merrill Lynch Account No. XXX-XX250 for their own use – funds which Defendants knew were subject to the PCACA and specifically designated to collateralize the financed portion of the debt owed to Plaintiff;

b) Selling the Nissan dealership, which remained subject to a collateralized debt obligation owed to Plaintiff, and absconding with the sale proceeds rather than tendering such proceeds, in whole or in part, to Plaintiff to satisfy the debt owed; and

c) Such other and further ways as may be shown by the evidence at trial.

45. As a direct and proximate result of Defendants' negligent, reckless and willful acts and/or omissions, Plaintiff has suffered actual and consequential damages.

FOR A FIFTH CAUSE OF ACTION
(Fraud as to Defendants THAG and Holmes)

46. Plaintiff realleges and incorporates all preceding paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

47. Defendants THAG and Holmes, by and through express assurances made in the PCACA (**Exhibit E**) and Pledge Agreement (**Exhibit G**), represented to Plaintiff that specific, readily identifiable funds sufficient to satisfy the aforementioned collateralized debt obligation owed to Plaintiff would remain on deposit in Merrill Lynch Account No. XXX-XX250 until the debt under the Note was paid in full and satisfied.

48. These specific representations by Defendants THAG and Holmes were false when made.

49. These representations by Defendants THAG and Holmes were material insofar as they served as the basis for the third amendment to the APA, and Plaintiff would not have agreed to the said amendment but for Defendants THAG and Holmes' willingness to collateralize the debt obligation as previously described.

50. Defendants THAG and Holmes knew the representations made in the PCACA and Pledge Agreement were false at the time of their making, or alternatively, Defendants THAG and Holmes made such representations in reckless disregard of the statements' truth or falsity.

51. Defendants THAG and Holmes intended that Plaintiff act upon their representations set forth in the PCACA and Pledge Agreement, which Plaintiff ultimately did by financing \$650,000 of the purchase price for the Nissan dealership.

52. Plaintiff was ignorant of the falsity of Defendants THAG and Holmes' statements and representations.

53. Plaintiff relied upon the truth of Defendants THAG and Holmes' statements and representations.

54. Plaintiff had a right to rely upon the statements and representations made by Defendants THAG and Holmes.

55. As a direct and proximate consequence of Defendants THAG and Holmes' fraudulent statements and representations, Plaintiff has suffered actual damages as a result of Defendants siphoning off in excess of \$360,035.15 worth of collateralized funds from Merrill Lynch Account No. XXX-XX250 for their own use. Plaintiff further seeks the imposition of a constructive trust on all funds withdrawn from Merrill Lynch Account No. XXX-XX250 by Defendants since February 28, 2017 as well as any proceeds from Defendants' sale of the Nissan dealership in or about 2019. Furthermore, Plaintiff is entitled to punitive damages as a result of Defendants' fraudulent conduct.

FOR A SIXTH CAUSE OF ACTION
(Constructive Fraud as to Defendants THAG and Holmes)

56. Plaintiff realleges and incorporates all preceding paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

57. Defendants THAG and Holmes, by and through express assurances made in the PCACA (**Exhibit E**) and Pledge Agreement (**Exhibit G**), represented to Plaintiff that specific, readily identifiable funds sufficient to satisfy the aforementioned collateralized debt obligation owed to Plaintiff would remain on deposit in Merrill Lynch Account No. XXX-XX250 until the debt under the Note was paid in full and satisfied.

58. These specific representations by Defendants THAG and Holmes were false when made, and Defendants THAG and Holmes should have known of their falsity.

59. These specific representations by Defendants THAG and Holmes were material insofar as they served as the basis for the third amendment to the APA, and Plaintiff would not have agreed to the said amendment but for Defendants THAG and Holmes' willingness to collateralize the debt obligation as previously described.

60. Defendants THAG and Holmes intended that Plaintiff act upon their representations set forth in the PCACA and Pledge Agreement, which Plaintiff ultimately did by financing \$650,000 of the purchase price for the Nissan dealership.

61. Plaintiff was ignorant of the falsity of Defendants THAG and Holmes' statements and representations.

62. Plaintiff relied upon the truth of Defendants THAG and Holmes' statements and representations.

63. Plaintiff had a right to rely upon the statement and representations made by Defendants THAG and Holmes.

64. As a direct and proximate consequence of Defendants THAG and Holmes' fraudulent statements and representations, Plaintiff has suffered actual damages as a result of Defendants siphoning off in excess of \$360,035.15 worth of collateralized funds from Merrill Lynch Account No.

XXX-XX250 for their own use. Plaintiff further seeks the imposition of a constructive trust on all funds withdrawn from Merrill Lynch Account No. XXX-XX250 by Defendants since February 28, 2017 as well as any proceeds from Defendants' sale of the Nissan dealership in or about 2019. Furthermore, Plaintiff is entitled to punitive damages as a result of Defendants' fraudulent conduct.

FOR A SEVENTH CAUSE OF ACTION

(Money Had and Received as to Defendants THAG, Nissan of Sumter and Holmes)

65. Plaintiff realleges and incorporates all preceding paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

66. One or more Defendants presently hold money in hand that was previously on deposit in Merrill Lynch Account No. XXX-XX250, which was subject to the PCACA and Pledge Agreement, or alternatively, which was generated as a result of Defendants' sale of the aforementioned Nissan dealership in or about 2019.

67. For the reasons previously alleged, Defendants, in equity and good conscience, ought to pay the money over to Plaintiff in an amount sufficient to satisfy the outstanding debt obligation on the Note, pre-judgment interest, the costs and attorney fees associated with this action, and such other and further amounts as equity may require.

FOR AN EIGHTH CAUSE OF ACTION

(Quantum Meruit as to Defendants THAG, Nissan of Sumter and Holmes)

68. Plaintiff realleges and incorporates all preceding paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

69. Plaintiff alleges that it conferred a non-gratuitous benefit upon Defendants via the transfer of possession of the Nissan automobile dealership in Sumter, South Carolina for only partial satisfaction of the full purchase price as contemplated by the APA.

70. Defendants realized a significant benefit from Plaintiff's transfer of possession of the dealership – a viable going concern at the time of transfer – in that Defendants were thereafter able to sell inventory at a profit; moreover, Defendants, upon information and belief, eventually sold the dealership itself for a profit in or about 2019.

71. Defendants' retention of the proceeds generated and received from the sale of the dealership in or about 2019 under these conditions would be unjust given the significant outstanding debt Defendants have owed to Plaintiff since August 2019 – an amount now in excess of \$360,035.15.

72. Plaintiff has suffered economic damage in an amount now exceeding \$360,035.15. Additionally, Plaintiff seeks pre-judgment interest on its claim for quantum meruit.

FOR A NINTH CAUSE OF ACTION

(Piercing the Corporate Veil / Alter Ego as to Defendants THAG and Nissan)

73. Plaintiff realleges and incorporates all preceding paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

74. At all times throughout the above-referenced dealings with Plaintiff, Defendants THAG and Nissan were controlled exclusively, to the point of domination, by Defendant Holmes individually, such that Defendants THAG and Nissan were the alter ego of Defendant Holmes individually, and merely a façade for Defendant Holmes' personal actions, including but not limited to actions associated with the management of financial assets designated and secured for the benefit of Plaintiff as previously alleged.

75. In light of Defendant Holmes' domineering and indistinguishable relationship with Defendants THAG and Nissan, the liability limitations and protections otherwise available to Defendant Holmes through each entity should be disregarded and nullified, and Defendant Holmes should be personally liable for the debts and obligations of each, specifically the debt previously alleged which now exceeds \$360,035.15.

76. In light of Defendant Holmes' domineering and indistinguishable relationship with Defendants THAG and Nissan, there would be an element of injustice or fundamental unfairness that would prevail if the liability limitations and protections otherwise available to Defendant Holmes through each entity were recognized such that Defendant Holmes would be allowed to profit from the wrongful conduct alleged herein.

77. Plaintiff would show that it has suffered actual damage in excess of \$360,035.15 because of the wrongful and inequitable conduct of Defendant Holmes while acting under the guise of Defendants THAG and Nissan, for which reason the liability protections otherwise available to Defendants THAG and Nissan should be disregarded.

FOR A TENTH CAUSE OF ACTION
(Accounting)

78. Plaintiff realleges and incorporates all preceding paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

79. Plaintiff would show that it is entitled to an accounting of Defendants' assets and liabilities, personal and corporate, due to Defendants' failure to satisfy the indebtedness previously described.

FOR AN ELEVENTH CAUSE OF ACTION
(Breach of Contract as to Defendant Merrill Lynch)

80. Plaintiff realleges and incorporates all preceding paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

81. The PCACA, as memorialized in **Exhibit E**, constitutes a legally binding contract between Plaintiff, Defendant THAG, and Defendant Merrill Lynch, and at all times relevant hereto, Defendant Merrill Lynch was subject to the terms and conditions of the PCACA.

82. The PCACA was entered into for the express purpose of perfecting Plaintiff's existing security interest in the assets held in Defendant THAG's Merrill Lynch Account No. XXX-XX250 (hereinafter "the Account"). (Exhibit E, Section 2) Accordingly, the PCACA contains provisions designed to accomplish this purpose by restricting Defendant THAG's ability to withdraw, transfer or otherwise manipulate the designated funds held in the Account.

83. Specifically, Section 4 of the PCACA provides that Defendant THAG may not, without Plaintiff's permission, withdraw assets from the Account except for transferring income earned on the assets in the Account to a designated receiving account. (Exhibit E, Section 4) Section 9 of the PCACA provides that Defendant Merrill Lynch can be held liable to Plaintiff for permitting a transfer of assets that violates Section 4. (Exhibit E, Section 9)

84. Additionally, Section 7 of the PCACA provides that so long as the PCACA is in effect, "Merrill Lynch subordinates in favor of Creditor any security interest, lien, or right of setoff it may have, now or in the future against assets in the Account". (Exhibit E, Section 7)

85. Defendant Merrill Lynch materially breached the PCACA in one or more of the following particulars:

- a. By permitting Defendants THAG, Nissan of Sumter and/or Holmes to transfer or withdraw ineligible funds and/or assets from the Account without Plaintiff's consent, in violation of PCACA Section 4;
- b. By permitting multiple transfers of ineligible assets by Defendants THAG, Nissan of Sumter and/or Holmes from the Account to accounts other than the authorized receiving account without Plaintiff's consent, in violation of PCACA Section 4;

- c. By failing to send Plaintiff copies of periodic account statements contemporaneously with those sent to Defendants THAG, Nissan of Sumter and/or Holmes, in violation of Section 8 of the PCACA;
- d. By subsequently taking a security interest in the Account when, on or about October 2017, the Account was pledged as collateral to a Merrill Lynch Loan Management Account held by Defendant THAG, in violation of Section 7 of the PCACA; and
- e. Such other and further ways as may be shown by the evidence at trial.

86. These breaches of the PCACA, along with any other breaches that Plaintiff may become aware of during discovery or at trial, interfered with Plaintiff's security interest in the Account and breached Plaintiff's rights under the PCACA.

87. As a direct and proximate result of Defendant Merrill Lynch's breach of the PCACA, Plaintiff has suffered actual damages in the form of Defendants THAG, Nissan of Sumter and/or Holmes' unsatisfied and outstanding indebtedness now totaling in excess of \$360,035.15, consequential damages, and the costs and attorneys' fees associated with the pursuit of this action.

FOR A TWELFTH CAUSE OF ACTION
(Negligence as to Defendant Merrill Lynch)

88. Plaintiff realleges and incorporates all preceding paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

89. Defendant Merrill Lynch owed Plaintiff, as a party to the PCACA, a duty of reasonable care in its management of the Account.

90. Defendant Merrill Lynch breached this duty in one or more of the following particulars:

- a. By failing to appropriately monitor the Account thereby permitting Defendants THAG, Nissan of Sumter and/or Holmes' transfer of the entirety of the funds out of the Account, leaving the Account essentially empty in or about July 2019;
- b. By failing to advise Plaintiff of unauthorized activity occurring with the assets in the Account at Defendants THAG, Nissan of Sumter and/or Holmes' direction, including but not limited to the occurrence of multiple transfers of assets from the Account to various accounts other than the designated receiving account as designated in the PCACA; and
- c. By such other and further ways as may be revealed during discovery and shown by the evidence at trial.

91. As a direct and proximate result of Defendant Merrill Lynch's negligent, grossly negligent, willful, wanton and reckless acts and/or omissions as set for above, Plaintiff has suffered actual damages in excess of \$360,035.15 as well as consequential damages. Furthermore, Plaintiff would show that it is entitled to punitive damages as the evidence may support and warrant at trial.

FOR A THIRTEENTH CAUSE OF ACTION
(Money Had and Received as to Defendant Merrill Lynch)

92. Plaintiff realleges and incorporates all preceding paragraphs, to the extent not inconsistent herewith, as if fully set forth herein verbatim.

93. Defendant Merrill Lynch presently holds money in hand, in whole or in part, that was previously on deposit in Account No. XXX-XX250, which was subject to the PCACA and Pledge Agreement, or alternatively, which was generated as a result of Defendants THAG, Nissan of Sumter and/or Holmes' sale of the aforementioned Nissan dealership in or about 2019.

94. For the reasons previously alleged, Defendant Merrill Lynch, in equity and good conscience, ought to pay the money over to Plaintiff in an amount sufficient to satisfy the outstanding debt obligation on the Note, pre-judgment interest, the costs and attorney fees associated with this action, and such other and further amounts as equity may require.

WHEREFORE, Plaintiff prays for the following:

- i. Judgment against all Defendants, jointly and severally, for actual, special and consequential damages as may be proven at trial;
- ii. Punitive damages in an amount to be determined by the fact finder;
- iii. All attorney's fees and costs associated with this action;
- iv. Pre-judgment interest;
- v. An accounting of Defendants THAG, Nissan of Sumter and Holmes' assets and liabilities;
- vi. Imposition of a constructive trust on all proceeds withdrawn, transferred or otherwise negotiated from Merrill Lynch Account No. XXX-XX250 since January 19, 2017;
- vii. Imposition of a constructive trust on all proceeds from Defendants THAG, Nissan of Sumter and/or Holmes' sale of the Nissan dealership in or about 2019;
- viii. That any corporate or other asset or legal liability protections Defendants THAG and/or Nissan of Sumter might otherwise be entitled to be disregarded and nullified; and
- ix. For such other and further relief as this Court deems just and proper.

MCLEOD LAW GROUP, LLC
3 Morris Street, Suite A
Charleston, SC 29403
Tel. 843-277-6655
Fax 843-277-6660

s/John D. Hudson, Jr.

W. Mullins McLeod, Jr. (14148)

mullins@mcleod-lawgroup.com

John D. Hudson, Jr. (68646)

john@mcleod-lawgroup.com

Attorneys for the Plaintiff

July 21, 2021
Charleston, SC

EXHIBIT A

ASSET PURCHASE AGREEMENT

Between

JONES NISSAN, INC.
(the "Company"),

And

James E. Jones and John T. Jones, Jr.,
(Collectively the "Shareholder", together with the "Company" as "Seller")

and

THAG, LLC or Assigns
(the "Purchaser")

July 25, 2016

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into this 25th day of July, 2016, and effective as of the Effective Date by and among JONES NISSAN, INC, a South Carolina Corporation (the "Seller" or the "Company"), James E. Jones and John T. Jones, Jr. (collectively the "Shareholder"), and THAG, LLC, or assigns, a South Carolina limited liability company (the "Purchaser").

WHEREAS, Seller desires to sell and Purchaser desires to buy certain assets of Seller hereinafter described; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and among the parties as follows:

1. **ASSETS TO BE SOLD:** Subject to the terms and conditions of this Agreement, on the Closing Date, Seller shall sell, convey, transfer, assign and deliver to Purchaser and Purchaser shall purchase and accept from Seller the following described assets (the "Assets"), free and clear of any and all liens:

(a) New Vehicles. (i) Company shall sell and Purchaser shall buy such of Company's new and unused, untitled 2016 or newer model Nissan vehicles as are in possession of Company on the Closing Date, at the factory invoice prices for same, less all previously paid or payable factory to dealer incentives, model discounts, factory bonuses or dealer rebates, interest, finance charges, advertising allowances or rebatable charges, dealer holdbacks and floor plan credits with respect to such vehicles. Adjustments shall be made to said prices to reflect any additions or removals from said vehicles of equipment and/or accessories which are not included within the factory invoice price. Purchaser shall have no obligation to purchase any vehicle upon which additional installed accessories or equipment has invalidated the new vehicle warranty. Exhibit "A" attached hereto is a list of all new and unused 2016 model Nissan vehicles in Seller's possession on the date designated thereon. Seller agrees that hereafter no additions shall be made to such vehicle inventories except in the ordinary course of business and, further, to keep its usual and adequate records of any such additions which shall be made available to the Purchaser for review and verification.

(b) It is further agreed that in the event any new vehicle referred to in this section shall have been damaged prior to the Closing Date, Company shall have repaired such vehicle to the satisfaction of Purchaser, or in the event any such vehicle has not been repaired, Company and Purchaser shall agree on the cost to cover such repairs, which cost shall be deducted from the prices referred to herein. In the event Company and Purchaser cannot agree on the cost of repairs, Purchaser shall have no obligation to purchase any such vehicle or vehicles. Notwithstanding the foregoing, Purchaser shall not be obligated to purchase any damaged vehicle (whether or not same has been repaired), having repair costs in excess of Five Hundred and No/100 Dollars (\$500.00) or which is subject to disclosure pursuant to O.C.G.A. §40-1-5.

(c) Demonstrator Vehicles. Any previously untitled 2016 or newer model year vehicles with odometer reading in excess of 500 miles and less than 6,000 miles shall be considered

a "Demonstrator Vehicle." The purchase price paid for Demonstrator Vehicles with odometer readings between 500 and 6,000 miles shall be the same as the price calculated for New Vehicles in Section 1(a) above, reduced by twenty-five cents (\$0.25) per mile. The purchase price to be paid for Demonstrator Vehicles with odometer readings excess of 6,000 shall be determined in accordance with Section 1(d), as if same were a Used Vehicle. Exhibit "B" attached hereto contains a list of all Demonstrator Vehicles in Seller's possession on the date designated thereon.

(d) Used Vehicles. Purchaser is not purchasing any used vehicle inventory.

(e) Vehicle Parts, Accessories and Other Inventories.

(i) Purchaser shall purchase from Seller at Closing, those vehicle parts and accessories which are current, unused, undamaged, non-obsolete, returnable, new factory Nissan parts and accessories. All factory parts to be non-obsolete must be listed in the most recent factory price book, and inventoried and valued at the net cost set forth in the price books. Purchaser shall not be obligated to purchase any used, damaged, remanufactured, unboxed or obsolete parts or accessories, however, Purchaser may purchase said parts and accessories at a discounted value to be mutually agreed upon between Purchaser and Seller.

(ii) Purchaser shall purchase from Seller at Closing, those non-OEM vehicle parts and accessories which are current, unused, undamaged, non-obsolete, returnable, new parts and accessories. Such parts shall be inventoried and valued at the Company's net cost for same. Purchaser shall not be obligated to purchase any used, damaged, remanufactured, unboxed or obsolete parts or accessories, however, Purchaser may purchase said parts and accessories at a discounted value to be mutually agreed upon between Purchaser and Seller.

(iii) Purchaser shall purchase from Seller at Closing, such other inventories and consumables used in Company's business, such as gas, oil, grease, anti-freeze, fluids, solvents, undercoating materials, paint, sealants, body shop materials, office and shop supplies which are undamaged, unopened, useable and returnable. Such miscellaneous inventories be inventoried and valued at the Company's net cost for same.

(iv) Purchaser shall not be obligated to purchase any obsolete, non-returnable, used, damaged or remanufactured inventory.

(v) Seller agrees to maintain the vehicle parts and accessories inventory at normal operating levels through Closing. The parties agree that they will equally split the cost of an independent inventory of the vehicle parts and accessories inventory prior to Closing, with the selection of the company that will perform said inventory to be mutually agreed upon by Purchaser and Seller. In the event that Seller makes any sales of parts after the date of the physical count, but prior to the date of Closing, the purchase price of parts and accessories shall be reduced by the price (as determined above) of each part sold.

(vi) Purchaser shall purchase from Seller at Closing, all service work in process with the vehicles in Seller's possession at Closing including outside or sublet work ("WIP"). The value of WIP shall be determined based on the actual cost of labor and parts installed

for such work in process, as shown on repair orders and established from Seller's records. Purchaser shall thereafter be entitled to invoice and collect from the customer the full amount of all charges for such parts and labor.

(f) Other Assets. Seller shall transfer to Purchaser all of Seller's right, title and interest in the following:

(i) Furniture, fixtures, equipment, machinery and shop equipment and tools; manufacturer parts return benefits and privileges; to the extent permitted, telephone numbers, facsimile numbers, white and yellow pages advertising, website content and URLs, internet domains, www.jonesnissan.com, websites, and customer lists, business records, intellectual property, intangible assets and rights, and goodwill.

(ii) Nissan franchise rights of the Company and the associated intangible assets of the franchise (collectively the "Blue Sky").

(iii) All rights, including common law rights and goodwill, of the Seller in any registered or unregistered trade names (excluding the name "Jones" as it appears in any such trade names), trademarks or service marks, and all derivatives thereof and the goodwill associated therewith, to the extent transferrable and without warranty.

(iv) Purchaser, Seller and Shareholder recognize the value of the goodwill associated with Company and its name and Shareholder's association with the Company. Purchaser, Seller and Shareholder further acknowledge the importance of setting reasonable limitations on future competition with Purchaser. As such, Company and Shareholder agree to limit its competition in the future by acknowledging that neither it nor any company or entity owned by Seller shall directly or indirectly carry on or be engaged in the business selling or servicing new Nissan motor vehicles in accordance within the parameters described in Section 12(b)(vii) below, but not otherwise.

(v) All parts return privileges which may have accrued to Seller with respect to the parts and accessories purchased hereunder. Seller and the Shareholders shall take all steps required by Nissan (or such other entity) in order for Purchaser to be entitled to use such parts return privileges.

(vi) All of Company's sales records and data, customer lists, vehicle dealership records, service records, mailing lists, files, invoices and correspondence, advertising material, all accounting records, stationery, office and business forms, personnel records, shop reference manuals, parts reference catalogs, video tapes, and any files required to be retained after the Closing by any applicable law or government regulation (collectively, the "Records and Lists"). Said Records and Lists shall be for the exclusive use of Purchaser, subject to Seller's rights described below. Neither Seller nor Shareholder shall make further use of said Records and Lists after the Closing except as required in any legal proceeding or for compliance with any state or federal regulation or for tax purposes and Purchaser shall permit Seller access to such records for inspection and copying upon reasonable prior notice.

(vii) To the extent not otherwise described herein, assets reflected in the parts inventory, the dealer payment statement, and the parts payment statement, together with any parts return benefits, customer lists, goodwill, inventories of parts, tires, oil, grease and other consumables, paint and undercoat materials, supplies, special tools, machinery, shop equipment, shop manuals, office equipment, furniture and signs.

2. EXCLUDED ASSETS AND ASSUMED LIABILITIES.

(a) Excluded Assets. Unless otherwise included within the description of Assets, the following shall be excluded from the Assets being sold and transferred hereunder (the "Excluded Assets").

(i) Seller's cash, bank deposits, cash equivalents, cash or cash equivalents on deposit with Nissan North America, Inc. ("Nissan") or any affiliate of Nissan, reserve accounts and marketable securities owned by Company at the time of Closing, excluding such items specified in Section 1;

(ii) Accounts receivable, refundable income taxes, prepaid interest, utility or other deposits, loans and exchanges, and loans receivable;

(iii) insurance policies owned by the company.

(iv) Any of the Assets which have been damaged prior to Closing.

(v) All other assets not specifically included in Section 1 above.

(b) Assumed Liabilities. Assumption of Liabilities. At the Closing, Purchaser shall assume (and shall discharge, pay and perform in accordance with their terms) only the following liabilities and obligations of Seller (each an "Assumed Liability", and collectively, the "Assumed Liabilities"), and no other liabilities or obligations of the Seller whatsoever:

(i) all of the Seller's liabilities to customers arising with respect to any customer deposits described in Section 11(a)(iv);

(ii) all of the Seller's obligations to complete WIP described in Section 1(e)(vi); and

(iii) All of Seller's obligations accruing after the Closing under the contracts described on Schedule 2(b)(iii) including, but not limited to, Seller's obligations under the Nissan dealer rental car program for not more than five (5) vehicles (the "Assumed Contracts").

3. PURCHASE PRICE.

(a) The purchase price for the Assets (the "Purchase Price") shall be allocated as set forth herein and Purchaser and Seller shall execute and file with the IRS in a timely manner Form 8594 with respect to such allocation, as said form shall be completed by Purchaser or

Purchaser's representatives. The Purchase Price shall be paid in cash or via wire transfer to an account designated by Seller, on the Closing Date. The Purchase Price for the Assets shall be as follows:

(i) Those amounts for New Vehicles, Demonstrator Vehicles, and Vehicle Parts, Accessories, Other Inventories and WIP, calculated in accordance with Sections 1(a) through 1(e), respectively; plus

(ii) Two Million Two Hundred Fifty Thousand and No/100 Dollars (\$2,250,000.00) for the Blue Sky.

(b) Upon execution hereof, Purchaser has deposited the sum of Seven Thousand Five Hundred Dollars (the "Deposit") to be delivered and held in escrow by Purchaser's Attorney, Weathers Law Firm, LLC. ("Escrow Agent"). The Deposit shall be applied to the Purchase Price at Closing unless Purchaser is in default of this Agreement, in which event the Deposit shall be forfeited to Seller as liquidated damages, and such liquidated damages shall be the sole and exclusive remedy of Seller by reason of a default by Purchaser under this Agreement; Seller waives and releases any right to sue Purchaser, for specific performance of this Agreement or to prove that Seller's actual damages exceed the amount of such liquidated damages. Should the transactions outlined herein fail to close as a result of the default of Seller, in addition to Deposit being returned to Purchaser, Purchaser shall have all remedies at law and equity, including but not limited to damages and specific performance.

Upon expiration of the Due Diligence Period as hereinafter set forth, Purchaser shall deposit the sum of Twenty-Five Thousand Dollars (the "Additional Deposit") to be delivered and held in escrow by the Escrow Agent. The Additional Deposit shall be held in the same manner as the Deposit.

(i) Escrow Agent shall serve as Escrow Agent pursuant to the terms and conditions of this Agreement. In performing any of its duties hereunder, the Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses, except for willful default or breach of trust, and it shall accordingly not incur any such liability with respect (A) to any action taken or omitted in good faith upon advice of its counsel, or (B) to any action taken or omitted in reliance upon any instrument, including any written notice or instruction provided for in this Agreement not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, which the Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons, and to conform with the provisions of this Agreement. The Escrow Agent is hereby specifically authorized to refuse to act except upon the written consent of Sellers and Purchaser.

(ii) Sellers and Purchaser hereby agree to indemnify and hold harmless the Escrow Agent against any and all losses, claims, damages, liabilities and expenses, including reasonable costs of investigation and counsel fees and disbursements, which may be imposed upon the Escrow Agent or incurred by the Escrow Agent in connection with its acceptance or the performance of its duties hereunder, including any litigation arising from this Agreement or involving the subject matter hereof.

(iii) In the event of a dispute between Sellers and Purchaser sufficient in the discretion of the Escrow Agent to justify its doing so, the Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction, all money or property in its hands under this Agreement, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties and liabilities under this Agreement. Any such legal action may be brought in any court of competent jurisdiction located in Georgetown County, South Carolina or in such other court as the Escrow Agent shall determine to have jurisdiction thereof. Sellers and Purchaser shall bear all costs and expenses of any such legal proceedings.

(iv) Sellers acknowledge, understand and agree that (A) Escrow Agent is Purchaser's counsel and as such Escrow Agent has not and will not exercise any independent professional judgment on Sellers behalf, and (B) notwithstanding its role as Escrow Agent hereunder, Escrow Agent may, in the event of a dispute between Sellers and Purchaser act as Purchaser's counsel and represent Purchaser in any dispute or litigation, whether or not Escrow Agent resigns and appoints a successor or substitute escrow agent, which Sellers and Purchaser specifically agree Escrow Agent may do.

(v) The Sellers and Purchaser acknowledge and agree that each of them has requested that the Escrow Agent act as escrow agent hereunder and to receive from Purchaser the Deposit and Additional Deposit which the Escrow Agent will deposit with First Citizens Bank (the "Bank") in the Escrow Agent's IOLTA account (the "Account") to be held and disbursed in accordance with this Agreement. Purchaser and Sellers acknowledge and agree that the Escrow Agent is unwilling to receive the Deposit and Additional Deposit and act in such capacity unless the parties agree to the provisions of this Section 3(b). Notwithstanding anything to the contrary herein to the contrary, Purchaser and Sellers confirm their understanding and agreement that that the Deposit and Additional Deposit will be deposited in the Account with the Bank, that the Deposit and Additional Deposit will be commingled with moneys of others in the Account, that the moneys held in the Account will often exceed available FDIC insurance, and that the Purchaser and Sellers have no right to any FDIC insurance in preference of others having rights in moneys within the Account. Purchaser and Sellers fully understand and accept the risk of full or partial loss of the Deposit and Additional Deposit or temporary unavailability of the Deposit and Additional Deposit (collectively, a "Loss") resulting from any Bank closing, Bank failure, or Bank insolvency, receivership, bankruptcy, dissolution or similar event or proceeding, and agree that the Escrow Agent shall have no responsibility or liability to the either of them for any Loss. Purchaser and Sellers agree that the Purchaser shall bear the full risk of any Loss. Purchaser and Sellers agree to indemnify and hold the Escrow Agent, as holder of the Deposit and Additional Deposit, harmless from and against any loss, damages, cost or expense, including legal fees, relating to any claim or demand that may be made against the Escrow Agent by reason of any Loss, including any claim based upon an allegation of negligence.

4. DUE DILIGENCE MATERIALS. Within five (5) days of the Effective Date, and thereafter promptly upon request,

(a) Seller shall deliver or cause to be delivered to Purchaser, if not previously delivered, or make available to Purchaser electronically, the following documents and information with respect to the Assets:

(i) Copies of the Assumed Contracts; and

(ii) Such documents or other materials in Seller's possession or control, regarding the Assets or the Company which Purchaser may reasonably request.

5. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller jointly and severally, hereby represents and warrants to Purchaser as follows:

(a) Seller is a corporation duly organized and existing and in good standing under the laws of the State of South Carolina, and is duly authorized to carry on its business and to own the Assets. The only shareholders of Seller are the Shareholders.

(b) Seller has good and marketable title to all of the Assets to be transferred and assigned to Purchaser pursuant to this Agreement subject to no mortgage, conditional sales agreement, charges, liens, or encumbrances of any kind, other than those being paid and satisfied as of the Closing Date with the proceeds of sale hereunder.

(c) Seller has filed all Federal, state and local governmental tax returns required by it to be filed in accordance with the provisions of law pertaining thereto and has paid all taxes and assessments (including, without limitation of the foregoing, income, excise, unemployment, social security, occupation, franchise, property, and import taxes, duties or charges and all penalties and interest in respect thereto) required by Seller to have been paid to date, other than those being paid and satisfied as of the Closing Date with the proceeds of sale hereunder. All of Seller's tax returns, statements, books and records and other information, including all reports to Nissan are true and correct in all respects.

(d) There are no legal, quasi-judicial or administrative actions, suits or proceedings of any kind or nature now pending or, to the knowledge of Seller, threatened before any court or administrative body in any manner involving Seller of any of its properties or ownership interests, or which may adversely affect the power or authority of Seller to carry out the transactions to be performed by Seller hereunder, except as listed on Schedule 5(d).

(e) Seller is not a party to any written or oral (i) contract not made in the ordinary course of business, (ii) employment contract which is not terminable without cost or other liability to Seller, or any successor, upon notice of thirty days or less, (iii) contract with any labor union, (iv) bonus, pension, profit-sharing, retirement, share purchase, hospitalization insurance or similar plan providing employee benefits that is not terminable without cost or other liability to Seller, (v) advertising contract or contract for public relations services, (vi) continuing contract for the purchase of materials, supplies or equipment, or (vii) contract continuing for a period of more than thirty days or which is not terminable without cost or other liability to Seller or its successors, all except as listed on Schedule 5(e).

(g) Seller has in all respects performed all material obligations required to be performed by it to date and is not in default in any respect under any of the contracts, agreements, leases or other documents to which it is a party.

(h) The consummation of the transactions contemplated by this Agreement and compliance with the provisions hereof will not conflict with or result in a breach of the terms, conditions or provisions of, or constitute a breach or default under, any provision of law, any order of any court or other agency of government, the articles of organization or operating agreement of Seller, or any note, debenture, mortgage, loan agreement or other instrument to which Seller is a party, or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any kind whatsoever or any property or assets to be transferred to Purchaser pursuant to this Agreement.

(i) Seller has obtained the necessary consent of its Shareholders approving this Agreement and the transactions contemplated herein.

(j) To the best of Seller's knowledge, all furniture, machinery, equipment and shop equipment and tools included within the Assets are in working order and good repair currently, reasonable wear and tear excepted, and shall be in working order and good repair, on the Closing Date, reasonable wear and tear excepted.

(k) Neither this Agreement nor any certificate, exhibit, or other instrument furnished by Seller to Purchaser under this Agreement or in connection with this transaction, to the best of the knowledge and belief of Seller, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements not misleading. There is no fact which materially, adversely affect the business, operations, or conditions (financial or otherwise) of Seller which has not been set forth in this Agreement or any exhibit to this Agreement.

6. COVENANTS OF SELLER AND SHAREHOLDERS. Seller and Shareholders, jointly and severally, represent and covenant to Purchaser that during completion of the sale of the Assets contemplated hereby and as of the Closing that:

(a) Each and every covenant, representation and warranty set forth in Section 5 shall be true and correct.

(b) Seller will maintain itself at all times up to and including the Closing Date as a domestic corporation in good standing under the laws of the State of South Carolina.

(c) Seller will afford Purchaser, its representatives, agents and employees, at all reasonable times, access with respect to all of Seller's books, files, records, and insurance policies for the purpose of audit, inspection and examination thereof, and will do everything reasonably necessary to enable Purchaser to make a complete examination of the assets of Seller and the condition thereof. Purchaser and its representatives, agents and employees shall have the right to have the Assets inspected, at Purchaser's sole cost and expense, for purposes of determining the physical condition and legal characteristics of Assets.

(d) Within three (3) business days after the Effective Date, Seller shall deliver to Purchaser copies of Seller's monthly financial statements for each of the past ten (10) calendar months of operations, together with the most recent year-end financial statements.

(e) Seller will keep all of its insurable properties insured in accordance with the present practice through the date of Closing.

7. REPRESENTATIONS AND WARRANTIES OF PURCHASER. Purchaser represents and warrants to Seller and Shareholders, on the date hereof and as of the Closing Date, as follows:

(a) Organization and Standing. Purchaser is or will be an entity duly organized, validly existing and in good standing under the laws of South Carolina. Purchaser has all necessary entity powers to (i) enter into this Agreement and all other agreements, certificates, and other documents to be executed and delivered by Purchaser under this Agreement, and (ii) perform its obligations under such agreements, certificates, and other documents.

(b) Authorization: Binding Effect: No Conflict. At or before the Closing, the execution and delivery of this Agreement and all other agreements, certificates, and other documents contemplated hereby will have been duly authorized and executed by Purchaser. This Agreement constitutes, and all other agreements, certificates, and other documents to be executed and delivered will constitute, the legal, valid, and binding obligations of Purchaser, enforceable against Purchaser in accordance with their terms. The consummation by Purchaser of the transactions contemplated hereby will not (i) require any consent, authorization, or approval of any person, entity, or government authority, or (ii) violate or constitute a default under the organizational documents of Purchaser, or any note, indenture, mortgage, deed of trust, or other contract, agreement, or commitment of Purchaser which would result in Purchaser being unable to perform its obligations hereunder.

8. REPRESENTATIONS, WARRANTIES AND COVENANTS TRUE AS OF CLOSING DATE. All of the representations, warranties and covenants herein contained in Sections 5 and 6 hereof shall be true and correct and shall not have been breached on and as of the Closing Date as though made on and as of said date and all such representations and warranties shall survive the Closing Date for a period of twenty four (24) months.

9. TAXES. Seller and Purchaser agree that all state, city and county personal property taxes, if any, which are directly applicable to the Assets to be transferred hereunder shall be prorated to the Closing Date. Purchaser shall pay only the pro rata share of such taxes applicable to the period subsequent to the Closing Date.

10. CERTAIN EMPLOYEE MATTERS. This Agreement is an agreement for the purchase of assets only. Seller acknowledges that Purchaser may, but is not obligated to, hire Seller's employees, on such terms and conditions as Purchaser deems appropriate. Purchaser does not assume, continue or maintain any death, disability, health insurance, severance or other employee benefit welfare plan or arrangement maintained by Seller. Seller shall be solely responsible for any and all obligations arising out of, or in connection with, any such plan or arrangement. Seller shall

be solely responsible for any obligation to notify all of its employees of their rights under, and provide continuation of medical benefits required by, Section 601, *et seq.* of the Employee Retirement Income Security Act of 1974 ("ERISA") or Section 4980B of the Internal Revenue Code of 1986, as amended.

11. CLOSING DATE; CLOSING. The closing (the "Closing" or "Closing Date" as the context requires) of the purchase and sale provided for herein shall take place within thirty (30) business days after the approval of Purchaser as a Nissan dealer but in no event shall the Closing occur later than November 1, 2016, unless agreed in writing by the parties. The Closing shall take place on such Closing Date beginning at 10 o'clock a.m. at the offices of the Purchaser's attorney, Weathers Law Firm, LLC. At the Closing, Seller shall execute and deliver to Purchaser such bills of sale and other instruments as may be necessary to transfer to Purchaser the Assets. Closing may be accomplished through the execution and delivery of counterpart documents and shall not require the presence of all parties on the Closing Date to be effective. For purposes of conditions of and preceding the Closing, the Closing Date shall be the date on which the Purchase Price paid and the Bill of Sale is executed and delivered.

12. CONDITIONS PRECEDENT TO PAYMENT OF PURCHASE PRICE AND TRANSFER OF ASSETS. Payment of the Purchase Price and the transfer of Assets stated in this Agreement shall be conditioned upon accomplishment of the following conditions precedent, it being understood that Seller and Purchaser, as appropriate, shall do everything within their power to cause such conditions to be accomplished.

(a) On the Closing Date:

(i) Seller's Resignation. Seller shall terminate its franchise agreement with Nissan in connection with the Closing.

(ii) Seller's Records. Seller shall have transferred to Purchaser all of its owner follow-up lists, service files, used "hard" copies of shop repair orders on hand at the Closing Date.

(iii) Telephone Numbers. Seller shall have transferred to Purchaser, insofar as it can, Seller's right in telephone numbers used by Seller in its business as an automobile dealer.

(iv) Customer Deposits. Seller, without additional charge therefore, shall have turned over or assigned by appropriate documents to Purchaser all unfilled retail orders and deposits made thereon and names and addresses of the service and other customers and prospective purchasers.

(v) List of Employees. Seller shall have furnished to Purchaser a list of all employees, their rates of pay including, separately, base pay, and any incentive or commission plans, if any, as of the date Seller ceased operating its dealership.

(vi) Condition of Assets. Purchaser shall have reasonably satisfied itself that all Assets transferred hereunder are in a good condition as agreed to herein, reasonable wear and tear excepted.

(vii) Bill of Sale. Seller shall have delivered to Purchaser a Bill of Sale for all assets to be transferred by Seller hereunder, other documents of transfer of title, and other documents necessary or desirable in the opinion of Purchaser's counsel in connection with the transfer, which documents shall warrant title to Purchaser and shall in all respects be in such form as may be reasonably required by Purchaser or its counsel.

(h) On or before the Closing Date:

(i) Sales Agreement. Purchaser shall have received a Nissan franchise agreement from Nissan, or approval of same, in form and substance satisfactory to Purchaser.

(ii) Company Approval of Sale and Ownership Property. Seller shall have furnished to Purchaser evidence to the reasonable satisfaction of Purchaser or its counsel of:

A. Proper company action on the part of Seller authorizing or ratifying the execution of this Agreement and the consummation of the transactions contemplated hereby; and

B. Ownership by Seller of the Assets to be transferred by Seller, free of any mortgage, conditional sales agreement, charge, lien, encumbrance or security interest of any type.

(iii) Tax Clearance. Seller shall have furnished a Certificate of Tax Compliance from the South Carolina Department of Revenue.

(iv) Representations and Warranties. A responsible officer, Shareholder or manager of each of Seller and Purchaser shall have executed and delivered to the other party a certificate confirming the truth and correctness of all representations and warranties set forth in Sections 5 and 6 hereof, as appropriate, from the date hereto to, and as of, the Closing Date.

(v) Consents. Seller shall have obtained any required governmental or other third-party consents and approvals.

(vi) Intentionally Omitted.

(vii) Non-Competition Agreement. Seller and Shareholders shall deliver to Purchaser a Non-Competition Agreement in the form attached as Exhibit "C" covenanting and agreeing, *inter alia*, that none of them, shall directly or indirectly, through the period ending five (5) years after the Closing Date of this transaction, with a fifty (50) mile radius of the Dealership Premises, compete with the business of Purchaser by engaging in any new Nissan brand motor vehicle sales or service dealership, but not otherwise.

13. **MUTUAL CONDITIONS PRECEDENT TO PERFORMANCE.** The obligations of each party hereunder are subject to the satisfaction on or before the Closing of each of the following conditions:

(i) **Representations, Warranties and Covenants.** All representations and warranties by each party contained in this Agreement must be true on the Closing Date as though made on the Closing Date. Each party must have performed all of its obligations and agreement and complied with all of its covenants of this Agreement. (Notwithstanding the foregoing, no party may claim its own breach as a failure of a condition precedent).

(ii) **Approval of Documentation.** The form and substance of all certificates, instruments, and other documents delivered or deliverable under this Agreement must be satisfactory in all reasonable respects to counsel for each party.

14. **SELLER'S AND SHAREHOLDERS' INDEMNITY.**

(a) Seller and Shareholders each agree to defend, indemnify, and hold Purchaser harmless against any and all damages incurred or sustained by the Purchaser (collectively, the "Losses" and individually a "Loss") as a result of:

(i) any breach of any representation or warranty of Seller or Shareholders contained in this Agreement;

(ii) any breach of any covenant or agreement of Seller or Shareholders contained in this Agreement;

(iii) any failure of Seller to convey to Purchaser good and marketable title to the Assets, free and clear of all liens other than taxes which are not yet due and payable;

(iv) any failure of Seller to pay taxes accruing prior to closing;

(v) any obligation or liability of Seller which is not expressly assumed by Purchaser hereunder, including any claims asserted by local, state or federal authorities for unpaid taxes or arising from any imposition of taxes or the assessment of any deficiency for taxes or penalties or interest incidental thereto;

(vi) the operation of Seller's business or the ownership, operation or use of the Assets prior to the Closing Date, other than liabilities expressly assumed by Purchaser hereunder;

15. **PURCHASER'S INDEMNITY.**

(a) Purchaser hereby agrees to defend, indemnify, and hold Seller harmless against any and all damages incurred or sustained by the Seller as a result of:

- this Agreement;
- (i) any breach of any representation or warranty of Purchaser contained in this Agreement;
- (ii) any breach of any covenant or agreement of Purchaser contained in this Agreement; or
- (iii) any liabilities arising out of or relating to the operation of ownership of the Assets after the Closing Date.

16. LIABILITIES. Purchaser does not assume any liabilities of Seller except as may otherwise be expressly specified herein. There are no third party beneficiaries to this Agreement.

17. TERMINATION.

(a) Purchaser shall have until thirty (30) days after the Effective Date (the "Due Diligence Period"), in which to examine and investigate the Assets and all other aspects of the contemplated transaction. Purchaser shall have until forty-five (45) days after the Effective Date (the "Financing Period"), in which to have obtained on terms and conditions substantially similar to other franchised motor vehicle dealerships with which Purchaser is or has been affiliated, the financing necessary to consummate the transaction described herein, to fund the working capital requirements of Purchaser's automobile dealership after the Closing Date, and such floor plan financing as is necessary for such dealership. In the event that Purchaser shall determine, in Purchaser's sole and absolute judgment and discretion, that either (i) the Assets, Dealership Premises, or any other aspect of the contemplated transaction is in any manner unsuitable or unsatisfactory to Purchaser or (ii) suitable financing is not available, then Purchaser shall have the right, at Purchaser's option, to terminate this Agreement by giving written notice thereof to Seller on or before the applicable date (i.e. the Due Diligence Period with respect to item (i) and the Financing Period with respect to item (ii)), in which event the Deposit and Additional Deposit shall be refunded to Purchaser immediately upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void. Seller acknowledges that Purchaser will expend time, money and other resources in connection with the examination and investigation of the Assets and other aspects of the contemplated transaction, and that, notwithstanding the fact that Purchaser may terminate this Agreement pursuant to this section, such time, money and other resources expended constitutes good, valuable, sufficient and adequate consideration for Seller's execution of and entry into this Agreement. In the event that Purchaser does not terminate this Agreement on or before expiration of the Due Diligence Period or Financing Period, as applicable, the Deposit and Additional Deposit shall be non-refundable, except as otherwise may be provided hereunder.

(b) Following the lapse of the Due Diligence Period and Financing Period, if Purchaser has not terminated the Agreement as provided in Subsection (a) above, this Agreement may be terminated and the transaction may be abandoned at any time prior to the Closing:

- (i) By the Purchaser, if the conditions set forth in Sections 12 and 13 that are within Seller's or Shareholders' control have not been satisfied and performed in any material

respect, and any such noncompliance or nonperformance shall not have been cured or eliminated (or by its nature cannot be cured or eliminated) on or before the Closing Date; or

(ii) By the Seller and Shareholders, if the conditions set forth in Sections 12 and 13 that are within Purchaser's control have not been satisfied and performed in any material respect, and any such noncompliance or nonperformance shall not have been cured or eliminated (or by its nature cannot be cured or eliminated) on or before the Closing Date; or

(iii) By mutual agreement of the Seller and the Purchaser; or

(iv) By either party, if there shall be a final non-appealable order of a court of competent jurisdiction in effect preventing the Closing.

18. EXPENSES AND OBLIGATIONS IF TRANSACTION NOT CONSUMMATED.

If this Agreement is terminated and the transaction contemplated hereby shall not be consummated as provided in Sections 17(a), (b)(iii) and (b)(iv), each party shall pay its own expenses incident to the preparation for carrying this Agreement into effect and consummating the transactions hereby contemplated.

If this Agreement is terminated and the transaction contemplated hereby shall not be consummated as provided in Section 17(b)(i) due to a breach by Seller, the Escrow Agent shall return the Deposit and Additional Deposit to the Purchaser, and the Purchaser shall be entitled to seek any remedy provided at law or in equity with respect to such breach or default, including, but not limited to an action for damages for such breach and/or, at the Purchaser's election, an action for specific performance.

If this Agreement is terminated and the transaction contemplated hereby shall not be consummated as provided in Section 17(b)(ii) due to a breach by Purchaser, the Purchaser shall forfeit all right, title and interest in and to the Deposit and Additional Deposit, and the Escrow Agent shall deliver the Deposit and Additional Deposit to the Seller, as liquidated damages, and such liquidated damages shall be the sole and exclusive remedy of Seller by reason of a default by Purchaser under this Agreement; Seller waives and releases any right to sue Purchaser for specific performance of this Agreement or to prove that Seller's actual damages exceed the amount of such liquidated damages.

In the event of a termination and abandonment of this Agreement, the Purchaser shall promptly redeliver to the Seller all documents, work papers and other material of the Seller relating to the transaction, whether so obtained before or after the execution of this Agreement. In such event, the Purchaser agrees not to use to the detriment of the Seller, nor to disclose to third parties, any of such information with respect to the Seller's business; provided, however, that the foregoing restriction shall not apply to any document, work paper, material, or information which is a matter of public knowledge or is otherwise in the public domain.

19. NOTICES. Any notice, communication, request, reply or advice (hereinafter severally and collectively, for convenience, called "Notice") in this Agreement provided or permitted to be

given, made or accepted by either party to the other must be in writing and may, unless otherwise in this Agreement expressly provided, be given or be served by commercial overnight courier (such as Federal Express), by depositing the same in the United States mail, postage paid, and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same in person to an officer of such party, when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be effective, unless otherwise stated in this Agreement, from and after the date it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For purposes of Notice, the addresses of the parties shall be as follows:

If to Seller or Shareholders:

Jones Nissan, Inc.
Attn: James F. Jones
1260 Broad Street
Sumter, SC 29150

With Copy to:

Jack W. Erter, Jr., Esquire
Lee, Erter, Wilson, Holler & Smith, LLC
Post Office Box 580
Sumter, SC 29150
(803) 938-9825 – facsimile

If to Purchaser:

THAG, LLC
Attn: Terry L. Holmes
8983 Ocean Highway
Pawley's Island, South Carolina 29585

With Copy to:

Gregory R. Weathers, Esquire
Weathers Law Firm, LLC
Post Office Box 4209
Pawleys Island, SC 29585
(843) 237-9056 – facsimile

If to Escrow Agent: C

Weathers Law Firm, LLC
Post Office Box 4209

Pawleys Island, SC 29585
(843) 237-9056 – facsimile

20. SECTION AND OTHER HEADINGS. Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

21. ASSIGNMENT. This Agreement may be assigned by Purchaser, in whole or in part, to any entity under the control of Purchaser or its principals, and such assignment shall relieve Purchaser of liability for the performance of Purchaser's duties and obligations under this Agreement. For purposes of this Agreement, the term "Purchaser" shall include any assignee of the interest of Purchaser under this Agreement. No other assignments by Purchaser shall be permitted except with the prior written consent of Seller, which consent shall not be unreasonably withheld, delayed or conditioned.

22. PARTIES. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, Purchaser and Sellers and their respective heirs, legal representatives, successors and permitted assigns.

23. COMMISSIONS. Purchaser, Seller and Shareholder represent and warrant to each other that no brokers' fees or real estate commissions will be due as a result of the sale or lease of the Property from their respective actions.

Seller and Shareholder agree to indemnify, defend and save harmless Purchaser from and against any cost and expense (including reasonable attorneys' fees) incurred by Purchaser as a result of the untruth of the foregoing representation by Seller or Shareholder, or any claims by a broker for payment of a commission by Purchaser based upon the actions of Seller or Shareholder.

Purchaser agrees to indemnify, defend and save harmless the Seller and Shareholder from and against any cost and expense (including reasonable attorneys' fees) incurred by Seller or Shareholder as a result of the untruth of the foregoing representation by Purchaser, or any claims by a broker for payment of a commission by Seller or Shareholder based upon the actions of Purchaser.

24. FURTHER ASSURANCES. On the Closing Date, and from time to time thereafter, Purchaser and Seller shall do all such additional and further acts, and shall execute and deliver all such additional and further affidavits, instruments, certificates and documents, as Seller. Seller's counsel, Purchaser or Purchaser's counsel may reasonably require fully to vest in and assure to Purchaser full right, title and interest in and to the Assets to the full extent contemplated by this Agreement and otherwise to effectuate the purchase and sale of the Assets as contemplated by and provided for in this Agreement.

25. SURVIVAL. Sellers' and Purchaser's representations and warranties as set forth in this Agreement, shall survive the consummation of the purchase and sale of the Assets on the Closing Date.

26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one of the same instrument.

27. TIME OF THE ESSENCE. Time is of the essence of this Agreement and each and every provision hereof.

28. EFFECTIVE DATE. The "Effective Date" of this Agreement shall be the last date of execution by the parties hereto. In the event that any applicable date hereunder falls on a Saturday, Sunday or holiday recognized by the State of South Carolina such date shall be extended to the next following business day.

29. ELECTRONIC SIGNATURES. A facsimile transmission of this Agreement shall be as valid as if the original, and the undersigned hereby stipulates that each signature hereon shall be deemed to be an "electronic signature" within the meaning of the South Carolina Electronic Commerce Act.

30. EXCLUSIVE. In consideration of the Deposit and Additional Deposit and Purchaser's investigation of the Assets, and as an inducement to the Purchaser expending time, money and other resources in connection with investigating the purchase of the Assets, Seller will not, during the Due Diligence Period and Financing Period, (a) solicit, initiate, encourage or entertain submission of proposals or offers from any person or entity relating to the sale of the Assets or any material portion thereof outside the ordinary course of the Company's business, or (b) consummate any transaction involving a sale of the Assets or any material portion thereof outside the ordinary course of the Company's business, or (c) disclose to any third party the provisions of this Agreement. If Purchaser does not terminate this Agreement on or before the lapse of the Due Diligence Period or Financing Period, the exclusivity provided in this Section shall extend until the earlier of Closing or the termination of this Agreement as provided in Section 17.

31. BULK SALES NOTIFICATION WAIVED. The parties hereto agree to waive compliance with any notification requirements of any applicable laws relating to bulk sales or transfers. Sellers agree to indemnify, defend and hold Purchaser harmless from any against any and all claims made against the Assets based on failure to comply with any applicable bulk sales laws.

32. CHOICE OF LAWS. Except as to any bulk sales act, the parties agree to comply with all federal, state and local laws applicable to this transaction. The law of the State of South Carolina shall govern the rights of the parties with respect to this Agreement and all parties hereto agree the County of Georgetown shall be proper venue for any dispute arising hereunder.

[signatures on the following page]

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed as of the day and year first above written.

SELLER:

Date executed:

July _____, 2016

Jones Nissan, Inc.

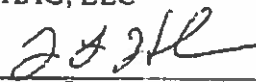

By: JAMES E. JONES
Its: Sec. Treas.

PURCHASER:

Date executed:

July 28, 2016

THAG, LLC


By: TERRY L. HOLMES
Its: MANAGING MEMBER

SHAREHOLDER

~~Aug 8~~
~~July~~ _____, 2016

~~Aug 8~~
~~July~~ _____, 2016


James E. Jones

John T. Jones, Jr.

The undersigned confirms the receipt of the \$7,500.00 Deposit delivered into escrow and its agreement to serve as Escrow Agent pursuant to the terms and obligations of hereof.

Date executed:

Weathers Law Firm, LLC

July _____, 2016

By: _____
Its: _____

The undersigned confirms the receipt of the \$25,000.00 Additional Deposit delivered into escrow and its agreement to serve as Escrow Agent pursuant to the terms and obligations of hereof.

Date executed:

Weathers Law Firm, LLC

_____, 2016

By: _____
Its: _____

LISTS OF SCHEDULES

Exhibit "A"
(New Vehicle Inventory)

Exhibit "B"
(Demonstrator Vehicle Inventory)

EXHIBIT "C"
(Non-Competition Agreement)

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT is made and entered into this 25th day of August, 2016, by and between THAG, LLC (hereinafter "Purchaser") and JONES NTSSAN, INC (hereinafter "Seller").

Whereas, Seller entered into an Asset Purchase Agreement with Purchaser dated July 25, 2016; and

Whereas, Purchaser and Seller wish to modify the terms of the Asset Purchase Agreement; and

Now Therefore, for good and valuable consideration, including the mutual obligations of the parties, the receipt and sufficiency of which is hereby acknowledged, this Amendment modifies the terms and conditions of the aforesaid Asset Purchase Agreement as follows:

Paragraph 17 of the Asset Purchase Agreement shall be stricken and replaced in its entirety with the following:

17. TERMINATION.

(a) Purchaser shall have until sixty (60) days after the Effective Date (the "Due Diligence Period"), in which to examine and investigate the Assets and all other aspects of the contemplated transaction. Purchaser shall have until sixty (60) days after the Effective Date (the "Financing Period"), in which to have obtained on terms and conditions substantially similar to other franchised motor vehicle dealerships with which Purchaser is or has been affiliated, the financing necessary to consummate the transaction described herein, to fund the working capital requirements of Purchaser's automobile dealership after the Closing Date, and such floor plan financing as is necessary for such dealership. In the event that Purchaser shall determine, in Purchaser's sole and absolute judgment and discretion, that either (i) the Assets, Dealership Premises, or any other aspect of the contemplated transaction is in any manner unsuitable or unsatisfactory to Purchaser or (ii) suitable financing is not available, then Purchaser shall have the right, at Purchaser's option, to terminate this Agreement by giving written notice thereof to Seller on or before the applicable date (i.e. the Due Diligence Period with respect to item (i) and the Financing Period with respect to item (ii)), in which event the Deposit and Additional Deposit shall be refunded to Purchaser immediately upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void. Seller acknowledges that Purchaser will expend time, money and other resources in connection with the examination and investigation of the Assets and other aspects of the contemplated transaction, and that, notwithstanding the fact that Purchaser may terminate this Agreement pursuant to this section, such time, money and other resources expended constitutes good, valuable, sufficient and adequate consideration for Seller's execution of and entry into this Agreement. In the event that Purchaser does not terminate this

First Amendment to Asset Purchase Agreement for Jones Nissan

Agreement on or before expiration of the Due Diligence Period or Financing Period, as applicable, the Deposit and Additional Deposit shall be non-refundable, except as otherwise may be provided hereunder.

(b) Following the lapse of the Due Diligence Period and Financing Period, if Purchaser has not terminated the Agreement as provided in Subsection (a) above, this Agreement may be terminated and the transaction may be abandoned at any time prior to the Closing:

(i) By the Purchaser, if the conditions set forth in Sections 12 and 13 that are within Seller's or Shareholders' control have not been satisfied and performed in any material respect, and any such noncompliance or nonperformance shall not have been cured or eliminated (or by its nature cannot be cured or eliminated) on or before the Closing Date; or

(ii) By the Seller and Shareholders, if the conditions set forth in Sections 12 and 13 that are within Purchaser's control have not been satisfied and performed in any material respect, and any such noncompliance or nonperformance shall not have been cured or eliminated (or by its nature cannot be cured or eliminated) on or before the Closing Date; or

(iii) By mutual agreement of the Seller and the Purchaser; or

(iv) By either party, if there shall be a final non-appealable order of a court of competent jurisdiction in effect preventing the Closing.

This Amendment is herewith made a part of the aforementioned Asset Purchase Agreement and modifies any contrary terms contained therein. All items appearing in the original Asset Purchase Agreement not modified herein shall remain in full force and effect.

REMAINDER OF PAGE INTENTIONALLY BLANK

SIGNATURES ON FOLLOWING PAGE

First Amendment to Asset Purchase Agreement for Jones Nissan

IN WITNESS WHEREOF, the undersigned parties have duly executed this First Amendment to Asset Purchase Agreement as of this 25th day of August, 2016 each acknowledging receipt of an executed copy hereof.

SELLER:

Date executed:

Jones Nissan, Inc.

August 23, 2016

By: JAMES F. JONES
Its: Sec-Treasurer

PURCHASER:

Date executed:

THAG, LLC

August 23, 2016

By: J J Hall
Its: MEMBER

EXHIBIT C

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT is made and entered into this 2nd day of November, 2016, by and between THAG, LLC (hereinafter "Purchaser") and JONES NISSAN, INC (hereinafter "Seller").

Whereas, Seller entered into an Asset Purchase Agreement with Purchaser dated July 25, 2016; and

Whereas, Purchaser and Seller wish to modify the terms of the Asset Purchase Agreement; and

Now Therefore, for good and valuable consideration, including the mutual obligations of the parties, the receipt and sufficiency of which is hereby acknowledged, this Amendment modifies the terms and conditions of the aforesaid Asset Purchase Agreement as follows:

Paragraph 11 of the Asset Purchase Agreement shall be stricken and replaced in its entirety with the following:

11. CLOSING DATE; CLOSING. The closing (the "Closing" or "Closing Date" as the context requires) of the purchase and sale provided for herein shall take place within thirty (30) business days after the approval of Purchaser as a Nissan dealer but in no event shall the Closing occur later than December 31, 2016, unless agreed in writing by the parties. The Closing shall take place on such Closing Date beginning at 10 o'clock a.m. at the offices of the Purchaser's attorney, Weathers Law Firm, LLC. At the Closing, Seller shall execute and deliver to Purchaser such bills of sale and other instruments as may be necessary to transfer to Purchaser the Assets. Closing may be accomplished through the execution and delivery of counterpart documents and shall not require the presence of all parties on the Closing Date to be effective. For purposes of conditions of and preceding the Closing, the Closing Date shall be the date on which the Purchase Price paid and the Bill of Sale is executed and delivered.

Paragraph 12(b) of the Asset Purchase Agreement shall be amended by adding the following:

12(b)(viii) COMMERCIAL LEASE AGREEMENT. The obligations of the parties to consummate the transaction contemplated by this Agreement at the Closing is subject to the simultaneous closing of that certain Commercial Lease Agreement between Mar-Gin Properties, a partnership ("Landlord") and Sumter Real Estate Holdings, LLC ("Tenant") attached herewith as Exhibit "A."

Second Amendment to Asset Purchase Agreement for Jones Nissan

This Amendment is herewith made a part of the aforementioned Asset Purchase Agreement and modifies any contrary terms contained therein. All items appearing in the original Asset Purchase Agreement not modified herein shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned parties have duly executed this First Amendment to Asset Purchase Agreement as of this 2nd day of November, 2016 each acknowledging receipt of an executed copy hereof.

SELLER:

Date executed:

Jones Nissan, Inc.

November 2, 2016

By: JAMES E. JONES
Its: Sec-Treas

PURCHASER:

Date executed:

THAG, LLC

November 2, 2016

By: TERRY L. HOLMES
Its: MEMBER / OWNER

EXHIBIT D

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

THIRD AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS THIRD AMENDMENT TO ASSET PURCHASE AGREEMENT is made and entered into this ____ day of January, 2017, by and between THAG, LLC (hereinafter "Purchaser") and JONES NISSAN, INC (hereinafter "Seller").

Whereas, Seller entered into an Asset Purchase Agreement with Purchaser dated July 25, 2016; and

Whereas, Purchaser and Seller wish to modify the terms of the Asset Purchase Agreement; and

Now Therefore, for good and valuable consideration, including the mutual obligations of the parties, the receipt and sufficiency of which is hereby acknowledged, this Amendment modifies the terms and conditions of the aforesaid Asset Purchase Agreement as follows:

Paragraph 3 of the Asset Purchase Agreement shall be amended by adding the following:

3(a)(iii) SELLER FINANCING. At closing, Seller shall extend financing to Purchaser in the principal amount of Six Hundred Fifty Thousand Dollars (\$650,000.00) to be amortized over a period of Sixty (60) months at Six (6) Percent Interest per annum.

The aforementioned financing shall be secured by pledge of Merrill Lynch Account Number 5LP-02250 pursuant to the terms of that Pledge Collateral Account Agreement dated January 12, 2017.

Paragraph 3(b) of the Asset Purchase Agreement shall be stricken and replaced in its entirety with the following:

(b) Purchaser previously deposited the sum of Thirty-Two Thousand Five Hundred Dollars (\$32,500.00) (the "Initial Deposit") into the escrow account of Purchaser's Attorney, Weathers Law Firm, LLC. ("Escrow Agent"). On January 9, 2017 Purchaser deposited an additional Sixty-Seven Thousand Five Hundred Dollars (\$67,500.00) (the "Additional Deposit," the Initial Deposit and Additional Deposit collectively referred to as the "Deposit") to be held in accordance with the terms hereof.

The Deposit shall be applied to the Purchase Price at Closing unless Purchaser is in default of this Agreement, in which event the Deposit shall be forfeited to Seller as liquidated damages, and such liquidated damages shall be the sole and exclusive remedy of Seller by reason of a default by Purchaser under this Agreement; Seller waives and releases any right to sue Purchaser, for specific performance of this Agreement or to

Third Amendment to Asset Purchase Agreement for Jones Nissan

prove that Seller's actual damages exceed the amount of such liquidated damages. Should the transactions outlined herein fail to close as a result of the default of Seller, in addition to Deposit being returned to Purchaser, Purchaser shall have all remedies at law and equity, including but not limited to damages and specific performance.

Paragraph 11 of the Asset Purchase Agreement shall be stricken and replaced in its entirety with the following:

11. CLOSING DATE; CLOSING. The closing (the "Closing" or "Closing Date" as the context requires) of the purchase and sale provided for herein shall take place within thirty (30) days after the approval of Purchaser as a Nissan dealer and after receipt of a final commitment letter from ALLY, but in no event shall the Closing occur later than February 28, 2017, unless agreed in writing by the parties. The Closing shall take place on such Closing Date beginning at 10 o'clock a.m. at the offices of the Purchaser's attorney, Weathers Law Firm, LLC. At the Closing, Seller shall execute and deliver to Purchaser such bills of sale and other instruments as may be necessary to transfer to Purchaser the Assets. Closing may be accomplished through the execution and delivery of counterpart documents and shall not require the presence of all parties on the Closing Date to be effective. For purposes of conditions of and preceding the Closing, the Closing Date shall be the date on which the Purchase Price paid and the Bill of Sale is executed and delivered.

This Amendment is herewith made a part of the aforementioned Asset Purchase Agreement and modifies any contrary terms contained therein. All items appearing in the original Asset Purchase Agreement not modified herein shall remain in full force and effect.

SIGNATURES ON FOLLOWING PAGE

Third Amendment to Asset Purchase Agreement for Jones Nissan

IN WITNESS WHEREOF, the undersigned parties have duly executed this First Amendment to Asset Purchase Agreement as of this ____ day of January, 2017 each acknowledging receipt of an executed copy hereof.

SELLER:

Date executed:

January 20, 2017

Jones Nissan, Inc.

By: [Signature]
Its: President

PURCHASER:

Date executed:

January _____, 2017

THAG, LLC

By: _____
Its: _____

Third Amendment to Asset Purchase Agreement for Jones Nissan

IN WITNESS WHEREOF, the undersigned parties have duly executed this First Amendment to Asset Purchase Agreement as of this 30th day of December, 2016 each acknowledging receipt of an executed copy hereof.

SELLER:

Date executed:

Jones Nissan, Inc.

December _____, 2016

By: _____
Its: _____

PURCHASER:

Date executed:

THAG, LLC

December 29, 2016

By: TERRY L. HOLMES
Its: Printed

EXHIBIT E

Pledged Collateral Account Control Agreement

Account Number (Internal Use Only)

PLEGGED COLLATERAL ACCOUNT CONTROL AGREEMENT

INSTRUCTIONS: Complete Boxes A, B, and C.

1. The Parties

The Parties to this agreement ("Agreement") are the Client named below, the Creditor named below and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch").

2. The Pledged Account

Box A
Client has granted Creditor a security interest in Merrill Lynch account number [REDACTED] (Account) pursuant to a separate Pledge or Security Agreement between Client and Creditor.

If the Account will be a new Merrill Lynch account, Client hereby instructs Merrill Lynch to transfer the assets listed in Exhibit A to the Account. The Account shall be maintained as a cash securities account, and will be titled "(Name of Client) Pledged Collateral Account for (Name of Creditor)" or a substantially similar title.

The purpose of this Agreement is to perfect the Creditor's security interest in the Account by granting Creditor control over the Account; however, this Agreement does not create Creditor's security interest in the Account in that Client and Creditor have a separate Pledge or Security Agreement for such purpose.

Client represents that client has not granted a security interest in the Account to any party other than Creditor, except for Merrill Lynch's broker lien referenced in section 7 and any lien for service fees to an Investment Manager or Agent named in Box B in section 4. Merrill Lynch has not entered into a Control Agreement with respect to the Account with any other party and agrees that it will not do so while this Agreement is in effect. The manager signing this Agreement on behalf of Merrill Lynch hereby represents, to the best of his or her knowledge, that no person other than Client, Creditor, Merrill Lynch and any Investment Manager or Agent named in Box B in section 4 has any claim, lien or interest in the Account or the assets in the Account. Except as set forth below in section 3, all assets in or credited to the Account, including without limitation, any cash or money account designated by the Client for the sweep of cash balances (e.g. money market mutual funds or bank deposit accounts) will be treated as financial assets under Article 8 of the New York Uniform Commercial Code.

3. Excluded Assets

Client and Creditor acknowledge that the following assets (each an "Excluded Asset" and, collectively, "Excluded Assets") are not covered by this Agreement even if shown, for information purposes, on a periodic account statement for the Account, because Merrill Lynch is not the legal custodian of such assets (i.e., they are not in or credited to the Account): shares of the Merrill Lynch Institutional Funds (unless such shares are held directly by Merrill Lynch), non-listed limited partnership interests, annuities and life insurance contracts, and precious metals. Merrill Lynch will not be responsible for assuring that any Excluded Assets are not acquired with Assets from the Account.

4. Client's Authority over the Account

Until Creditor delivers to Merrill Lynch a Notice of Exclusive Control pursuant to section 6, Client will have full authority to give instructions with respect to assets in the Account in regard to voting and other rights, but will not have the authority to give any entitlement orders with respect to, or terminate or withdraw assets from the Account, except as may be provided in Box C, without written consent by Creditor. Client's authority with respect to trading in the Account and receipt of income from the Account will be governed by the completion of boxes B and C, which authority Creditor may revoke at any time by providing written notice to Merrill Lynch delivered to Merrill Lynch at the address of the branch office servicing the Account as indicated on the most recent account statement.

If an Investment Manager or Agent is named in Box B, Creditor agrees that the assets in the Account are subject to Client's agreement with such manager or agent and that periodic payment of normal advisory and service fees from assets in the Account pursuant to such an agreement is permitted without consent of Creditor.

Box B
Is Client permitted to trade in the Account?
Yes ☒ No ☐
If yes, except as otherwise provided in a Notice to Merrill Lynch, may comply with any trading instructions from Client to the Investment Manager or Agent named below without the written consent by Creditor.
Print name of Merrill Lynch advisory service, Investment Manager or Agent designated by separate power of attorney or equivalent document on file with Merrill Lynch: [REDACTED]

Box C
Is Client permitted to withdraw from the Account?
Yes ☒ No ☐
If yes, Client is authorized to receive all interest and regular cash dividends earned on assets in the Account monthly by check or by transfer to account no. [REDACTED]

Pledged Collateral Account Control Agreement

Account Number (Internal Use Only)

5. Control by Creditor

Merrill Lynch agrees to comply with any instructions it receives from Creditor at any time to transfer, sell, redeem, close open trades or otherwise liquidate any assets in the Account (including instructions to transfer assets directly to, or into an account in the name of, Creditor), without further consent by Client. All instructions to transfer assets from the Account must be in writing. If Creditor is an entity, Merrill Lynch is authorized to take instructions from any person Merrill Lynch reasonably believes represents Creditor.

6. Notice of Exclusive Control

Creditor may at any time deliver to Merrill Lynch a "Notice of Exclusive Control" substantially in the form of Exhibit B. Upon receipt of such notice by the manager of the Merrill Lynch office servicing the Account, Merrill Lynch will cease complying with trading instructions from, or on behalf of, Client with respect to the Account, cease distributing to Client interest and regular cash dividends earned on assets in the Account, and refuse to accept any other instructions from Client intended to exercise any authority with respect to the Account except upon instruction of Creditor.

7. Priority of Creditor's Security Interest

So long as this Agreement is in effect, Merrill Lynch subordinates in favor of Creditor any security interest, lien, or right of setoff it may have, now or in the future, against assets in the Account, except Merrill Lynch may retain a prior lien on assets in the Account to secure payment for assets purchased for the Account and to collect normal commissions and service fees.

8. Duplicate Statements and Confirmations

Merrill Lynch will send Creditor duplicate copies of periodic account statements and trade confirmations, if any, contemporaneously with those sent to Client. If Creditor stops receiving such duplicate Account statements and trade confirmations, Creditor shall provide Merrill Lynch with written notice of such at the address of the branch office servicing the Account as indicated on the account statement.

9. Responsibility and Protection of Merrill Lynch

Except for permitting a transfer of assets from the Account in violation of section 4, Merrill Lynch will not be liable to Creditor for complying with instructions from Client, or any Investment Manager or Agent named in Box B in section 4, that are received by Merrill Lynch before Merrill Lynch receives a Notice of Exclusive Control in accordance with section 6. Merrill Lynch will not be liable to Client for complying with a Notice of Exclusive Control or any instructions received from any person Merrill Lynch reasonably believes represents Creditor. Merrill Lynch has no duty to investigate whether Creditor is authorized under the Pledge or Security Agreement to give such Notice of Exclusive Control or such instructions.

Client hereby agrees to indemnify and hold harmless Merrill Lynch, its officers, directors, employees and agents, and any Investment Manager or Agent named in Box B in section 4, against claims, liabilities and expenses arising out of maintenance of the Account pursuant to this Agreement (including reasonable attorneys' fees), except if such claims, liabilities or expenses are caused solely by Merrill Lynch's or such manager's or agent's gross negligence or willful misconduct, respectively.

Creditor hereby agrees to indemnify and hold harmless Merrill Lynch, its officers, directors, employees and agents, and any Investment Manager or Agent named in Box B in section 4, against claims, liabilities and expenses (including reasonable attorneys' fees) arising out of Merrill Lynch's compliance with any instructions from Creditor with respect to the Account except if such claims, liabilities or expenses are caused solely by Merrill Lynch's or such manager's or agent's gross negligence or willful misconduct, respectively.

This Agreement does not create any obligations for Merrill Lynch except for those expressly set forth in this Agreement.

10. Termination; Survival

Creditor may terminate this Agreement by providing written notice to Merrill Lynch at the address of the branch office servicing the Account as indicated on the most recent account statement. Upon such notification by Creditor to Merrill Lynch that Creditor's security interest in the Account has terminated, this Agreement will automatically terminate. Merrill Lynch may terminate this Agreement by providing thirty (30) days written notice to Creditor and Client. In the event that Merrill Lynch voluntarily terminates this Agreement, Merrill Lynch shall transfer the assets in the Account as directed in writing by the Creditor. Section 9, "Responsibility and Protection of Merrill Lynch," will survive termination of this Agreement.

11. Effect of Agreement

Client and Creditor agree that this Agreement supplements the applicable Merrill Lynch account agreement with respect to the Account, and any related agreement if the Account is a managed account under a Merrill Lynch advisory program with a manager named in Box B, and that it does not abridge any rights that Merrill Lynch might otherwise have, except as provided in section 7, if there is any inconsistency between this Agreement and such Merrill Lynch account agreements this Agreement will control. The Parties also acknowledge that there are no other understandings or agreements with Merrill Lynch concerning the Account except for this Agreement, the Merrill Lynch account agreement(s) and any agreement with an Investment Manager or Agent named in Box B to which Merrill Lynch may be a party. If the account number identified or referenced in Box A above is changed for any reason by Merrill Lynch, this Agreement shall also cover the successor or replacement account number.

12. Governing Law

This Agreement and the Account will be governed by the internal laws of the State of New York with respect to interpretation and enforcement.

13. Amendments

No amendment of, or waiver of a right under, this Agreement will be binding unless it is in writing and signed by the party to be charged.

14. Severability

To the extent a provision of this Agreement is unenforceable, this Agreement will be construed as if the unenforceable provision were omitted.

15. Successors and Assigns of Creditor

A successor to or assignee of Creditor's rights and obligations under the Pledge or Security Agreement between Creditor and Client will succeed to Creditor's rights and obligations under this Agreement.

Pledged Collateral Account Control Agreement

Account Number (Internal Use Only)

SIGNATURE PAGE

INSTRUCTIONS:
Fill in names and addresses and sign. Use Exhibit A to list the assets to be transferred into the Merrill Lynch Pledged Collateral Account.

PLEASE NOTE:
This Agreement may be executed in counterparts, but the preparator should provide the completed original to Merrill Lynch with signed photocopy counterparts provided to Client and Creditor.

Client:

Client's Name (Print) THAG, LLC
 Signature [Signature] Date 1-12-2017
 Name of Individual Signing (Print) TERRY L. HOLMES
 Title MANAGING MEMBER
 Client's Address: Street 8883 OCEAN HIGHWAY
 City RAWLEYS ISLAND State/Province SC
 Postal Code (zip code) 29585 Country USA

Creditor:

Creditor's Name (Print) Jones Nissan, Inc
 Signature [Signature] Date 1-20-17
 Name of Individual Signing (Print) John T. Jones, Jr.
 Title (an authorized officer) President
 Creditor's Address: Street P.O. Box 458
 City Sumter State/Province SC
 Postal Code (zip code) 29151-0458 Country USA

Merrill Lynch, Pierce, Fenner, & Smith Incorporated:

Name (Print) _____
Managing Director/Director/Complex Director (or delegate of Complex Director evidenced by Branch Office Supervisory Designation)
 Signature _____ Date _____
Managing Director/Director/Complex Director (or delegate of Complex Director evidenced by Branch Office Supervisory Designation)

Merrill Lynch Wealth Management makes available products and services offered by Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S) and other subsidiaries of Bank of America Corporation.

Investment products:

Are Not FDIC Insured	May Lose Value	Are Not Bank Guaranteed

MLPF&S is a registered broker-dealer, Member SIPC and a wholly owned subsidiary of Bank of America Corporation.

EXHIBIT E-1



Thag LLC
8883 Ocean Hwy
Pawleys Island, SC 29586-6902

January 19, 2017

RE: Verification of Deposit - Credit Reference

Important Notice

This is in response to the Verification of Deposit (VOD) request for the Merrill Lynch account of Thag LLC. Details appear below.

Account Type	WCMA
Account Number	XXX-XX250
Value as of Date (Close of Business (COB))	01/18/2017
Total Portfolio Value*	\$850,000.00

☐ If checked, the portfolio value provided represents an average balance.

*This total is as of COB on the listed date. However, the balance provided is monthly/quarterly as Merrill Lynch does not maintain daily balance records. It includes Money Fund shares/balances, marginable/non-marginable securities, and outstanding loans. If an average balance is requested, it is calculated based upon the monthly/quarterly balance.

BBIF* Money Fund Shares	\$0.00
Market Value of Marginable Securities	\$0.00
Outstanding Loans from Marginable Securities	\$0.00
Commercial Line of Credit	\$0.00
Outstanding Loans from Commercial Line of Credit	\$0.00
Current Available Funds as of [01/18/2017] at 11:00	\$850,000.00
Comments	

Signature of Merrill Lynch Branch Office Management Team (OMT)

Walter Hardy Resident Branch
Printed Name

Jan 19, 2017
Date

EXHIBIT F

\$650,000.00February 28, 2017
Sumter, SC

FOR VALUE RECEIVED, the Undersigned (the "Obligor") promises to pay to the order of Jones Nissan, Inc. (the "Holder"), payable at Sumter, South Carolina, the sum of Six Hundred Fifty Thousand and No/100 (\$650,000.00) Dollars, with interest at the rate of Six Percent (6.00%) per annum, past due interest to bear interest at the same rate; principal and interest being payable as follows:

In fifty nine (59) consecutive, equal annual installments of Twelve Thousand Five Hundred Sixty Six and 32/100 (\$12,566.32) and a sixtieth consecutive installment of the balance then due, all in accordance with the amortization schedule attached hereto and made a part hereof.

PROVIDED, HOWEVER, that should default be made in the payment of said principal, or any installment thereof, or said interest, or any portion thereof, on the due date, the Holder hereof, his successors and assigns, may at his/their option declare the entire remaining balance immediately due and payable. The Obligor hereunder agrees to pay all costs of collection, including a reasonable attorney's fee, in case payment shall not be made at maturity. Obligor does hereby waive demand, presentment, notice of non-payment, dishonor, protest, and notice of protest.

THAG, LLC

By: 22/1/16Terry L. Holmes
Its

EXHIBIT G

PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT is made this 28 day of February, 2017, by THAG, LLC (the "Pledgor") in favor of JONES NISSAN, INC. (the "Lender") whose address is 1260 Broad Street, Sumter, South Carolina 29150.

Recitals

Pledgor has executed and delivered a promissory note (as amended, extended or renewed from time to time, the "Note") dated February 28, 2017 in the original principal amount of Six Hundred Fifty Thousand Dollars (\$650,000.00) in favor of the Lender. Pledgor has agreed to secure its obligations under the Note in accordance with the terms hereof.

NOW, THEREFORE, for good and valuable consideration, the Pledgor agrees as follows:

1. Security Interest. The Pledgor hereby pledges to the Lender and gives and grants the Lender a continuing and unconditional security interest (the "Security Interest") in the following described property and in all increases, income, dividends, distributions and profits therefrom, and in all substitutions therefor and in all proceeds thereof in any form (the "Collateral"):

Merrill Lynch Account No. 250 having a portfolio value of \$650,000 as more fully described in Pledged Collateral Account Control Agreement appended hereto and made a part hereof (or any reissue, replacement or substitute thereof or therefor).

2. Delivery of Collateral. The Lender hereby accepts delivery of the Collateral on behalf of itself and any future transferee of the Indebtedness. Pledgor will execute and deliver to the Lender all assignments, endorsements, powers and other documents requested at any time and from time to time by the Lender with respect to the Collateral and the rights and powers granted to the Lender hereunder.

3. Indebtedness Secured. The Security Interest secures payment when due of all Indebtedness (as defined herein) to the Lender. As used in this Agreement, the term "Indebtedness" means: all principal, interest, costs, expenses (including attorneys' fees) and other amounts now or hereafter due under the Note (including, without limitation, all principal amounts advanced thereunder before, on or after the date hereof).

4. Warranties of the Pledgor. The Pledgor represents and warrants and so long as the Indebtedness remains unpaid shall be deemed continuously to represent and warrant that: (a) each item constituting Collateral is genuine and in all respects what it purports to be; (b) the Pledgor is the owner of the Collateral free of all security interests or other encumbrances except the Security Interest; and (c) the Pledgor is authorized to enter into this Security Agreement.

5. Irrevocable Proxy. Pledgor irrevocably constitutes and appoints the Lender as the

Pledgor's proxy with full power without limitation to do all things which the Pledgor could do as an owner of the Collateral, giving to the Lender full power of substitution and revocation. Notwithstanding the foregoing, the Pledgor alone shall have the rights under this paragraph and the Lender may not exercise those rights so long as no Event of Default or Default has occurred. The proxy contained in this paragraph shall terminate when this Agreement terminates. The Pledgor hereby revokes all proxies heretofore given to any person or persons and agrees not to give any other proxies in derogation of this proxy so long as this Agreement is in force.

6. Covenants of Pledgor. The Pledgor: (a) will defend the Collateral against the claims of all persons; (b) will keep the Collateral free from all security interests or other encumbrances except the Security Interest; (c) will not assign, sell, transfer, deliver or otherwise dispose of the Collateral or any interest therein or attempt to do the same without the prior written consent of the Lender; (d) will notify the Lender promptly in writing of any change in the Pledgor's address, name or identity, specified above; (e) in connection herewith will execute and deliver to the Lender such financing statements and other documents, pay all costs of filing financing statements and other documents in all public offices requested by the Lender, and take such other action as the Lender may deem advisable to perfect the Security Interest created by this Agreement; and (f) will pay taxes, assessments and other charges of every nature which may be levied or assessed against the Collateral.

7. Income from Collateral.

(a) Until the occurrence of an Event of Default, the Pledgor reserves the right to receive all income from the Collateral. If the Lender receives any of the income prior to the occurrence of any Event of Default, it will pay the income promptly to the Pledgor.

(b) From and after the occurrence of an Event of Default, the Pledgor will not demand or receive any income from the Collateral. If the Pledgor receives any such income without demand the Pledgor will pay it promptly to the Lender. The Lender may apply the net cash receipts of such income to payment of any of the Indebtedness. However, the Lender shall account for and pay over to the Pledgor all Collateral remaining, and any income remaining, after termination of this Agreement.

8. Default.

(a) Each of the following events or conditions shall constitute an "Event of Default" hereunder: (i) the Pledgor's failure to pay any Indebtedness when due; (ii) the Pledgor's failure to perform any other obligation now or hereafter owed to the Lender; (iii) the occurrence of any Event of Default under the Note; or (iv) material falsity in any certificate, statement, representation or warranty at any time furnished to the Lender by or on behalf of the Pledgor pursuant to or in connection with this Agreement or otherwise (including warranties in this Agreement).

(b) Upon the occurrence of an Event of Default, the Lender may: (i) declare all or any part of the Indebtedness to be immediately due without notice; and (ii) exercise such other rights and remedies as are available hereunder or otherwise.

(c) Upon the occurrence of any Event of Default, the Lender's rights with respect to the Collateral shall be those of a secured party under the Uniform Commercial Code and under any other applicable law from time to time in effect. The Lender shall also have any additional rights granted herein and any other agreement now or hereafter in effect between the Pledgor and the Lender.

(d) The Pledgor agrees that any notice by the Lender of the sale or disposition of Collateral or any other intended action hereunder, whether required by the Uniform Commercial Code or otherwise, shall constitute reasonable notice to the Pledgor if the notice is mailed by regular or certified mail, postage prepaid, at least thirty days before the action to the Pledgor's address as specified in this Agreement or to any other address which the Pledgor has specified in writing to the Lender as the address to which notices shall be given to the Pledgor.

(e) The Pledgor shall pay all costs and expenses incurred by the Lender in enforcing this Security Agreement, realizing upon any Collateral and collecting any Indebtedness (whether incurred in connection with collection, trial or appeal) including a reasonable attorney's fee whether suit is brought or not and to the extent of the Pledgor's liability for repayment of any of the Indebtedness, shall be liable for any deficiency in the event that disposition of the Collateral does not satisfy the Indebtedness in full.

9. Miscellaneous.

(a) The Pledgor appoints the Lender as the Pledgor's attorney-in-fact to perform all acts which the Lender deems appropriate, to perfect and continue the Security Interest, to protect and preserve the Collateral and to endorse and transfer all or any part of the Collateral. Notwithstanding the foregoing, the Pledgor alone shall have the rights under this paragraph and the Lender may not exercise those rights so long as no Event of Default or Default has occurred. The proxy contained in this paragraph shall terminate when this Agreement terminates.

(b) Upon the Pledgor's failure to perform any of its duties hereunder the Lender may, but it shall not be obligated to, perform any of such duties and the Pledgor shall forthwith upon demand reimburse the Lender for any reasonable expense incurred by the Lender in so doing.

(c) No delay or omission by the Lender in exercising any right hereunder or with respect to any Indebtedness shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude the Lender from any other or further exercise of that right or the exercise of any other right or remedy. The Lender may cure any default by the Pledgor in any reasonable manner without waiving the default so cured and

without waiving any other prior or subsequent default by the Pledgor. All rights and remedies of the Lender under this Agreement and under the Uniform Commercial Code shall be deemed cumulative.

(d) The Lender shall exercise reasonable care in the custody and preservation of the Collateral to the extent required by law and it shall be deemed to have exercised reasonable care if it takes such action for that purpose as the Pledgor shall reasonably request in writing. However, no omission to do any act not requested by the Pledgor shall be deemed a failure to exercise reasonable care and no omission to comply with any requests by the Pledgor shall of itself be deemed a failure to exercise reasonable care.

(e) The rights and benefits of the Lender under this Agreement shall, if the Lender agrees, inure to any party acquiring any interest in the Indebtedness or any part thereof.

(f) The terms "Lender" and "Pledgor" as used in this Agreement include the heirs, personal representatives, and successors or assigns of those parties.

(g) This Agreement may not be modified or amended nor shall any provision of it be waived except in writing signed by the Pledgor and by an authorized officer of the Lender.

(h) This Agreement shall be construed under the Uniform Commercial Code of South Carolina and any other applicable South Carolina laws in effect from time to time.

(i) This Agreement is a continuing agreement which shall remain in force until the Lender shall actually receive written notice of its termination and thereafter until all of the Indebtedness contracted for or created before receipt of the notice and any extensions or renewals of that Indebtedness (whether made before or after receipt of the notice) together with all interest thereon both before and after the notice shall be paid in full.

10. Waiver. The Pledgor hereby waives any right that the Pledgor may have to notice and a hearing before possession or sale of any Collateral is effected by the Lender by self-help, replevin, attachment or otherwise.

DATED the day and year first above-written.

THAG, LLC



Terry L. Holmes

Its

(SEAL)

EXHIBIT H

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER) Assignment of Asset Purchase Agreement

This Assignment of Asset Purchase Agreement, hereinafter "the Assignment", is made by and between THAG, LLC, hereinafter "Assignor", and Nissan of Sumter, LLC, hereinafter "Assignee," and shall be effective as of February 28, 2017.

WITNESSETH:

Whereas, Jones Nissan, Inc. James E. Jones and John T. Jones, Jr., collectively as Seller and THAG, LLC as Purchaser entered into an Asset Purchase Agreement dated July 25, 2016 for the purchase of assets associated with the Jones Nissan, Inc. Nissan dealership (hereinafter the "Contract"); and

Whereas, Assignor desires to assign all of its right, title and interest in and to the Contract to Assignee, and Assignee desires to accept all of the right, title and interest of the Assignor in and to the Contract; and

Now, Therefore, Know All Persons by These Presents, for and in consideration of Ten Dollars (\$10.00), the covenants herein set forth, together with other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Assignor transfers, sells, negotiates, assigns, endorses, transfers, grants, conveys, delivers and assigns any and all of its right, title, interest and benefit in and to the Contract to Assignee, its Successors and Assigns.

To have and to hold the same together with all rights, titles, interests, privileges, claims, demands and equities existing and to exist in connection with the Contract unto Assignee, its Successors and Assigns, forever.

Witness the Hand and Seal of Terry L. Holmes, member of THAG, LLC this 28th day of February, 2017

THAG, LLC, Assignor

By: Terry L. Holmes (L.S.)
Its: Member

Witness the Hand and Seal of Terry L. Holmes, member of Nissan of Sumter, LLC this 28th day of February, 2017.

Nissan of Sumter, LLC, Assignee

By: THAG Strategic Investment Services of Sumter, LLC (L.S.)
Its: Member
By: Terry L. Holmes
Its: Member

EXHIBIT I

SMITH ROBINSON

Smith Robinson Holler DuBose and Morgan, LLC
Attorneys at Law
126 North Main Street
Post Office Box 580
Sumter, South Carolina 29150

G. Murrell Smith, Jr.
Jonathan M. Robinson
David C. Holler, Jr. *
John K. DuBose, III
Thomas Morgan, Jr.

J. Alexander Hooks**
P. Edward Brasher, Jr.
Shanon N. Peake

*Also Admitted in NC, GA
**Also Admitted in NC

Of Counsel:
J. Kennedy DuBose, Jr.
Jack W. Erter, Jr.
Harry C. Wilson, Jr.

Telephone: (803) 778-2471
Facsimile: (803) 778-1643

E-Mail Address: jackarter@smithrobinsonlaw.com
Writer's Direct Dial Number: (803) 774-6241
Writer's Direct Dial Facsimile: (803) 938-9925
Reply to Sumter Office

TO: Thag, LLC
8933 Ocean Highway
Pawleys Island, SC 29585
Attn: Terry L. Holmes, Member/Manager

FROM: Jack W. Erter, Jr.

DATE: August 20, 2019

SUBJECT: Notice of Default; Promissory Note dated February 28, 2017 in the original amount of \$650,000.00 in favor of Jones Nissan, Inc. ("Lender/Creditor")

We represent the referenced Lender/Creditor, Jones Nissan, Inc., and in that regard you are hereby notified that you are in default under the terms of the Note referenced above in that the installment due on the 28th day of July, 2019 in the amount of \$12,566.32 has not been paid. As per the terms of the Note, demand is hereby made upon you for the full payment of the entire outstanding balance in the amount of \$360,035.15.

To secure the indebtedness, you entered into a pledge agreement with Lender/Creditor dated February 28, 2017 (the "Pledge Agreement") pursuant to which you pledged to Lender/Creditor Merrill Lynch Account No. [REDACTED] having a portfolio value of \$650,000 thereby granting to Lender/Creditor a security interest in said account. In connection therewith, you entered into a Pledged Collateral Account Control Agreement dated January 19, 2017 with Lender/Creditor and Merrill Lynch (the "Pledged Account Control Agreement") pursuant to which Merrill Lynch has agreed to comply with any instructions it receives from Lender/Creditor at any time to transfer, sell, redeem, close open trades or otherwise liquidate any Assets in the Account (including instructions to transfer assets directly to, or into an account in the name of Lender/Creditor), without further consent by you. This is to further notify you that as a consequence of your default, Lender/Creditor is delivering to Merrill Lynch a "Notice of Exclusive Control" as called for under the referenced Pledged Account Control Agreement.

Camden Office
935 Broad Street
PO Drawer 39
Camden, SC 29021
803-432-1992
803-432-0784 (f)

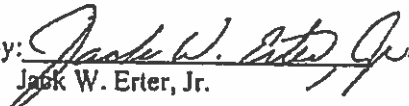
Columbia Office
2530 Devine Street, Ste. 1-B
Columbia, SC 29205
803-254-5445
803-254-5007 (f)

Sumter Office
126 N. Main Street
PO Box 580
Sumter, SC 29151
803-778-2471
803-778-1643 (f)

Smith Robinson

This is to further notify you that if payment of the entire amount is not received on or before the 30th day of August, 2019, legal proceedings shall be instituted against you and the costs of collection and attorney's fees shall be added to your account.

Smith Robinson Law Firm

By: 
Jack W. Erter, Jr.

Encl

EXHIBIT J

JONES NISSAN INC

**1260 BROAD STREET
SUMTER, SC 29150
803-469-3424**

Via Federal Express

TO: Merrill Lynch Wealth Management
10267 Ocean Highway
Pawleys Island, SC 29585
Attn: Scott Hurston, Manager

FROM: Jack W. Erter, Jr.

DATE: August 22, 2019

SUBJECT: Notice of Exclusive Control
Pledge Collateral Account Control Agreement dated 01/19/2017- Account
[REDACTED] (the "Account")
Client: Thag, J.L.C.
Creditor: Jones Nissan, Inc.

Pursuant to Paragraph 9 of the referenced Pledged Collateral Account Control Agreement (the "Control Agreement"), this is to notify you that the undersigned Creditor is exercising its right to "exclusive control" of the captioned Merrill Lynch "pledged account". Per the terms of the Control Agreement, you are to cease complying with trading instructions from, or on behalf of, Client with respect to the Account, cease distributing to Client interest and regular cash dividends earned on assets in the Account, and refuse to accept any other instructions from Client intended to exercise any authority with respect to the Account except upon instruction of the undersigned Creditor.

Enclosures: To assist you with the above, please find enclosed herewith the following:

Pledge Collateral Control Agreement entered into between Client, Creditor and Merrill Lynch.

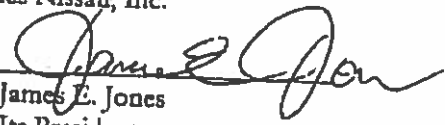
If you need anything further to carry out the subject "exclusive control" instructions, you are authorized and directed to contact counsel for the Creditor whose name, address and telephone number are set forth below:

Jack W. Erter, Jr.
Smith Robinson Law Firm
PO Box 580
Sumter, SC 29151
803-774-6241

Further instructions with regard to the disposition of the Account will be forthcoming in the near future.

Jones Nissan, Inc.

By:


James E. Jones
Its President

Encl.

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,
Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC; and
Terry L. Holmes,
Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

**Answer and Counterclaims of Defendants
to Plaintiff's First Amended Complaint**

NOW COME THAG, LLC; Nissan of Sumter, LLC; and Terry L. Holmes, Defendants in the above-captioned action, and submit their Answer and Counterclaims to the Plaintiff's Complaint as follows:

1. Defendants admit Paragraph 1.
2. In response to Paragraph 2, Defendants admit that THAG's principal place of business was in Pawleys Island until about February 6, 2019, when it was moved to Cheraw, SC. Further, Defendants deny that THAG owns or operates a dealership in Sumter. The reminder of Paragraph 2 is admitted.
3. Defendants admit Paragraph 3.
4. Defendants deny Paragraph 4 to the extent it claims Mr. Holmes is a resident of Georgetown County, and that he operated the companies for his personal benefit. The remainder of Paragraph 4 is admitted.
5. Defendants admit Paragraphs 5-6.
6. In response to Paragraph 7, Defendants reallege and incorporate their prior responses as if fully set forth herein verbatim.

7. Defendants admit Paragraphs 8-10, upon information and belief.
8. In response to Paragraphs 11-14, Defendants crave reference to the documents referenced therein for the terms thereof, and deny anything inconsistent therewith.
9. Defendants deny Paragraph 15 to the extent it references an Exhibit H which is not signed by any of the purported parties.
10. Defendants admit Paragraph 16.
11. Defendants deny Paragraph 17 to the extent it describes the transaction as a "sale." Nissan of Sumter was forced to relinquish the dealership for no consideration after the dealership under-performed due to Plaintiff's breach of contract as set forth herein.
12. Defendants deny Paragraphs 18-21 and demand strict proof thereof.

Answering the First Cause of Action
(Breach of Contract)

13. Paragraph 22 states a legal conclusion and requires no answer from Defendants. To the extent an answer is deemed required, Defendants deny Paragraph 20.
14. Defendants deny Paragraphs 23-25 and demand strict proof thereof.

Answering the Second Cause of Action
(Breach of Contract Accompanied by Fraudulent Act)

15. In response to Paragraph 26, Defendants reallege and incorporate their prior responses as though fully set forth herein verbatim.
16. Paragraph 27 states a legal conclusion and requires no answer from Defendants. To the extent an answer is deemed required, Defendants deny Paragraph 27.
17. Defendants deny Paragraphs 28-30 and demand strict proof thereof.

Answering the Third Cause of Action
(Conversion and Civil Theft)

18. In response to Paragraph 31, Defendants reallege and incorporate their prior responses as though fully set forth herein verbatim.

19. Defendants deny Paragraphs 32-37 and demand strict proof thereof.

Answering the Fourth Cause of Action
(Breach of Implied Covenant of Good Faith and Fair Dealing)

20. In response to Paragraph 38, Defendants reallege and incorporate their prior responses as though fully set forth herein verbatim.

21. Paragraph 39 states a legal conclusion that requires no answer from the Defendants.

To the extent an answer is deemed required, Defendants deny Paragraph 39.

22. Defendants are without information sufficient to form a belief as to the truth of Paragraph 40, and thus this paragraph stands denied.

23. Paragraphs 41-42 state legal conclusions that require no answer from the Defendants.

To the extent answers are deemed required, Defendants deny Paragraphs 39-40.

24. In response to Paragraph 43, Defendants admit that they owed such duties as arose through contract or by operation of SC law, and deny anything inconsistent therewith.

25. Defendants deny Paragraphs 44-45 and demand strict proof thereof.

Answering the Fifth Cause of Action
(Fraud)

26. In response to Paragraph 46, Defendants reallege and incorporate their prior responses as though fully set forth herein verbatim.

27. In response to Paragraph 47, Defendants crave reference to the documents referenced for the terms thereof, and deny anything inconsistent therewith.

28. Defendants deny Paragraphs 48-50 and demand strict proof thereof.

29. Defendants admit Paragraph 51.

- 30. Defendants deny Paragraph 52 and demand strict proof thereof.
- 31. Defendants are without information sufficient to form a belief as to the truth of Paragraph 53, and thus this paragraph stands denied.
- 32. Defendants admit Paragraph 54.
- 33. Defendants deny Paragraph 55 and demand strict proof thereof.

Answering the Sixth Cause of Action
(Constructive Fraud)

- 34. In response to Paragraph 56, Defendants reallege and incorporate all prior responses as though fully set forth herein verbatim.
- 35. Defendants deny Paragraphs 57-60 and demand strict proof thereof.
- 36. Defendants are without information sufficient to form a belief as to the truth of Paragraphs 61-62, and thus these paragraphs stand denied.
- 37. Defendants admit Paragraph 63.
- 38. Defendants deny Paragraph 64 and demand strict proof thereof.

Answering the Seventh Cause of Action
(Money Had and Received)

- 39. In response to Paragraph 65, Defendants reallege and incorporate all prior responses as if fully set forth herein verbatim.
- 40. Defendants deny Paragraphs 66-67 and demand strict proof thereof.

Answering the Eighth Cause of Action
(Quantum Meruit)

- 41. In response to Paragraph 68, Defendants reallege and incorporate all prior responses as if fully set forth herein verbatim.
- 42. Defendants deny Paragraphs 69-72 and demand strict proof thereof.

Answering the Ninth Cause of Action
(Piercing Corporate Veil/Alter Ego)

43. In response to Paragraph 73, Defendants reallege and incorporate all prior responses as if fully set forth herein verbatim.
44. Defendants deny Paragraphs 74-77 and demand strict proof thereof.

Answering the Tenth Cause of Action
(Accounting)

45. In response to Paragraph 78, Defendants reallege and incorporate all prior responses as if fully set forth herein verbatim.
46. Defendants deny Paragraph 79 and demand strict proof thereof.
47. Paragraphs 80-94 do not contain any allegations against these Defendants, and thus no response is necessary.
48. Defendants deny any remaining allegations not previously answered, including but not limited to the prayer for relief.

Further Answering the Amended Complaint
And as an Affirmative Defense Thereto
(Failure to State a Claim)

49. Plaintiff's Amended Complaint must be dismissed because it fails to state a claim upon which relief may be granted.

Further Answering the Amended Complaint
And as an Affirmative Defense Thereto
(Statute of Limitations)

50. One or more of Plaintiff's claims are barred by the relevant statute(s) of limitations.

Further Answering the Amended Complaint
And as an Affirmative Defense Thereto
(Statute of Frauds/Parol Evidence Rule)

51. One or more of Plaintiff's claims fails because it relies on an interpretation of the contract in conflict with the Statute of Frauds and/or Parol Evidence Rule.

Further Answering the Amended Complaint
And as an Affirmative Defense Thereto
(Waiver/Laches/Estoppel)

52. The Plaintiff's claims fail under the alternate doctrines of waiver, laches, and/or estoppel.

Further Answering the Amended Complaint
And as a First Counterclaim Against Jones Nissan, Inc.
(Breach of Contract)

53. Defendants incorporate their prior allegations as though restated herein verbatim.
54. This Court has jurisdiction over Defendants' Counterclaims herein involving the same set of transactions or occurrences.
55. THAG, LLC entered into an Asset Purchase Agreement with Jones Nissan on or about July 28, 2016.
56. THAG, LLC performed its obligations under the Asset Purchase Agreement.
57. Jones Nissan breached the contract with THAG, LLC in the following particulars:
- a) Misrepresentation of material facts concerning the market value of the dealership;
 - b) Charging an exorbitant amount of rent to THAG in exchange for its use of the dealership property;
 - c) Representing to THAG that it would be allowed to rent a 1.5 acre lot, when in fact it was allowed to use only about 0.25 acres;
 - d) Not renting THAG sufficient space to display its inventory;
 - e) Not renting THAG the building on the premises, instead using it for Jones' detailing business;

- f) Owning and operating a car dealership next door to THAG, in direct competition with THAG and in violation of the non-compete agreement; and
 - g) Such other and further breaches as will come to light through discovery.
58. As a direct and proximate result of Jones Nissan's breach of contract, THAG, LLC has sustained actual damages in an amount to be determined by the trier of fact.

Further Answering the Amended Complaint
And as a Second Counterclaim Against Jones Nissan, Inc.
(Breach of Implied Covenant of Good Faith and Fair Dealing)

59. Defendants incorporate their prior allegations as though restated herein verbatim.
60. As with any contract entered into in SC, the Asset Purchase Agreement contains an implied covenant of good faith and fair dealing for both parties.
61. Jones Nissan breached its implied covenant of good faith and fair dealing in the following particulars:
- a) Misrepresentation of material facts concerning the market value of the dealership;
 - b) Charging an exorbitant amount of rent to THAG in exchange for its use of the dealership property;
 - c) Representing to THAG that it would be allowed to rent a 1.5 acre lot, when in fact it was allowed to use only about 0.25 acres;
 - d) Not renting THAG sufficient space to display its inventory;
 - e) Not renting THAG the building on the premises, instead using it for Jones' detailing business;
 - f) Owning and operating a car dealership next door to THAG, in direct competition with THAG and in violation of the non-compete agreement; and
 - g) Such other and further breaches as will come to light through discovery.

62. As a direct and proximate result of Jones Nissan's breach of the implied covenant of good faith and fair dealing, THAG, LLC has sustained actual damages in an amount to be determined by the trier of fact.

WHEREFORE, Defendants pray this Honorable Court for the following:

- a) Dismissal of the Plaintiff's claims with prejudice;
- b) Judgment against Plaintiff on THAG's Counterclaims;
- c) Assessment of court costs and attorney's fees against Plaintiff; and
- d) Such other and further relief as the Court deems proper.

THE BOSTIC LAW GROUP, P.A.

/s/ Christopher M. Ramsey
Christopher M. Ramsey
2236 Ashley Crossing Dr.
Charleston, South Carolina 29414
(843) 571-2525
Fax: (843) 571-7050
cramsey@bosticlaw.com
Attorneys for the Defendants

May 1, 2023

Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC; and
Terry L. Holmes,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

**PLAINTIFF'S REPLY TO
COUNTERCLAIMS DATED
MAY 1, 2023**

Plaintiff Jones Nissan ("Plaintiff" or "Jones Nissan"), by and through the undersigned attorneys, hereby serves its Reply to Defendants' Answer and Counterclaims dated May 1, 2023 and would respectfully show unto the Court the following:

GENERAL OBJECTIONS

Plaintiff generally and specifically denies each and every allegation, statement, matter and/or thing set forth and alleged in the Counterclaim portions of Defendants' Answer and Counterclaims dated May 1, 2023 ("Defendants' Counterclaims"), unless specifically and expressly admitted, qualified or explained.

FOR A FIRST DEFENSE TO THE COUNTERCLAIM
(12(b)(6))

1. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 94 of the Amended Complaint.
2. Plaintiff would show that Defendants have failed to allege facts sufficient to constitute a cause of action, for which reason Defendants' Counterclaims should be dismissed pursuant to Rule 12(b)(6), SCRPC.

FOR A SECOND DEFENSE TO THE COUNTERCLAIM
(General Denial)

3. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.
4. Paragraphs 1 – 52 of Defendants' Answer and Counterclaims do not assert any allegations of wrongdoing against Plaintiff, and therefore require not response; however, to the extent any allegations of wrongdoing are asserted, they are denied.
5. Paragraph 53 is a paragraph of incorporation and requires no response from Plaintiff; however, to the extent any response is required, it is denied.
6. Plaintiff admits the allegations of Paragraph 54 upon information and belief.
7. Plaintiff admits the allegations of Paragraph 55.
8. Plaintiff denies the allegations of Paragraph 56.
9. Plaintiff denies the allegations of Paragraph 57 (including all subparts).
10. Plaintiff denies the allegations of Paragraph 58.
11. Paragraph 59 is a paragraph of incorporation and requires no response from Plaintiff; however, to the extent any response is required, it is denied.
12. Plaintiff admits the allegations of Paragraph 60.
13. Plaintiff denies the allegations of Paragraph 61 (including all subparts).
14. Plaintiff denies the allegations of Paragraph 62.
15. Plaintiff denies the WHEREFORE paragraph of Defendants' Answer and Counterclaims in its entirety.

FOR A THIRD DEFENSE TO THE COUNTERCLAIM
(Statute of Limitations)

16. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

17. Plaintiff would show that Defendants' Counterclaims are barred by the applicable statute of limitations, for which reason the Counterclaims should be dismissed.

FOR A FOURTH DEFENSE TO THE COUNTERCLAIM
(Statute of Frauds/Parol Evidence Rule)

18. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

19. Plaintiff would show that one or more of Defendants' Counterclaims are barred by the Statute of Frauds and/or parol evidence rule.

FOR A FIFTH DEFENSE TO THE COUNTERCLAIM
(Waiver/Laches/Estoppel)

20. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

21. Plaintiff would show that Defendants' Counterclaims are barred, in whole or in part, by the doctrines of waiver, laches and/or estoppel.

FOR A SIXTH DEFENSE TO THE COUNTERCLAIM
(Fraud)

22. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

23. Plaintiff would show that Defendants' Counterclaims are barred by fraud.

FOR A SEVENTH DEFENSE TO THE COUNTERCLAIM
(Misrepresentation)

24. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

25. Plaintiff would show that Defendants' Counterclaims are barred by misrepresentation.

FOR AN EIGHTH DEFENSE TO THE COUNTERCLAIM
(Exclusions/Limitations of Contract(s))

26. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

27. Defendants' Counterclaims are barred by the exclusions and/or limitations set forth in the plain language of the contract(s) between the parties.

FOR A NINTH DEFENSE TO THE COUNTERCLAIM
(Failure of Condition(s) Precedent)

28. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

29. Defendants' Counterclaims are barred due to the failure of one or more conditions precedent to the contract(s) between the parties.

FOR A TENTH DEFENSE TO THE COUNTERCLAIM
(Unclean Hands)

30. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

31. Plaintiff would show that Defendants' Counterclaims are barred by the doctrine of unclean hands.

FOR AN ELEVENTH DEFENSE TO THE COUNTERCLAIM
(Defendants' Lack of Good Faith)

32. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

33. Plaintiff would show that Defendants' Counterclaims are barred by their lack of good faith.

FOR A TWELFTH DEFENSE TO THE COUNTERCLAIM
(Defendants' Breach of Contract(s))

34. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

35. Plaintiff would show that Defendants' Counterclaims are barred they their breach of the contract(s) between the parties.

FOR A THIRTEENTH DEFENSE TO THE COUNTERCLAIM
(Repudiation of Contract(s))

36. Plaintiff alleges and incorporates all preceding paragraphs as if fully set forth verbatim herein.

37. Plaintiff would show that Defendants' Counterclaims are barred due to their repudiation of the contract(s) between the parties.

FOR A FOURTEENTH DEFENSE TO THE COUNTERCLAIM
(Failure to Mitigate)

38. Plaintiff alleges and incorporates all preceding paragraphs as if fully set forth verbatim herein.

39. Plaintiff would show that Defendants' Counterclaims are barred by their failure to mitigate their alleged damages as required by law.

FOR A FIFTEENTH DEFENSE TO THE COUNTERCLAIM
(Lack of Notice)

40. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

41. Plaintiff would show that Defendants' Counterclaims are barred by their failure to provide timely notice of any alleged breach of contract(s) to Plaintiff.

FOR A SIXTEENTH DEFENSE TO THE COUNTERCLAIM
(Frivolous Proceedings Act)

42. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein verbatim.

43. Plaintiff would show that Defendants' Counterclaims' are entirely without merit and constitute frivolous proceedings pursuant to S.C. Code Ann. §15-36-10, more commonly known as the South Carolina Frivolous Proceedings Act.

WHEREFORE, Plaintiff prays for the following:

- i. Defendants' Counterclaims be dismissed with prejudice;
- ii. All attorney's fees and costs associated with this action, including replying to Defendants' Counterclaims;
- iii. For such other and further relief as this Court deems just and proper, including that Defendants be found to have violated S.C. Code Ann §15-36-10.

MCLEOD LAW GROUP, LLC
3 Morris Street, Suite A
Charleston, SC 29403
Tel. 843-277-6655
Fax 843-277-6660

s/John D. Hudson, Jr.
W. Mullins McLeod, Jr. (14148)
mullins@mcleod-lawgroup.com

John D. Hudson, Jr. (68646)
john@mcleod-lawgroup.com

Attorneys for the Plaintiff

May 26, 2023
Charleston, SC

s/Henrietta U. Golding

Henrietta U. Golding, SC Bar No. 2173

Taylor K. Voegel, SC Bar No. 104770

BURR & FORMAN LLP

2411 Oak Street, Suite 206

Myrtle Beach, SC 29577

Phone: 843.444.1107

Fax: 843.444.4729

Email: hgolding@burr.com

tvoegel@burr.com

Timothy P. Burke*

Matthew C. McDonough*

MORGAN LEWIS & BOCKIUS LLP

One Federal Street

Boston, MA 02110

Phone: 617.951.8000

Fax: 617.951.8736

Email: timothy.burke@morganlewis.com

matthew.mcdonough@morganlewis.com

**Pro hac vice*

*Attorneys for Defendant Merrill Lynch,
Pierce, Fenner & Smith Incorporated*

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC; and Terry
L. Holmes,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

Defendants' Motion to Compel

NOW COME Defendants and submit their Motion to Compel as follows:

1. On April 26, 2023, Defendants served Interrogatories and Requests for Production upon Plaintiff through counsel. Email attached as Exhibit A; discovery attached as Exhibit B.
2. On June 23, 2023, pursuant to Rule 11, counsel for Defendants advised opposing counsel that he had not received the responses to discovery, and asked that the same be provided within 10 days so that he would not have to file a motion to compel. Email attached as Exhibit C.
3. Counsel certifies that he has consulted with opposing counsel prior to filing this motion, but still has not been furnished the requested discovery.

WHEREFORE, Defendants request the Court enter an order compelling Plaintiff to respond to the Defendants' discovery, along with any other appropriate relief.

THE BOSTIC LAW GROUP, P.A.

/s/ Christopher M. Ramsey

Christopher M. Ramsey
2236 Ashley Crossing Dr.
Charleston, SC 29414
(843) 571-2525

Fax: (843) 571-7050

cramsey@bosticlawn.com

Attorneys for the Defendants

July 10, 2023

Charleston, South Carolina

Jones Nissan v. THAG - Discovery Requests to Plaintiff

Chris Ramsey

Wed 4/26/2023 11:44 PM

To: John Hudson <john@mcleod-lawgroup.com>

 1 attachments (142 KB)

Discovery to Plaintiff - THAG v Jones Nissan.pdf;

John,

See attached for service upon you Defendants' Discovery Requests to Plaintiff.

Chris

Christopher M. Ramsey
The Bostic Law Group, P.A.
2236 Ashley Crossing Drive
Charleston, SC 29414
(843) 571-2525
Fax: (843) 571-7050
bosticlaw.com

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC; and Terry
L. Holmes,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

Defendants' Discovery to Plaintiff

TO: COUNSEL FOR PLAINTIFF

Defendants hereby require Plaintiff, within thirty (30) days after service hereof, to answer the Interrogatories and Requests for Production hereinafter set forth, in accordance with South Carolina Rules of Civil Procedure, Rules 33 and 34. In these requests, the term "party" is used to designate Jones Nissan, Inc. These requests shall be deemed to continue until the time of the trial of the case.

Interrogatories

1. Give the names and addresses of persons known to the party or counsel to be witnesses concerning the facts of the case, and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.
3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

4. Set forth an itemized statement of all damages, exclusive of pain and suffering claimed to have been sustained by the party.
5. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of this case and for each state the following:
 - a) The specialty or sub-specialty in which you claim they are an expert;
 - b) The subject matter to which the expert is expected to testify;
 - c) The substance of the facts and opinions to which the expert is expected to testify;
 - d) A summary for the grounds of each opinion;
 - e) Whether the expert has testified previously in other actions within the same specialty or sub-specialty;
 - f) For each expert in which the answer was affirmative, list the name of the action, the jurisdiction, the civil action number, the date of the testimony or deposition, and the names, current addresses and telephone numbers for the attorneys for each of the parties in the actions.
6. For each person known to the party or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.
7. If any documents responsive to the Requests for Production are being withheld for privilege or other reasons, please identify the document with sufficient detail to enable counsel to determine whether the privilege applies.

8. If any documents responsive to the Requests for Production are known to be missing, lost, or destroyed, please describe the document and provide the names of any persons who might have retained a copy.
9. Please list the amount and date of all payments made by Defendants to Plaintiff and include any other credit(s) which Plaintiff agrees Defendants are entitled to.
10. Please provide the name of the banking institution(s) and account number(s) for any bank accounts used by Plaintiff.
11. Please list the amount of any settlement(s) concerning Plaintiff's claims which have been paid by a party other than Defendants, including but not limited to Merrill Lynch.

Requests for Production

1. All documents identified in answers to Interrogatories.
2. All documents referred to in preparing the answers to Interrogatories.
3. All photographs, videotapes, radiological studies, maps, plats, drawings, diagrams, measurements, surveys, medical records, accounting records, reports, notes, memos, electronic communications or information, letters, books, drawings, charts, models or other documents related in any way to the subject matter of this action or to the areas and persons involved, made either before or after the incident that is the subject of this action.
4. All photographs, videotapes, radiological studies, maps, plats, drawings, diagrams, measurements, surveys, medical records, accounting records, reports, notes, memos, electronic communications or information, letters, books, drawings, charts, models or other documents that the party intends to rely upon or to offer into exhibits as evidence at any time, or to use as demonstrative aids at the trial of this action.

5. All statements of any witness, in the possession of the party or its attorney, (whether written or recorded on a tape, hard drive, disc or otherwise), that relate to the matters alleged in the pleadings, or in the party's answers to interrogatories.
6. All unprivileged statements, memoranda, notes, diaries, reports, photographs, or other material that are in any way related to the Plaintiffs' claims or defenses thereto.
7. Copies of any policies of insurance covering the claims asserted against the party.
8. Copies of all documents you intend to introduce at trial.
9. Current curriculum vitae for all expert witnesses identified in the party's Answers to Interrogatories.
10. All material of any sort used by experts for the party in forming their opinions or in researching the matters which are the subject of this lawsuit.
11. All articles, books, or other publications written by any individual whom the party intends to utilize as an expert in this case.
12. All written reports, evaluations, notes, memoranda, correspondence (whether or not in electronic form), bills or other documents or tangible items regarding this case, rendered by those individuals whom the party intends to use as an expert in this case.
13. All documents that contain, refer, or relate to any oral reports, conclusions or comments ever prepared by those individuals whom the party intends to use as an expert in this case.
14. Copies of any regulations, standards, manuals, texts, journals, or other documents or publications which the party may use in direct examination or cross-examination of any witness or introduce into evidence or use as a demonstrative aid either in a deposition or at trial.

15. Copies of all documents obtained in response to or in cooperation with any subpoena *duces tecum* issued by the party's counsel in this lawsuit.
16. Copies of all contracts between the Plaintiff and the Defendants.
17. Copies of all correspondence, including emails, between Plaintiff and the Defendants.
18. All information and documents which could, or will, be used at trial and/or during discovery for impeachment purposes.
19. A copy of any privilege log produced or needed to be produced for any document or information not produced or described in the answer to any discovery in this litigation due to any claim of privilege, any work product or other doctrine or for any other reason such was not produced.
20. Copies of any settlement agreement or release entered into between Plaintiff and any other party to this matter, including but not limited to Merrill Lynch.

THE BOSTIC LAW GROUP, P.A.

/s/ Christopher M. Ramsey

Christopher M. Ramsey
2236 Ashley Crossing Dr.
Charleston, SC 29414
(843) 571-2525

Fax: (843) 571-7050
cramsey@bosticlaw.com
Attorneys for the Defendants

April 26, 2023

Charleston, South Carolina

Certificate of Service

I hereby certify that I have this date served all counsel with a copy of the foregoing discovery, by causing same to be e-mailed to counsel's e-mail address of record as shown in the AIS system, as follows:

John Hudson
john@mcleod-lawgroup.com

/s/ Christopher M. Ramsey
Christopher M. Ramsey

April 26, 2023

Charleston, South Carolina

Re: Jones Nissan v. THAG - Discovery Requests to Plaintiff

Chris Ramsey

Fri 6/23/2023 2:27 AM

To: John Hudson <john@mcleod-lawgroup.com>

John,

We served Defendants' discovery requests upon you on April 26 and answers would have been due on or around May 26. Kindly provide responses within 10 days so that I can avoid having to file a motion to compel. Thanks

Chris

Christopher M. Ramsey
The Bostic Law Group, P.A.
2236 Ashley Crossing Drive
Charleston, SC 29414
(843) 571-2525
Fax: (843) 571-7050
bosticlaw.com

From: Chris Ramsey

Sent: Wednesday, April 26, 2023 11:44 PM

To: John Hudson <john@mcleod-lawgroup.com>

Subject: Jones Nissan v. THAG - Discovery Requests to Plaintiff

John,

See attached for service upon you Defendants' Discovery Requests to Plaintiff.

Chris

Christopher M. Ramsey
The Bostic Law Group, P.A.
2236 Ashley Crossing Drive
Charleston, SC 29414
(843) 571-2525
Fax: (843) 571-7050
bosticlaw.com

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC;
Terry L. Holmes; and Merrill Lynch, Pierce,
Fenner & Smith Incorporated,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

**PLAINTIFF'S NOTICE OF
AND MOTION FOR SUMMARY
JUDGMENT**

PLEASE TAKE NOTICE that Plaintiff Jones Nissan, Inc. ("Plaintiff"), by and through its undersigned attorneys, will move at the first available hearing no sooner than ten (10) days after service, before the Presiding Judge, or at such time as counsel may be heard, for an Order granting Plaintiff summary judgment against Defendants THAG, LLC, Nissan of Sumter, LLC and Terry L. Holmes (collectively "THAG Defendants") on to its First Cause of Action (breach of contract), Second Cause of Action (breach of contract accompanied by a fraudulent act), Third Cause of Action (conversion and civil theft), Fourth Cause of Action (breach of implied covenant of good faith and fair dealing), Seventh Cause of Action (money had and received), Eighth Cause of Action (quantum meruit) and Ninth Cause of Action (piercing the corporate veil/alter ego) – as well as the THAG Defendants' First Counterclaim (breach of contract) and Second Counterclaim (Breach of Implied Covenant of Good Faith and Fair Dealing) in the event they remain viable – pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.¹ The basis for Plaintiff's motion is that

¹ As of the time of this filing, Plaintiff's Motion to Alter or Amend the Court's order of May 11, 2023 to confirm that Defendants' counterclaims have been dismissed as untimely remains pending.

there is no genuine issue of material fact as to the above-referenced causes of action (and counterclaims if applicable) and Plaintiff is entitled to judgment as a matter of law against these Defendants.

Plaintiff's motion will be supported by the pleadings, depositions (Terry L. Holmes' deposition is attached as **Exhibit 1** and incorporated by reference), answers to interrogatories, and admissions on file, the affidavits of James E. Jones (attached as **Exhibit 2** and incorporated by reference), Karen H. "Necie" Oliver (attached as **Exhibit 3** and incorporated by reference) and John D. Hudson, Jr. (attached as **Exhibit 4** and incorporated by reference) submitted herewith, any supporting memorandum to be submitted hereafter, and such other and further matters as may be submitted to the Court in accordance with Rule 56, SCRCP, prior to the hearing on this motion.

Respectfully Submitted,

MCLEOD LAW GROUP, LLC
3 Morris Street, Suite A
Charleston, SC 29403
Tel. 843-277-6655
Fax 843-277-6660

s/John D. Hudson, Jr.
W. Mullins McLeod, Jr. (14148)
mullins@mcleod-lawgroup.com
John D. Hudson, Jr. (68646)
john@mcleod-lawgroup.com

Attorneys for the Plaintiff

May 12, 2023

Charleston, South Carolina

EXHIBIT 1

Terry Holmes

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF
COMMON PLEAS OF THE
FIFTEENTH JUDICIAL CIRCUIT

JONES NISSAN, INC., CIVIL ACTION NO.
 Plaintiff, 2020-CP-22-00373

vs.

THAG, LLC, NISSAN OF SUMTER,
LLC, TERRY L. HOLMES, and
MERRILL LYNCH, PIERCE,
FENNER & SMITH, INC.,
 Defendants.

DEPOSITION OF TERRY L. HOLMES

DATE TAKEN: March 23, 2023
TIME BEGAN: 12:22 p.m.
TIME ENDED: 7:55 p.m.
LOCATION: (via videoconference)

REPORTED BY: Eileen Thompson, CCR
 EveryWord, Inc.
 P.O. Box 1459
 Columbia, South Carolina 29202
 803-212-0012

APPEARANCES:

MCLEOD LAW GROUP
BY: JOHN D. HUDSON, ESQUIRE
928 Washington Street
Columbia, South Carolina 29201
803-451-6057
john@mcleod-lawgroup.com
(via videoconference)
Representing the Plaintiff

THE BOSTIC LAW GROUP, P.A.
BY: CHRISTOPHER M. RAMSEY, ESQUIRE
2236 Ashley Crossing Drive
Charleston, South Carolina 29414
843-350-9646
cramsey@bosticl原因.com
(via videoconference)
Representing the Defendants

Also Present: None

Terry Holmes

I N D E X

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By Mr. Hudson	5
Certificate of Reporter	223

E X H I B I T S

(Premarked exhibits by Mr. Hudson.)

	1	Asset Purchase Agreement
1	2	First Amendment to APA
1	3	Second Amendment to APA
1	4	Third Amendment to APA
1	5	Pledged Collateral Account
1	6	Validation of Deposit
1	7	Promissory Note
1	8	Pledge Agreement
1	9	Assignment of APA (UNSIGNED)
1	10	Notice of Default
1	11	Notice of Exclusive Control
2	12	Letter and Cashier's check
2	13	Cashier's check dated 9-27-19
2	14	Nissan Part 2
2	15	Amortization calculator
2	16	Merrill Lynch documents
2	17	Pages from 2017 1040

Terry Holmes

- 18 9-22-2021 Notice of Filing
- 19 2020 Federal 1040 Return
- 20 Marital Asset Summary
- 21 2022 Valuation Report- Cheraw
- 22 2022 Valuation Report - Nashville
- 23 GIS Map of Jones Nissan

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Terry Holmes

ELECTRONICALLY FILED - 2023 May 12 4:28 PM - GEORGETOWN - COMMON PLEAS - CASE#2020CP2200373

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1 ---
2 PROCEEDINGS
3 ---
4 TERRY L. HOLMES, after having been
5 first duly sworn, was examined and
6 testified as follows:
7 ---
8 EXAMINATION
9 ---
10 BY MR. HUDSON:
11 Q. Mr. Holmes, good afternoon.
12 A. Good afternoon.
13 Q. Can you hear me okay?
14 A. Yes, sir, I sure can.
15 Q. To echo what Eileen, our court reporter,
16 just said, if you would extend me the courtesy of
17 allowing me to complete my question before you start
18 responding, I will try to do the same, meaning I
19 will try to make sure you have finished your
20 response before I ask you another question, okay?
21 A. Sure.
22 Q. Because we do have a little bit of delay
23 factor that we're going to be dealing with, since
24 we're doing it by Zoom.
25 A. Sure.

Page 6

1 Q. I have not had the pleasure of meeting you
2 before -- I was not at the mediation -- but my name
3 is John Hudson. I'm one of the lawyers that
4 represents Jones Nissan in this lawsuit that's been
5 brought against THAG, LLC; Nissan of Sumter; as well
6 as you individually.
7 A. Sure.
8 Q. You understand that I have asked you to
9 come in today to give your deposition, correct?
10 A. Yes.
11 Q. Have you given a deposition before?
12 A. No.
13 Q. Okay. Let me walk you through the process
14 and explain to you the rules that we've got to play
15 by. I'm going to ask you a good many questions
16 today. Some will have to do with background
17 information, so I can understand a little bit about
18 who you are, what you do, things like that, but the
19 majority of my questions will pertain to the
20 contract or agreement that your business and you
21 entered into with Jones Nissan that pertains to the
22 purchase of the Nissan dealership over in Sumter.
23 A. Okay.
24 Q. If I ask you a question that you do not
25 understand or you find confusing, tell me. I will

Page 7

1 rephrase my question or ask it differently so I'm
2 making myself clear, all right?
3 A. Very good.
4 Q. If I ask you a question and you provide me
5 a response to that question, my assumption will be
6 that you understood the question that I asked you,
7 all right?
8 A. Okay.
9 Q. If you need to take a break at any point
10 in time for any reason, I am happy to accommodate
11 you. The only thing that I would ask is that if
12 there's a question pending, you respond fully to
13 that question that's on the table before we take a
14 break.
15 A. Okay.
16 Q. Once we are off record for any reason,
17 you're not allowed to have any discussions with Mr.
18 Ramsey about the substance of your testimony in this
19 matter. Do you understand that?
20 A. I do.
21 Q. If any such discussions were to take
22 place, you need to let me know that, once we come
23 back on the record, so I can determine whether or
24 not I need to inquire as to the substance of any of
25 those communications, all right?

Page 8

1 A. Okay.
2 Q. And that pretty much covers it. Do you
3 understand that you have been placed under oath?
4 A. I do.
5 Q. So you understand that the responses that
6 you give to my questions here today will have the
7 import as if they were provided under oath in a
8 court of law, correct?
9 A. Correct.
10 Q. Is there any reason that you're aware of
11 why you can't respond truthfully and honestly to the
12 questions I'm going to ask you?
13 A. No. I don't know what you're going to
14 ask, but no.
15 Q. Do you have any questions of me before we
16 get started?
17 A. I do. I mean, I'm not sure -- I mean,
18 this disposition -- or deposition that we're doing,
19 is that relevant to the interrogatories and the
20 production of documents that we've already given at
21 some point?
22 Q. Well, this is simply one of the discovery
23 devices that is provided for by our procedural rules
24 that allows me to gather information that I believe
25 to be relevant to the claims we've brought --

Terry Holmes

ELECTRONICALLY FILED - 2023 May 12 4:28 PM - GEORGETOWN - COMMON PLEAS - CASE#2020CP2200373

Page 9

1 A. Okay.

2 Q. -- so it's another discovery tool. It's

3 similar in some respects to the interrogatories and

4 production requests in that it involves the

5 gathering of evidence. But, obviously, this is a

6 different format and forum, because it allows me to

7 ask you questions verbally rather than in writing.

8 A. Okay.

9 Q. That's probably the best I can do with

10 that.

11 A. Okay.

12 Q. Let me just ask you some pointed questions

13 to begin with, so I can figure out how involved we

14 need to be today and how long it's going to take us,

15 all right?

16 A. Okay.

17 Q. Do you admit that THAG, LLC, breached the

18 asset purchase agreement it entered into with Jones

19 Nissan in 2016?

20 A. I don't understand that question.

21 Q. Let me ask it again. Do you admit that

22 THAG, LLC breached the asset purchase agreement it

23 entered into with Jones Nissan in 2016?

24 A. I don't agree to that.

25 Q. Why not?

Page 10

1 A. I don't know. I don't have all the facts.

2 I mean, once again, it's about 2016, so I don't --

3 you know, a lot of stuff happened during that

4 particular time. You know, I would have to look at

5 that. But no.

6 Q. Do you believe that THAG, LLC fully

7 performed under the asset purchase agreement it

8 entered into with Jones Nissan in 2016?

9 A. We're talking about strictly the asset

10 purchase agreement, not a side note that we deal

11 with?

12 Q. Correct.

13 A. Okay. The APA agreement, from my

14 understanding, it was entered into to do the

15 buy-sell with the Jones Nissan dealership and as far

16 as I knew, it went through as it was intended.

17 Q. So is it your testimony that THAG fully

18 performed under the asset purchase agreement that it

19 entered into with Jones Nissan in 2016?

20 A. Yes, the asset purchase agreement, I

21 believe we -- it was performed by, you know, the

22 property dealers of Nissan of Sumter agreement,

23 which allowed us to buy the store.

24 Q. A minute ago you referenced a side note,

25 if I recall your testimony correctly.

Page 11

1 A. Correct.

2 Q. What side note are you referring to?

3 A. I'm talking about the note that Jones and

4 THAG entered into, Nissan of Sumter, to cover a --

5 let's see how to put this -- to cover a deficiency

6 off of the asset purchase agreement.

7 Q. And when you say "note," you're referring

8 to a promissory note that was entered into between

9 Jones Nissan and THAG, LLC, correct?

10 A. I believe so. I'm not sure of the

11 appropriate entity, but yes, there is an agreement.

12 I'm not sure if it was Nissan of Sumter, LLC, or

13 THAG, LLC. That's what I'm referencing.

14 Q. What was the purpose of that promissory

15 note?

16 A. Well, the intent was to be able to -- to

17 be able to buy the Jones Nissan of Sumter store,

18 because of the asking price by them wasn't -- there

19 was a shortfall in what the amount that was going to

20 be financed from Nissan Motor and the performers,

21 that their asking price was over the asking price of

22 what could be actually bought.

23 Q. Explain that to me. You said that their

24 asking price was over the asking price of what could

25 be bought. What do you mean by that?

Page 12

1 A. What I mean by that, that the financial

2 terms of the bank, of our lending institution and

3 Nissan Motor Company, in order for the deal to

4 properly -- to properly be successful, there was a

5 certain amount of money that should be paid on the

6 deal asking price. However, due to the fact of

7 trying to -- in good spirit, trying to help the sale

8 -- to help the transaction of this deal, we extended

9 separate terms that were outside of the normal

10 manufacturer's agreement and due diligence.

11 Q. When you say "we," who do you mean?

12 A. Well, the company, Nissan of Sumter.

13 Q. Is it true --

14 A. And that amount was excessive goodwill.

15 Q. What was the amount of the promissory

16 note?

17 A. If I can recall, it was somewhere in the

18 neighborhood of six hundred.

19 Q. \$650,000, correct?

20 A. Six hundred, somewhere in that ballpark.

21 Six hundred -- yeah, it could be.

22 Q. And the reason the parties entered into

23 the promissory note was so the purchaser could

24 finance a portion of the sale price for the

25 business, correct?

Page 13

1 A. That is correct.

2 Q. Who asked that a portion of the purchase

3 price be financed? Who made that request?

4 A. You know, I don't remember. I don't

5 recall how that actually -- that transaction

6 actually come in, but we do typically create a

7 broker or something what would suggest some

8 arrangements in order to be able to put a deal

9 together that's excessive -- excessive goodwill on

10 the thing to cover that.

11 Now, understanding this, when we bought

12 the store, the reason why I was approached by it is

13 that it was underperforming under Nissan standards.

14 And typically an underperforming store, there's not

15 excess goodwill for it. But in an attempt to bring

16 two markets together, we tried to facilitate the

17 deal. And goodwill is calculated on a multiple of

18 -- on a multiple of profitability for a multiple of

19 years, whether it's three times earnings or four

20 times earnings of that case.

21 Q. How do you know that?

22 A. It's typical in our businesses, from what

23 I've seen. You know, I'm not a professional on

24 that. But typically, when deals are performed, it's

25 based off of net earnings times a multiple, which

Page 14

1 ranges sometimes.

2 Q. When you say "the store was

3 underperforming by Nissan standards," you're

4 referring to the Jones Nissan dealership?

5 A. Yes, sir.

6 Q. How badly was it underperforming,

7 according to your understanding?

8 A. You know, I don't really know, but the

9 manufacturer approached me and said that they needed

10 -- approached me and said that they -- we needed to

11 facilitate this deal to get it going, because I had

12 gotten awarded at a previous point, which is Lugoff

13 of South -- an open point, I was awarded that

14 particular point before Nissan of Sumter. However,

15 Nissan came back to me and said, "Before we give you

16 the Lugoff point, you need to arrange a deal with

17 Jones to buy him out, then we will award you,"

18 because that store was underperforming at that time

19 and they wanted to sell.

20 Q. So were you basically going to come in and

21 be somewhat of a savior, is that what you're saying?

22 A. No, I'm not saying that, because I'm not

23 Superman or anything like that. But we were going

24 to give it our best effort to try to put together

25 scales of economy and try to make it a business case

Page 15

1 for it with good intent.

2 Q. Did you approach Jones Nissan about

3 purchasing their business or did they approach you?

4 A. I was instructed to approach them. I knew

5 nothing about them selling their business.

6 Q. Who instructed you to approach Jones

7 Nissan?

8 A. Nissan of -- Nissan Motor Company.

9 Q. Did they make you do that?

10 A. Did they make me? No. I mean, they

11 suggested that we get together and create a business

12 opportunity.

13 Q. And you, in turn, did that, correct?

14 A. Yes, sir, per their instructions.

15 Q. Do you admit that THAG, LLC breached the

16 promissory note it entered into with Jones Nissan in

17 February of 2017?

18 A. Once again, Mr. Hudson, I don't have that

19 promissory note in front of me. I don't know how it

20 was written or do it, because I mean, I apologize

21 for that, but I don't have that to see what it is.

22 What you say is -- you know, you need to understand

23 that.

24 Q. Yes. And listen, let me be crystal clear.

25 We can get into all this and we will talk as much as

Page 16

1 we need to. I'm just trying to figure out what

2 you're willing to concede versus what you're going

3 to challenge. So we will spend as long today as we

4 need to walk through this.

5 A. I understand.

6 Q. Do you admit that THAG, LLC owes Jones

7 Nissan \$360,035.15, in outstanding principal on the

8 promissory note?

9 A. No, sir.

10 Q. Why do you not admit that?

11 A. Well, there's various factors that I think

12 that we did in good faith to pay them a lot more

13 than what -- than what this deal actually called for

14 in trying to make this work. This is a very -- this

15 was a very complicated, very complicated transaction

16 that we entered into, just to try to make a buy-sell

17 go in favor of the Joneses.

18 Q. Explain that to me.

19 A. Well, let me just give you one thing that

20 I can recall in the memories of this is when I got

21 -- when we agreed to purchase the Jones Nissan

22 facility -- I mean, purchase the franchise, there

23 was nowhere to put it. So the premise is that we

24 can wait a year and find a facility to do it. Now,

25 one of the things that I can recall -- and I don't

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Page 17 1 remember all this because there was so many 2 transactions -- we did so many transactions that 3 particular year -- but one of the things that kind 4 of comes to the top of my mind was, "Hey, you can 5 rent this facility, but you're going to pay" -- "but 6 we'll give it to you, but you're going to pay 7 \$30,000 a month for that." Okay. And that will 8 allow you to stay -- that will allow you to start 9 operating immediately to try to turn some of this 10 debt -- pay some of this debt that you created. 11 So saying that, I remember the rent being 12 somewhere in the neighborhood of \$30,000 a month. 13 Only facility that would properly -- I think, that 14 they were paying \$7,500 a month. So, you know, was 15 it a good decision or not? Apparently not, but we 16 actually entered into that. So when you take that 17 \$20,000 of overages and multiple it by 24, you're 18 going to get somewhere in the neighborhood of half a 19 million dollars additional money, revenue stream for 20 them just so we could actually get started doing 21 business and getting them satisfied, and that was 22 the intent. 23 Q. Are you saying you entered into a deal 24 that was not favorable to THAG in order to keep the 25 Joneses satisfied?	Page 19 1 Q. I'm just trying to understand if you're 2 really trying to take the position that this was a 3 bad deal for you and your business and you were 4 forced to enter into it. Is that essentially what 5 you're saying here? 6 A. No, sir. Mr. Hudson, what I -- you know, 7 I think in any business realm, any business, you 8 believe that there's an opportunity for you to be 9 successful in the future. Now, none of us have a 10 crystal ball. And I think that's what I am alluding 11 to, or whatever, because most of them, like I say 12 work out, and some don't. But our intent was to do 13 everything that we had said we were going to do. 14 Q. And one of the primary reasons that you 15 wanted to purchase the Jones Nissan dealership was 16 so you could eventually also purchase the Lugoff 17 dealership, correct? 18 A. That is correct. 19 Q. And that's what Nissan told you needed to 20 happen if you wanted to ultimately have the right to 21 purchase the Lugoff dealership, is that right? 22 A. That -- well, they awarded me the Lugoff 23 dealership before any of this. And we were supposed 24 to -- we were in rights to actually go in -- they 25 had loaned the money to build the store in Lugoff.
Page 18 1 A. Well, I'm saying I entered into a deal 2 with the Joneses to try to consummate a deal that 3 probably was not at my advantage in doing so. But 4 in a good spirit of putting the deal together, we 5 thought well, maybe we won't be as profitable, but 6 we still can possibly make it work. 7 Q. But Jones did not force you to enter into 8 this deal with them, did they? 9 A. No, sir, nobody forced me to do anything, 10 period. 11 Q. Right. You entered into the deal that you 12 did voluntarily, correct? 13 A. You know, there were some stressors in 14 putting these things together. There was a couple 15 heated conversations in putting these things 16 together to try to make it work, but we did. So it 17 wasn't without stress of putting this together. 18 Q. Sure. But you entered into the agreement 19 voluntarily, right? 20 A. Yes, sir. Well, nobody put a gun to my 21 head, if that's what you're asking, absolutely. 22 Q. Did anybody tell you that you could not 23 walk away from the deal before you entered into it? 24 A. Did anybody ever tell me that? I'm not 25 sure.	Page 20 1 So the regional manager came back and told me, she 2 says, "Well, you know, Terry, we want to get Lugoff, 3 which is going to be in the future, but we need to 4 get Sumter up and going before that, before this 5 right here, because this is our prerequisite and 6 Sumter is a market that we have a delineation in and 7 I'm tasked to make that market work." 8 So Nissan actually -- I knew nothing about 9 Sumter ever being for sale. As a matter of fact, I 10 got a call in -- I'm at my Orangeburg store and they 11 say, "Terry, you need to come into the office. We 12 got something to show you." I don't know what they 13 wanted to show me. I come in. They said, "Terry, 14 you did well by selling cars, not profitability, by 15 selling cars. You did well in Orangeburg and you 16 did well at Mitsubishi in Myrtle Beach. We think 17 you could be our guy to get our Nissan sales up. 18 We're going to award you" -- and I went in their 19 office and they told me, "We're going to award you 20 Lugoff," and not once did anybody ask me did I have 21 the finances to do it. 22 Q. Did you ever ask that question of 23 yourself? 24 A. Well, they said, "Well, we will" -- in 25 Lugoff, they were financing 110 percent of that

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1 property. Page 21

2 Q. When you say "they," you're talking about
3 Nissan?

4 A. Nissan Motor Company.

5 Q. So did Nissan Motor Company pressure you
6 into purchasing the Jones Nissan dealership?

7 A. I would say yes.

8 Q. Have you thought about suing them over
9 that?

10 A. You know, I think this whole thing should
11 be -- everybody should be involved in this deal,
12 because it wasn't just Terry Holmes here, but I'm
13 the one that's holding the bag for all of this
14 stuff. Everybody profited except for me, everybody.

15 Then let me tell you about this Nissan
16 deal. Then we get to Lugoff. Then we get there and
17 they say, "Well, you got to do Sumter." Then NMAC
18 -- and this is what's relevant and important to me.
19 NMAC, which is Nissan Acceptance, approved the
20 financing for Lugoff and was going to approve the
21 financing for Sumter. Then at that time, he got --
22 the president gets transferred. A new president
23 comes in and he says, "Who the hell put this deal
24 together?" They went from 100 percent to 75 percent
25 loan to value. And when you're talking about me in

1 dollars, that's a huge impact. So -- but they were Page 22
2 the ones that made the package there midstream of us
3 in this whole process.

4 So I had did what I said to do, never
5 defaulted on any loans whatsoever, whatever, up
6 until this particular point, because I believe your
7 word is what you have, and I've dealt that way for
8 35 years or so. Unfortunately, I end up trying to
9 file bankruptcy, through several different South
10 Carolina attorneys somewhere around that point in
11 time because I couldn't satisfy any of the debt
12 obligations.

13 2018 in June, I remember this Allied Bank
14 calls the note for floor plan. And going back to
15 McCarthy, who I believe was the law firm in Columbia
16 that was trying to help us through a Chapter 13, or
17 whatever, when we got all those documents, they
18 says, "You owe entirely too much, too much to do
19 Chapter 13. We suggest on Thursday, you go file
20 Chapter 7 and buy yourself a car, and turn all the
21 keys to all the stores in, and go get yourself" --
22 what was it -- "a \$6,000 car and get yourself a job
23 and go start selling, but make sure you have a job
24 on Monday selling cars." That's the hand that I was
25 faced with in 2018. So when you ask some of the

1 questions you asked, that's on the top of my mind Page 23
2 where I am right now.

3 Q. Well, as you were about to enter into the
4 deal with Jones Nissan to purchase their dealership,
5 did you believe that it was a bad deal for you?

6 A. It wasn't a great deal, it was a tough
7 deal. Was it possible? Yes, I believed it was
8 possible. And I didn't have -- you know, the
9 history I had in selling vehicles and dealerships
10 was pretty good, which I thought right at that time.

11 I never intended -- but I never intended to enter
12 something that we couldn't perform. You know, the
13 -- did I miscalculate? Did I count all the costs
14 that was associated with it? Apparently not.
15 Apparently, I didn't. And we had some market turns
16 and things and I got caught, overleveraged, grew too
17 fast. You know, I had got five dealerships in five
18 years.

19 Q. Did you try to negotiate more favorable
20 terms to you than the terms you ultimately agreed to
21 with Jones Nissan?

22 A. Absolutely not.

23 Q. Why not?

24 A. Well, number one, there was -- if you know
25 the Jones, they're pretty tough and they're

1 sticklers about what they -- how they feel about Page 24
2 things.

3 Q. Why didn't you just walk away from the
4 deal then?

5 A. I think at that point in time, I was too
6 far into it.

7 Q. And you were getting too much pressure
8 from Nissan?

9 A. Yes.

10 Q. Did you ever tell the powers that be at
11 Nissan that you felt like this was not a good deal
12 for you and you needed to take a step back and
13 possibly walk away?

14 A. You know, those conversations was not had
15 as what do you need, how do we continue forward with
16 this deal. And, you know, there was promises that
17 they were going to help over -- initially when we
18 went into the deal, that didn't happen. And, you
19 know, then they put five-year prerequisites and
20 quotas on, you know, getting some -- about \$500,000,
21 \$600,000. So initially that was supposed to happen
22 and it didn't. So it got spread out over five or
23 six years. And just the softening of the market and
24 things just happened, it just burned cash.

25 And at one point, all these stores -- I

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1 remember this. The debt service was about \$1.5
2 million per month and we were -- no matter what we
3 did, all we could produce was about \$800,000 in
4 gross -- \$800,000 to 900,000, leaving a deficit of
5 about \$45,000 per month.

6 Q. Did you ever ask Nissan to finance a
7 portion of the asking price that the Jones were
8 asking for their business?

9 A. Yes.

10 Q. What did they say?

11 A. They had the performer and they financed,
12 I think -- I believe, the goodwill. And don't quote
13 me, but estimated was somewhere around \$2.2 million,
14 what I think the goodwill asking price was. Now,
15 that number is just strictly a number that was
16 provided by the seller, what they wanted to make --
17 to change. Was it warranted? Probably not, because
18 when they came back and did projections, NMAC says
19 that, Look, we're going to do this, but we're only
20 going to finance \$1.6 million for you and that's it.
21 And hence, that's when all the other stuff started.
22 It only qualified for \$1.6 million goodwill, and
23 that was pressing all -- doing a performer at 100 --
24 almost 200 percent sales increase than what they
25 were doing before.

Page 26
1 Q. And so what you're saying is that Nissan
2 was not willing to finance the amount of the
3 purchase price that was going to be needed to get
4 that deal consummated with Jones Nissan, is that
5 right?

6 A. They had a cap and the cap that they put
7 was \$1.6 million.

8 Q. Which meant the additional funds over and
9 above the cap that Nissan put on the deal was going
10 to have to be provided for by you or someone else,
11 correct?

12 A. Correct.

13 Q. And the way that was handled was to see if
14 Jones Nissan would agree to finance that difference,
15 correct?

16 A. No, sir. I mean, initially, yes, but they
17 said the cap price on this store was \$1.6 million.
18 This is what they -- what it would bring. Nissan
19 Motor Company had no indication of the extra
20 \$600,000 that Jones wanted. That was nowhere in the
21 thing, because it would have -- it would have -- the
22 deal may not have passed their litmus test because
23 of the excessive amount.

24 Q. Well, did you tell Nissan corporate that?

25 A. No, I didn't.

Page 27
1 Q. Why not?

2 A. I don't know.

3 Q. You would agree that you should have?

4 A. Going -- let me see. I don't remember. I
5 don't recall that particular, I just know that they
6 didn't -- they didn't know of this side note that we
7 did and they -- you know, typically, that's between
8 the buyer and the seller.

9 Q. Did you ever let Jones Nissan know that
10 their asking price was in excess of what Nissan
11 corporate was willing to finance?

12 A. Absolutely.

13 Q. How did they respond?

14 A. I don't remember how they -- I think --
15 you know, but like I said, we had brokers in this
16 deal and it was suggesting maybe they would take a
17 side note to do it.

18 Q. You say there were brokers involved in
19 that deal?

20 A. And that would have been the only way it
21 could have been done.

22 Q. Who were the brokers involved in the deal?

23 A. You know, I want to say I had Joy McQuade,
24 which was -- I forget his name -- his company,
25 McQuade Brokers, out of, I think, Lake Oconee,

Page 28
1 Georgia.

2 Q. And that's who was representing your
3 interests?

4 A. I believe so. I'm not sure on that. I
5 mean, because he did a lot of different deals for
6 me. And typically, I know he did the Orangeburg
7 deal, Nissan of Orangeburg, and I think he would
8 have been involved with this. I don't remember
9 exactly how all that went. And I'm not trying to be
10 evasive, I'm just telling you that I just don't
11 recall how this specific transaction came about.

12 Q. Mr. Holmes, do you admit that THAG, LLC
13 owes Jones Nissan interest on the outstanding
14 principal promissory note debt at a rate of 6
15 percent per annum?

16 A. I would -- it seems like a standard -- a
17 standard loan agreement. But, once again, I don't
18 know -- once again, I don't know what entity it was
19 that actually performed it. I don't know if it was
20 THAG, which I would believe it was Nissan of Sumter
21 that the promissory note was the LLC.

22 Q. You admit that THAG, LLC owes Jones Nissan
23 reasonable attorneys' fees associated with its
24 efforts to collect the outstanding promissory note
25 debt?

Terry Holmes

Page 29 1 A. To be honest with you, no, I don't. 2 Q. Why not? 3 A. Because, you know, I think we were over 4 fair and paying what we paid with attempt to paying 5 them. And the goodwill and everything that we paid, 6 the hundred -- \$500,000 in excess rent to help the 7 goodwill for 24 months, all the things after the 8 fact that we didn't contend a -- and I'm not trying 9 to get into all that, but I think we were way more 10 than fair, way more than fair in satisfying the 11 Joneses, and that's why I don't understand even why 12 we're here today, to be honest with you. 13 Q. Do you agree that Nissan of Sumter, LLC, 14 breached the asset purchase agreement assigned to it 15 by THAG in 2017? 16 A. No, sir. 17 Q. Why not? 18 A. I don't know. It just doesn't sound 19 right. Asset purchase agreements are -- asset 20 purchase agreements are generally made to the 21 manufacturer between the buyer and seller. And 22 everything -- if you look, probably everything 23 that's spelled out in the asset purchase agreement 24 was completed. 25 Q. Well, do you know that to be the case, or	Page 31 1 Q. Do you admit that Nissan of Sumter, LLC, 2 breached the promissory note assigned to it by THAG 3 in 2017? 4 A. I don't know how to answer that question. 5 Q. Truthfully. 6 A. Absolutely. I don't believe it -- you 7 know, I don't believe it, you know, -- and I'm 8 talking in the spirit of the contract. I think we 9 did everything over and above to perform 10 satisfactorily as best we could. That's what I 11 believe. 12 Q. Do you admit that Nissan of Sumter, LLC, 13 owes Jones Nissan \$360,035.15 in outstanding 14 principal owed on the promissory note? 15 A. No, sir. 16 Q. Why not? 17 A. Well, when I think about the excessive 18 amount of money that I paid already and when you 19 really look at it, I personally feel that I may need 20 to be -- I should be recouping some of the money 21 that I paid. 22 Q. Why is that? 23 A. Because the excessive amount of money that 24 I paid in already way over dictates what their note 25 says.
Page 30 1 do you just want that to be the case? 2 A. I'm just talking about standard practices, 3 if you will. And going back to asset purchase 4 agreements, those are -- once again, they are 5 approved through the manufacturer, which the 6 manufacturer signs off on an asset purchase 7 agreement. And in order for the parties to be sold 8 -- and that speaks to new vehicles, used vehicles, 9 parts, service, and whatever is listed -- spelled it 10 out in that document, and I believe everything was 11 performed in that document. 12 Q. And I don't want to talk about standard 13 practices that may generally hold true throughout 14 the automobile dealer industry, okay. I want to 15 talk about the specific asset purchase agreement at 16 issue in this lawsuit, okay? 17 A. Sure. 18 Q. So with that being said, let me ask this 19 question again, just so I can get your response. 20 A. Okay. 21 Q. Do you admit that Jones Nissan of Sumter, 22 LLC, breached the asset purchase agreement assigned 23 to it by THAG, LLC, in 2017? 24 A. Do I agree that they breached it? No sir, 25 I don't believe it.	Page 32 1 Q. How much money have you -- 2 A. And I don't think what they were paid, 3 they could have gotten anywhere else. 4 Q. Well, you agreed to pay them that amount, 5 didn't you? 6 A. I tried to pay them that amount, and we 7 did in other forms. 8 Q. All right. We'll walk through it. 9 A. Okay. 10 Q. You admit that Nissan of Sumter, LLC, owes 11 Jones Nissan interest on the outstanding principal 12 debt at a rate of 6 percent per annum? 13 A. You know, I don't agree to that now. I 14 don't agree to the contract anymore. 15 Q. Why don't you agree to the contract 16 anymore? 17 A. Because I think -- once again, I think 18 they have been well compensated for the entire deal, 19 very well compensated. 20 Q. You would like to modify the contract, is 21 that right? 22 A. No, I didn't say that. I just said that 23 they have been well compensated, in essence, for the 24 purchase of this entire deal. 25 Q. Were they compensated in accordance with

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1 the contract and the promissory note that you
2 signed?

3 A. I think there was other factors that they
4 were compensated on that actually were outside of
5 that particular contract as a whole -- and I'm
6 speaking of a whole -- that I think they were very
7 well compensated on this particular deal.

8 Q. Were they compensated in accordance with
9 the contract that you signed?

10 A. I think so.

11 Q. Were they compensated in accordance with
12 the promissory note that you signed?

13 A. I think so. I believe that. Yes, sir, I
14 believe that. I believe they have been taken care
15 of.

16 Q. Okay. Do you admit that Nissan of Sumter,
17 LLC, owes Jones Nissan reasonable attorneys' fees
18 associated with its efforts to collect the
19 outstanding debt owed?

20 A. No, sir, I don't.

21 Q. Do you agree that you are personally
22 liable for the outstanding debt owed to Jones Nissan
23 by THAG, LLC?

24 A. Absolutely not.

25 Q. Why not?

Page 34

1 A. I just don't. And I think they have been
2 compensated, again, well enough for this particular
3 deal.

4 Q. You agree that you are personally liable
5 for the outstanding debt owed to Jones Nissan by
6 Nissan of Sumter, LLC?

7 A. No, sir, those are all corporate entities
8 that stand on their own.

9 Q. All right. Let's go ahead and walk
10 through some of these documents.

11 All right. Mr. Holmes, are you able to
12 see my screen?

13 A. Yes.

14 Q. Okay. So what we're going to mark as
15 Exhibit 1 is the Asset Purchase Agreement, okay?

16 A. Sure.

17 MR. HUDSON: And, Eileen, do you have
18 these exhibits premarked already?

19 THE COURT REPORTER: Yes.

20 EXAMINATION RESUMED BY MR. HUDSON:

21 Q. Mr. Holmes, so Exhibit 1 to your
22 deposition is the asset purchase agreement that
23 THAG, LLC, entered into with Jones Nissan, Inc.,
24 okay. Do you see the first page of that agreement
25 on your screen?

Page 35

1 A. I do see the first page.

2 Q. You would agree with me that the date of
3 this agreement was July 25 of 2016, correct?

4 A. Yes.

5 Q. What does THAG stand for?

6 A. Initially, it stands for Terry Holmes
7 Automotive Group.

8 Q. And that's your company?

9 A. Yes, sir.

10 Q. Is that company still in existence?

11 A. No, sir. It's still open, but there's no
12 -- I don't have any operating entities with it.

13 Q. Who started the company?

14 A. I started the company.

15 Q. Why did you start the company?

16 A. To run -- successfully run automobile
17 dealerships.

18 Q. When did you start the company?

19 A. I'm not sure. I started my first
20 franchise business in 1999 in Warner Robins,
21 Georgia.

22 Q. Is that when you started THAG, LLC?

23 A. No, sir, because at that time, there was
24 one store.

25 Q. And I think, according to the Secretary of

Page 36

1 State's records, the business was founded in maybe
2 2014. Does that sound about right?

3 A. It could have been.

4 Q. Excuse me. 2011 is what those records
5 show.

6 A. It could have been, yeah, in the state of
7 South Carolina I believe, I'm not sure.

8 Q. The company was founded in May of 2011 and
9 the registered agent, at that point in time, was
10 someone named Bobby Hill. Who is Mr. Hill?

11 A. Bobby Hill is -- he worked for me. He was
12 hired as a general manager.

13 Q. Where is he today?

14 A. Today he is at Nissan of Sumter still.

15 Q. Since the founding of THAG, LLC, in 2011,
16 has anyone, other than you, had an ownership
17 interest in the company?

18 A. No, sir.

19 Q. You're the sole member of the LLC?

20 A. Yes, sir.

21 Q. And that has always been the case?

22 A. Yes, sir.

23 Q. Do you have sole decision-making authority
24 for the company?

25 A. Yes, sir, for that particular company, but

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1 any entities that it went with, it was governed by
 2 the shareholders that were the lending institutions
 3 of putting the deal together.
 4 Q. But it's true that the only member of
 5 THAG, LLC, has been you since the company has
 6 existed, right?
 7 A. Yes, sir, so far as I know.
 8 Q. Who handled the legal work for the
 9 company?
 10 A. Several attorneys. We had the Weathers
 11 Law Group in Pawleys Island. And in Georgia, it was
 12 Segal Shuster Fryer of Atlanta, Georgia. That was
 13 about the two attorneys that we dealt with.
 14 Q. Was THAG, LLC, founded solely to handle
 15 your South Carolina operations?
 16 A. Well, it was set up as a parent company to
 17 handle -- to deal with running franchise automobile
 18 dealers, so it wasn't exclusively for South
 19 Carolina. That wasn't the intent.
 20 Q. Is there an operating agreement for THAG,
 21 LLC?
 22 A. I believe so.
 23 Q. Do you have access to a copy of it?
 24 A. I would probably have to get it. I don't
 25 have it with me.

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1 Q. How would you get it?
 2 A. Well, I mean, maybe ask or see if my CFO
 3 could find the documents. Maybe we had it in
 4 Dropboxes or where we file documents -- I mean,
 5 company records.
 6 Q. Who is your CFO? Let me ask you this.
 7 A. Can you ask me that question again? How
 8 could I get the formation of THAG -- oh, the
 9 operating agreements?
 10 Q. Right. How would you go about getting a
 11 copy of THAG's operating agreement?
 12 A. We might have them on file -- I'm sure we
 13 do -- because if I remember correctly, any time you
 14 open a bank account, you got to -- they want to see
 15 -- I think they want to see an operating agreement,
 16 but I know all the manufacturers probably do.
 17 Q. I'd like for you to get that document and
 18 provide it to Mr. Ramsey so I can get a copy of it,
 19 okay?
 20 A. All right. Will do.
 21 Q. Who is THAG's CFO?
 22 A. Well, we didn't really have a CFO. You
 23 know, the office managers at each individual store
 24 just kind of handled that per se, because we were
 25 kind of a loan entity. And that would have been

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1 Lana Barthelmes, and also Mark Sanchez was
 2 instrumental in helping me put all the paperwork for
 3 the formation and I -- paperwork for putting any
 4 asset purchase agreements, he did all that stuff.
 5 Q. All right. Focusing on the date of July
 6 25, 2016, which is the date that's on the first page
 7 of the asset purchase agreement between Jones Nissan
 8 and James Jones and John Jones, Jr., who was THAG's
 9 CFO on that particular date?
 10 A. Okay. And, once again, I have to ask. I
 11 just see the first page. I don't see any dates,
 12 signatures of the final. Is there a final document
 13 that says not a draft, or whatever, because at any
 14 dealership, we have multiple texting, where these
 15 have been revised multiple times.
 16 Q. Right. I'll show it to you.
 17 A. Okay.
 18 Q. I'm showing you now the signature page to
 19 the agreement that we've marked as Exhibit 1.
 20 A. Okay. All right.
 21 Q. Is that your signature on behalf of THAG,
 22 LLC, dated July the 28th of 2016?
 23 A. You know, it looks like it, but it also
 24 looked like a stamped copy, to be honest, but yeah.
 25 Q. Well, did you have a signature stamp at

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1 that point in time?
 2 A. I think I did.
 3 Q. Is that how you typically signed
 4 documents?
 5 A. No, not these documents.
 6 Q. Would you ever sign legal contracts with a
 7 signature stamp?
 8 A. No.
 9 Q. All right. So for purposes of this
 10 deposition, do you admit that you signed this
 11 particular signature page on or about July the 28th
 12 of 2016?
 13 A. I'm not -- looking at this, I'm not sure.
 14 I can't validate that 100 percent.
 15 Q. Who would be in a better position than you
 16 to validate that that's your signature?
 17 A. I'm not sure.
 18 Q. As of July the 28th of 2016, had you
 19 authorized anyone else to sign your name to legal
 20 contracts?
 21 A. No, that's not authorized, but I'm not
 22 saying that it didn't happen. I could have been out
 23 of town or something and needed to get this in right
 24 away and there's a possibility that that could have
 25 happened.

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Page 41 1 Q. Were you the managing member of THAG, LLC, 2 as of July 28 of 2016? 3 A. Yes, sir. 4 Q. Does that look like your signature or not? 5 A. Yes, sir, it looks like my signature. The 6 printing is not mine. 7 Q. Do you agree that regardless of whether 8 you yourself signed this document or someone signed 9 on your behalf, you intended that your signature be 10 placed on this document for purposes of execution? 11 A. Yes, it seems like that would be correct. 12 Q. Now, going back to the first page of the 13 document -- 14 A. Okay. 15 Q. -- tell me the reason or reasons why THAG, 16 LLC, was willing to enter into this asset purchase 17 agreement. 18 A. You know, and I'm not sure, because it 19 seems like to me it should have been entered into 20 this agreement by Nissan of Sumter or Nissan of 21 Sumter, LLC. 22 Q. Okay. Well, obviously, it was THAG, LLC, 23 and not any other LLC, that, in fact, entered into 24 this agreement. So can you explain why that was? 25 A. I cannot.	Page 43 1 deal, whatever that came up to. And, generally, you 2 might have exhibits explaining those items, parts, 3 or whatever. But it just says whatever these 4 amounts are calculated there, it just happens to 5 specifically put a goodwill amount there and I 6 remind you, for an unprofitable dealership. 7 Q. Did you know the dealership was 8 unprofitable before you agreed to purchase it? 9 A. I believe so. 10 Q. Why did you move forward with the 11 purchase? 12 A. You know -- and I go into these businesses 13 right, wrong, or indifferent, it's just me. I don't 14 necessarily look at what a past operator did, as I 15 look at what I think we could do and our performers 16 might be with the operation. I think every operator 17 is different. So it was based on what I thought we 18 could actually do based on that, and also with 19 trying to make sure we could cover the debt service. 20 Q. \$2,250,000 was the agreed-upon price for 21 the blue sky, per this agreement, right? 22 A. Yes, that's what they said they had to 23 have to sell this store. 24 Q. What is blue sky? 25 A. Blue sky is goodwill, if that explains the
Page 42 1 Q. Have you ever seen this document before 2 today? 3 A. I've seen one like it, not -- this is kind 4 of a standard form and one we would have -- it seems 5 like a normal asset purchase agreement to me. 6 Q. What assets were -- or was THAG, LLC, 7 intending to purchase in executing this agreement? 8 A. What assets were they intending to 9 purchase? 10 Q. Yes, sir. 11 A. The business: new cars, new vehicles, 12 parts, services, and the databases of the former 13 corporation. 14 Q. What was the agreed-upon purchase price 15 for those particular assets that you just described? 16 A. It looks like there's a price down here on 17 page 6. 18 Q. Yes, sir. So I'm showing you section 3, 19 which is entitled "Purchase Price." It begins on 20 page 5 and spills over to page 6. 21 A. Yeah, that looks like \$2.5 million -- I 22 mean, \$2,250,000 in goodwill, the amount for new 23 vehicles, demonstrators, and parts calculated in 24 accordance with section 1-A. So when you add all 25 those factors up, yeah, it's going to be a sizable	Page 44 1 term good enough for you, but it's an intangible 2 asset. 3 Q. Did you ever try to negotiate a lower 4 figure than \$2,250,000 on the blue sky element of 5 this deal? 6 A. Of course, we always try to do that. And 7 that was what the \$1.6 million valuation that we 8 actually came up with that fit our pro forma. 9 Q. How did those negotiations go? 10 A. It went to \$2,250,000. 11 Q. And that's what the parties agreed on? 12 A. That's what -- that's what it took to do 13 that deal. 14 Q. And that's what the parties agreed on, 15 right? 16 A. Yes, for this agreement -- and I might 17 add, reluctantly. 18 Q. Understood. But still, that's what the 19 parties ultimately agreed on, right? 20 A. True. 21 Q. Mr. Holmes, I'm showing you now Exhibit 2 22 to your deposition, and this appears to be the first 23 amendment to the asset purchase agreement. Do you 24 see that? 25 A. First amendment, yes, sir.

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1 Q. And it looks like this document was 2 entered into on the 25th of August, 2016 between 3 THAG, LLC, and Jones Nissan, Inc. That's in the 4 first paragraph. Do you see that? 5 A. Yes. 6 Q. Before we talk about this particular 7 amendment, help me understand why THAG, LLC, was a 8 party to the asset purchase agreement as opposed to 9 any other LLC. 10 A. I don't know. I don't know. Maybe the 11 other LLCs hadn't gotten put together yet. That's 12 the only thing I can assume. 13 Q. Who would have made the decision to allow 14 THAG to be a party to the asset purchase agreement? 15 A. More than likely, me. 16 Q. Because you were the sole member of THAG, 17 LLC, at that point in time, right? 18 A. Yes. 19 Q. And if you look at this particular 20 amendment, which is marked as Exhibit 2, it looks 21 like it just deals with an amendment to the 22 termination provision of the asset purchase 23 agreement. You're welcome to read through it, if 24 you want, but I don't really have any questions to 25 ask you about that.	Page 45 1 A. Uh-huh. 2 Q. And according to the final page of this 3 exhibit, it looks like you would have signed it on 4 behalf of THAG, LLC, on November the 2nd of 2016, 5 right? 6 A. Yes, as far as I know. I mean, I don't 7 know what all is in the documents, but yeah, this 8 looks correct. 9 Q. Well, we touched on this earlier. Let me 10 ask again, just so I am clear. During this general 11 time frame, which would be November of 2016 and then 12 going back to August of 2016, had you authorized any 13 other individual to sign your name to legal 14 documents on behalf of THAG? 15 A. I don't know if I -- I mean, it could have 16 happened. I'm not saying that it didn't. But 17 generally, I sign those documents, if I'm available. 18 Sometimes I may have been out. I may have been -- I 19 don't know. Maybe I could have been out of the 20 country or something. 21 Q. You don't dispute that this is your 22 signature on Exhibit 3, do you? 23 A. It looks like it. 24 Q. And it is yours, isn't it? 25 A. It looks like it. Page 47
1 A. Okay. If you don't mind, can I ask you a 2 question? 3 Q. Sure. 4 A. Were you their attorney on this document 5 back then? 6 Q. No, I was not. No, sir. 7 A. Okay. 8 Q. Just for the sake of completion, if you 9 look at the final page of Exhibit 2, it looks like 10 it was signed by James Jones on August the 23rd of 11 2016. Do you agree with that? 12 A. Yes. 13 Q. And it looks like it was signed by you, on 14 behalf of THAG, on August the 23rd of 2016. Do you 15 agree with that? 16 A. Yes. 17 Q. I'm showing you now Exhibit 3. This is a 18 second amendment to the asset purchase agreement. 19 There in the first paragraph, it indicates this was 20 signed on or about November the 2nd of 2016 between 21 THAG, LLC, and Jones Nissan, right? 22 A. Yes. 23 Q. This particular amendment deals with 24 modifications to the closing date as shown in 25 paragraph 11 down towards the bottom?	Page 46 1 Q. Do you agree that it is yours? 2 A. I don't necessarily agree, because as I'm 3 looking at these three documents, some of them are 4 not my signature, I don't think. 5 Q. And if you didn't sign your name on 6 Exhibit 3 here, who did? 7 A. It would have gotten stamped. 8 Q. Who would have stamped it? 9 A. It could have been Mark Sanchez, it looks 10 like, or Lana Barthelmes. 11 Q. Who else? 12 A. That would have been probably it. 13 Q. Do you have a stamp that is formatted in 14 this fashion, where your name is printed on the top 15 line, signed in the middle line, and then it says 16 member, slash, owner on the bottom line? 17 A. No. 18 Q. So that's your signature, isn't it? We 19 can agree on that? 20 A. Once again, I'm not trying to be 21 argumentative. I'm not sure. It looks like it. 22 Q. I'm showing you now Exhibit 4 to your 23 deposition. This is the third amendment to the 24 asset purchase agreement. And in the first 25 paragraph here, it indicates that it was to be Page 48

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1 signed on an unspecified date of January of 2017. Page 49 2 Do you see where I am? 3 A. Yes. 4 Q. Mr. Holmes, do you agree that this 5 document was to be signed on an unspecified date in 6 January of 2017? 7 A. Yes. 8 Q. And this particular amendment appears to 9 deal with seller financing, right? 10 A. Yes, I see that. 11 Q. And then if we look at the bolded portion 12 of the first page of this exhibit, it says, 13 "Paragraph three of the asset purchase agreement 14 shall be amended by adding the following: Seller 15 financing. At closing, seller shall extend 16 financing to purchaser in the principal amount of 17 \$650,000 to be amortized over a period of 60 months 18 at 6 percent interest per annum. The aforementioned 19 financing shall be secured by pledge of Merrill 20 Lynch account number SLP-02250, pursuant to the 21 terms of that pledged collateral account agreement 22 dated January 12, 2016." Did I read all of that 23 language correctly? 24 A. You did. 25 Q. So this amendment to the asset purchase	1 you if you dispute that that's your signature on the Page 51 2 final page of this agreement. 3 A. No, I'm not. 4 Q. And THAG, LLC, in fact, intended to be 5 bound by this agreement once it was signed, right? 6 A. I'm not sure. I don't remember this. 7 Q. Well, if you didn't sign this document, 8 who signed your name on your behalf? 9 A. I don't know. 10 Q. Well, give me the potential candidates. 11 A. I mean, it would have been the same -- it 12 would have been Mark Sanchez or Lana Barthelmes. 13 Q. And they would not have signed your name 14 to a document like this unless they had authority to 15 do so by you, right? 16 A. Well, it looks like this document existed 17 all the way to December. I don't even know what the 18 time frame of the operations of our store. So this 19 went on for a six-month period from the initial time 20 frame. And I don't know whether you can make an 21 asset purchase agreement like this. 22 Q. Mr. Holmes, do you acknowledge that this 23 is your signature on this document or not? 24 A. I do not. 25 Q. So you think your name was forged to this
1 agreement memorializes the fact that a portion of Page 50 2 the purchase rights was going to be financed in 3 order for the deal to be closed, right? 4 A. Yes. Extend financing to purchaser in the 5 principal amount of \$650,000 for what? 6 Q. All right. Are you good? 7 A. Yeah. No, this is the first time I've 8 ever seen this document, that I can recall. 9 Q. If we look at the final page of this 10 exhibit -- excuse me, the next to the last page of 11 this exhibit, it appears that John Jones signed this 12 document on behalf of Jones Nissan on January the 13 20th of 2017, right? 14 A. Yes. 15 Q. And then if we look at the final page of 16 this document, it appears that you signed it on 17 behalf of THAG, LLC, on December the 29th of 2016, 18 right? 19 A. It looks like it. 20 Q. And you remember -- 21 A. That's not how I sign my name. 22 Q. Well, are you disputing that that's your 23 signature on the final page of this exhibit? 24 A. I'm saying I don't remember this document. 25 Q. Well, that's not my question. I'm asking	1 document? Page 52 2 A. I'm not saying that. I'm just saying I 3 don't know -- I don't remember signing this, or any 4 of that, or remember the whole thing. 5 Q. Well, let's be crystal clear here, because 6 that's what this whole lawsuit has been about for 7 the years that this has been going on. I mean, you 8 agree that as part of THAG, as effort to purchase 9 the Jones Nissan dealership, a portion of the 10 purchase price was going to be financed, correct? 11 A. I agree that there was going to be -- that 12 there was an outside arrangement with the Jones 13 deal, but I don't remember an asset purchase 14 agreement speaking to it. I remember a promissory 15 note and that's it. 16 Q. Who initiated -- 17 A. I don't know where this -- 18 Q. -- the request for a portion of the 19 purchase price to be financed? 20 A. Say that again, sir. 21 Q. Who initiated the request for a portion of 22 the purchase price to be financed? 23 A. I mean, the Jones -- we had a meeting with 24 the Jones group. And when we collectively came up 25 to say, "Hey, we don't have enough money to do this,

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1 that is what it's going to take, what can we do?"

2 Q. Who was involved in that meeting?

3 A. Jim and John.

4 Q. Who else?

5 A. Me and my accountant friend, Nathaniel

6 Curtis.

7 Q. Where was the meeting?

8 A. In Jones' office at the Chevrolet

9 dealership.

10 Q. When did the meeting take place?

11 A. I don't recall.

12 Q. Give me the year.

13 A. I would imagine 2016.

14 Q. And during that meeting --

15 A. No, this is 2023, is that correct?

16 Q. This year is 2023.

17 A. Okay.

18 Q. During that meeting, isn't it true that

19 either you or Nathaniel Curtis asked the Jones

20 brothers if they would be willing to seller finance

21 a portion of the agreed-upon purchase price so

22 you-all could get the deal consummated?

23 A. Yes, that was the final -- that was

24 probably the final result.

25 Q. And the amount that was agreed upon that

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1 would be financed in order to get the deal done was

2 \$650,000, right?

3 A. That seems right.

4 Q. And that's the amount that is stated in

5 what we've marked as Exhibit 4 to your deposition,

6 correct?

7 A. Yes, absolutely.

8 Q. Tell me what else you recall being

9 discussed in that particular meeting about any

10 seller financing that would be done?

11 A. Well, at that particular meeting -- I

12 think at that particular meeting, we were just

13 talking would they -- I mean how would we do that,

14 just to put this to bed, because we were -- I mean,

15 we couldn't go any further until we had some

16 solution to do this.

17 Q. Was anything discussed about

18 collateralizing the amount of money that would need

19 to be financed?

20 A. No, not at that particular meeting. There

21 might have been said something, but there was no

22 specifics about it, because I wouldn't have known.

23 Q. What do you mean you would not have known?

24 A. I wouldn't have had an idea of what they

25 would want as collateral, what would be acceptable.

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1 Q. Well, when did those discussions begin, to

2 the best of your recollection?

3 A. I think they probably -- I mean, they

4 started ongoing after that. Maybe I would suggest

5 some real estate transaction, some copies of real

6 estate or something like that would be thrown out

7 there, circulated at first. That would be typical,

8 a second or something like that. Take a second on a

9 mortgage or whatever you might have.

10 Q. Was an agreement eventually reached?

11 A. Yes.

12 Q. What was the agreement?

13 A. Actually, it looks like this Merrill Lynch

14 account, as stated in the APA -- as stated in this

15 APA that we call that there.

16 Q. The agreement that was reached is what's

17 set forth in this third amendment to the asset

18 purchase agreement, correct?

19 A. Yes, that is in there. I just don't like

20 calling this an asset purchase agreement.

21 Q. Well, it's not. It's amendment to the

22 asset purchase agreement. And I've put in a blue

23 box the language I'm referring to which says, "The

24 aforementioned financing shall be secured by pledge

25 of Merrill Lynch account number SLP-02250, pursuant

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1 to the terms of that pledged collateral account

2 agreement dated January 12, 2017." That's the

3 agreement that was reached in order for the sellers

4 to finance a portion of the purchase price, right?

5 A. Yes -- I mean, I'm not sure. My train of

6 thought is gone. I wonder who wrote this document.

7 I mean, I was just wondering who was the author of

8 this.

9 Q. Well, as the party who signed it, you tell

10 me. Do you know who authored it or not?

11 A. I don't recall. I'm saying.

12 Q. Let's look at Exhibit 5 to your

13 deposition. This is the Pledged Collateral Account

14 Control Agreement.

15 A. Uh-huh.

16 Q. Have you seen this document prior to

17 today?

18 A. I'm not sure.

19 Q. Are you familiar with what a pledged

20 collateral account control agreement is?

21 A. You know, I can read it to see what that

22 is, but it's not something I do -- I'm privy to.

23 Q. Well, just in your business of purchasing

24 and running automobile dealerships, have you ever

25 had occasion to deal with a document like this?

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1 A. No.

2 Q. I'm showing you the signature page to this

3 agreement. It's got identified THAG, LLC, as the

4 client up top. Do you see that?

5 A. I do.

6 Q. Then it appears to be signed by you. Do

7 you agree with that?

8 A. Yes.

9 Q. And it was signed on January the 12th of

10 2017?

11 A. Correct.

12 Q. Then it was signed by Jones Nissan, who

13 was identified as the creditor, on January the 20th

14 of 2017, correct?

15 A. Uh-huh.

16 Q. That's a "yes"?

17 A. Yes. Sorry.

18 Q. And then if we go down to the next

19 document, which will be Exhibit 6 to your

20 deposition.

21 A. Okay.

22 Q. It indicates that Merrill Lynch apparently

23 generated a verification of deposit on or about

24 January the 19th of 2017 on behalf of THAG, LLC,

25 correct?

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1 A. Correct.

2 Q. And according to this document, it looks

3 like Merrill Lynch is confirming that \$650,000 was

4 confirmed to be in account number 250 as of January

5 the 19th of 2017, correct?

6 A. Yes.

7 Q. And why was \$650,000 placed in account 250

8 at Merrill Lynch during this time frame?

9 A. Because that was the agreed amount that we

10 came up with that they wanted to have control --

11 that they wanted to have funds pledged to them.

12 Q. So tell me your understanding of how this

13 pledging of funds was to work pursuant to the

14 agreement.

15 A. Well, I mean it was supposed to, I think

16 -- that \$650,000 was to go over into secured by

17 opening an account, putting \$650,000 in that

18 account.

19 Q. Did you specifically open an account for

20 purposes of having the \$650,000 deposit into it that

21 was to serve as the collateral for the financed

22 purchase price?

23 A. Did I specifically do it? I mean, I think

24 it was agreed upon to set that up for that purpose.

25 The bank said that they could do that, I think. As

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1 far as the workings of it, I don't know how that

2 was. There was some creative stuff going on back

3 then.

4 Q. Asked differently, this particular account

5 at Merrill Lynch, which has the last three digits of

6 250, that account did not exist until there was an

7 agreement to finance a portion of this particular

8 purchase price for this particular deal, right?

9 A. Yes.

10 Q. And you were the person on behalf of THAG

11 who went to Merrill Lynch and created this account,

12 right?

13 A. It was -- I mean, I signed off on it. I

14 mean, it was orchestrated by several different

15 people, including the bank and whatever, to do it.

16 Q. But the reason you allowed this to be done

17 on behalf of THAG was to allow the deal with Jones

18 Nissan to close, right?

19 A. Yes. I mean, THAG actually agreed to do

20 that. And I want to keep it in reference to THAG,

21 because that's where the money was. And, yes, THAG

22 entered into an agreement with Jones to close the

23 deal.

24 Q. As of this January 2017 time frame, did

25 THAG have any other accounts at Merrill Lynch?

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1 A. Yes.

2 Q. How many?

3 A. I don't know.

4 Q. What were those other accounts at Merrill

5 Lynch used for?

6 A. Operation of the dealership, several

7 different dealerships.

8 Q. Whose idea was it to open up this

9 collateralized account at Merrill Lynch as opposed

10 to some other financial institution?

11 A. I'm not sure.

12 Q. Was it you?

13 A. No.

14 Q. Was it THAG?

15 A. Yeah, probably THAG, or it could have been

16 the bank, or it could have been Wells Fargo. It

17 could have been several different people, because

18 they were advisors too.

19 Q. But who else knew that THAG had accounts

20 at Merrill Lynch?

21 A. Contrary, I'm not all that smart to come

22 up with all this stuff. Go ahead.

23 Q. Well, who else, other than THAG, knew that

24 THAG had accounts at Merrill Lynch?

25 A. Wells Fargo Advisors -- I mean, Merrill

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1 Lynch Advisors, and we had some board members, too,
2 that met.

3 Q. Who had board members?

4 A. THAG.

5 Q. Who were those board members as of January
6 2017?

7 A. And, once again, they're more an advisor,
8 they wasn't specific to board, but it was an
9 advisory committee that was set for THAG.

10 Q. Well, which were they? Were they part of
11 an advisory committee or were they --

12 A. Yeah, advisory. It wasn't official. It
13 was an informal advisory, formal board and informal
14 advisory. And we would meet maybe once a week every
15 other week to discuss business.

16 Q. Who was on this advisory committee as of
17 January 2017?

18 A. Dr. A.V. Fleming, Marcus Sanchez, Corlice
19 Goode, and Nathaniel Curtis.

20 Q. All right. I've got A.P. Fleming?

21 A. Apple Victor.

22 Q. A.V. Fleming. Marcus Sanchez, Nathaniel
23 Curtis, and there was one other I missed.

24 A. Corlice Goode.

25 Q. Corlice?

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1 A. Yes.

2 Q. G-o-o-d-e?

3 A. Correct.

4 Q. Who is A.V. Fleming?

5 A. He's executive -- I mean what he does, his
6 work capacity is executive director of Ford Motor
7 Minorities Dealers Association.

8 Q. Where does he live?

9 A. He was living in -- working out of
10 Detroit, Michigan.

11 Q. Where does he live now?

12 A. Indiana.

13 Q. What does he do now?

14 A. Still same capacity.

15 Q. He's still employed with Ford?

16 A. No, he's employed by the executive -- by
17 Ford Motor Minority Dealers Association.

18 Q. How did you get to know Mr. Fleming?

19 A. We served together. I was a board member
20 of Ford Motor Minority Association in 2002.

21 Q. Do you stay in touch with him?

22 A. Yes.

23 Q. Is his name on any document that's
24 affiliated with THAG, LLC?

25 A. No.

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1 Q. Is there any document that could be
2 confirmed in writing that Mr. Fleming was a member
3 of the advisory committee to THAG, LLC?

4 A. No.

5 Q. Is Mr. Fleming aware of this lawsuit?

6 A. Probably. I would imagine.

7 Q. How did he become aware of this lawsuit?

8 A. You know, because we were still informal,
9 the advisory committee, when all this started going
10 down.

11 Q. Does Mr. Fleming still serve as a member
12 of the advisory committee to THAG?

13 A. No, it's no longer valid.

14 Q. When did it disband?

15 A. Probably when we ended -- when we ended up
16 selling or disposing of all the stores in 2019.

17 Q. Who is Marcus Sanchez?

18 A. He's a general manager.

19 Q. General manager of what?

20 A. THAG, LLC.

21 Q. What was he managing?

22 A. Finances of the dealerships, assisting in
23 that.

24 Q. Where does he currently live?

25 A. Atlanta, Georgia.

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1 Q. Is he still involved with THAG at all?

2 A. He's still involved with the two stores
3 that we have now.

4 Q. What stores are those?

5 A. Cheraw Chevrolet, Cheraw, South Carolina,
6 and Nashville Ford of Georgia.

7 Q. What does he do with those two stores?

8 A. Right now, he's helping run the store in
9 south Georgia.

10 Q. Has he ever been involved with Nissan of
11 Sumter, LLC?

12 A. Yes.

13 Q. What was his involvement?

14 A. Manager.

15 Q. Was he paid for that work?

16 A. Yes, sir.

17 Q. How was he paid?

18 A. Payroll.

19 Q. He was salaried?

20 A. Yes.

21 Q. How much did he make when he was working
22 for Nissan of Sumter, LLC?

23 A. Well, I mean he helped manage the group of
24 stores, so it wasn't just them.

25 Q. Did he have an employment agreement with

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1 any of your LLCs?

2 A. I'm not sure.

3 Q. Who would know the answer to that?

4 A. I don't know if there is one.

5 Q. Right. So who would know whether there is

6 or there is not?

7 A. Well, he would know. Well, you know what?

8 As I think about it, we don't have a contract.

9 Q. Has Mr. Sanchez ever been an employee of

10 THAG, LLC?

11 A. Yes, I think we all were.

12 Q. Is there a written contract that

13 memorializes the details of his employment?

14 A. Not that I'm aware of.

15 Q. Is it your testimony that you have also

16 been an employee of THAG, LLC?

17 A. Yes, I was a manager.

18 Q. Is there a written employment agreement

19 that memorializes the details of your manager

20 position?

21 A. No, sir.

22 Q. Were you paid by THAG when you were

23 serving as its manager?

24 A. Yes.

25 Q. Were you salaried?

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1 A. Yes.

2 Q. What was your salary in 2016?

3 A. Somewhere in the neighborhood of 15K.

4 Q. What was your salary in 2017?

5 A. The same.

6 Q. \$15,000?

7 A. Yes.

8 Q. What was your salary in 2018?

9 A. It may have dropped back to 10 grand.

10 Q. What was your salary in 2019?

11 A. \$5,000.

12 Q. What was the reason for the decrease in

13 salaries over that four-year period?

14 A. Well, that was the declination of the

15 dealerships, so I did the appropriate thing was take

16 salary cuts.

17 Q. Was Mark Sanchez drawing a salary from

18 THAG in 2016?

19 A. Yes.

20 Q. What was it?

21 A. I'm not sure. Probably somewhere in the

22 neighborhood of 8 to 10K.

23 Q. Was he drawing a salary in 2017?

24 A. Yes.

25 Q. What was it?

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1 A. The same.

2 Q. Was he drawing a salary in 2018?

3 A. Yes.

4 Q. What was it?

5 A. The same.

6 Q. Was he drawing a salary in 2019?

7 A. Yes.

8 Q. What was it?

9 A. His kind of changed. It probably went to

10 around \$5,000 to \$6,000 a month.

11 Q. Did Mr. Sanchez have any other source of

12 income from any of your LLCs, during the 2016

13 through 2019 time frame?

14 A. No, sir.

15 Q. Did he have any other source of income

16 outside of your LLCs, during that time frame?

17 A. No, sir. Outside of my LLCs?

18 Q. Yes, sir.

19 A. I mean, not that I'm aware of. He may

20 have some interests.

21 Q. Well, how was he living on the salary that

22 he was drawing from THAG, LLC?

23 A. That's what I have been trying to tell

24 everybody. You're asking me where is all this money

25 at. I don't know. That's just what we did. That's

Page 68

1 where we -- what we had to do to survive.

2 Q. But he was living on about \$5,000 -- or

3 \$8,000, I believe, a year?

4 A. Yes, if that much.

5 Q. Don't you find that hard to believe?

6 A. No, sir, I don't.

7 Q. What kind of car was he driving?

8 A. A company car.

9 Q. What kind of car?

10 A. I mean, I don't -- whatever was available,

11 it was used. We didn't really have any assigned

12 demos. Just an SUV of some type, nothing special.

13 Q. But that would have been a car that was

14 provided to Mr. Sanchez by THAG?

15 A. It could have been by THAG, it could have

16 been by Sumter, it could have been by wherever we

17 had availability of a car.

18 Q. Was THAG also paying Mr. Sanchez's

19 mortgage at that point in time?

20 A. Mortgage, no, sir.

21 Q. Was it paying his rent during that period

22 of time?

23 A. No, sir. There was some type of hotel

24 expenses or something, because he wasn't at home,

25 that went into his equation.

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1 Q. Were you driving a K7 vehicle during the
2 2016 through 2019 time frame?
3 A. Yes, sir.
4 Q. What were you driving?
5 A. I changed very frequently. You know,
6 because I drove a lot. So we put -- it was
7 generally a Jeep Cherokee, Grand Jeep Cherokee or
8 something like that.
9 Q. And you didn't have to pay anything for
10 that company vehicle you were provided?
11 A. Well, I mean it was expensed to us, to the
12 company, but I would say no.
13 Q. No, you did not have to pay anything for
14 it?
15 A. Yeah. No, I don't think so. I don't
16 know. I don't know how they accounted for that.
17 That would be with them.
18 Q. What was Nathaniel Curtis' role with the
19 advisory committee with THAG?
20 A. He was just a friend of mine that was an
21 accountant.
22 Q. Is he still an accountant?
23 A. Yes.
24 Q. Where does he live?
25 A. He lives in Milledgeville, Georgia.

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1 Q. Does he still work with you?
2 A. Well, he doesn't work with me or anything
3 like that. I mean, we don't pay him.
4 Q. Has Mr. Curtis ever been paid for any of
5 his services provided to THAG?
6 A. Yeah, he's been paid for some tax forms or
7 something that he's done.
8 Q. But that's work that's done through his
9 accounting business?
10 A. Yes.
11 Q. What's the name of his accounting
12 practice?
13 A. I don't recall the name of it. I could
14 find it out and give it to you.
15 Q. But you don't use Mr. Curtis as your
16 business accountant for any of your LLCs, do you?
17 A. No.
18 Q. Why not?
19 A. Because it's out of his -- I feel it's out
20 of his realm of expertise. You have to have proper
21 car accountants, it's easier that way, and he's not
22 a CPA.
23 Q. Why did you decide to get him on board in
24 an advisory capacity for THAG?
25 A. You know, just a difference of opinions.

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1 Q. Is this someone you grew up with?
2 A. Pardon me?
3 Q. Is this someone you grew up with?
4 A. I knew him before -- I knew him before
5 time. I met him at -- I met him in Georgia at my --
6 when I had my Georgia dealership, somewhere in the
7 2000s.
8 Q. Who is Corlice Goode?
9 A. Corlice Goode was my sister -- is my
10 sister, and she graduated from school and came to
11 work for us.
12 Q. When you say "us," you mean THAG?
13 A. Yes, all our automotive entities, because
14 at that time, you got to remember it was -- THAG had
15 three stores. There was Nissan of Sumter. Then we
16 started getting -- and they had their own LLCs,
17 which the manufacturer, or whatever, suggested that
18 happen. And also now, there was a Ross Chevrolet,
19 it's its own entity, and then Nashville Ford of
20 Georgia is its own entity, so that was the
21 automotive group.
22 Q. Who hired Ms. Goode to come to work?
23 A. I did, at the suggestion of our group
24 there.
25 Q. Did you hire her through a particular

Page 72

1 entity?
2 A. No.
3 Q. You hired her personally?
4 A. Yes.
5 Q. What specifically was she hired to do?
6 A. She was to help with some of our legal
7 contracts, contracting.
8 Q. How was she to help with some of the legal
9 contracts?
10 A. Just read them, review them, and, you
11 know, begin to start to put together -- learn the
12 corporate documents. So eventually, the goal of
13 THAG and the group was to try to grow to 10 stores.
14 And at that point in time, we wanted to bring in our
15 own people to learn to do the business so we
16 wouldn't have to have outside representatives, it
17 would all be done in-house -- at least that was the
18 vision.
19 Q. Did your sister have any legal background?
20 A. Yes.
21 Q. What is it?
22 A. She was a litigator on the criminal side,
23 and then SBA for them, and then started with taking
24 the bar in South Carolina and stuff like that.
25 Q. So she is a lawyer?

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Page 73 1 A. Yes, she is. 2 Q. Is she licensed in South Carolina? 3 A. She is. 4 Q. Does she currently practice anywhere? 5 A. Yes. 6 Q. Where? 7 A. Warner Robins, Georgia. 8 Q. How long did she do work for THAG? 9 A. I think maybe 2017. 10 Q. When did she start? 11 A. I mean, I'm saying I think that's about 12 when she started. I don't recall the exact dates. 13 Q. When did she stop working for THAG? 14 A. Somewhere in 2019, when we couldn't afford 15 -- when we sold -- well, short sold the stores, and 16 then we went from 200 people down to 30 people. 17 Q. Was she paid for her work? 18 A. Yes. 19 Q. How was she paid? 20 A. Salary. 21 Q. How much was she paid? 22 A. I'd say she was making maybe five grand a 23 month. 24 Q. Was there a written employment agreement 25 for your sister?	Page 75 1 Nissan, who was the president of THAG? 2 A. That would be me or a managing member, 3 whatever they called it. 4 Q. Who was the vice president of THAG? 5 A. There was no vice president. 6 Q. Who was the secretary of THAG? 7 A. We didn't have a secretary. 8 Q. Who was the treasurer of THAG? 9 A. Didn't have one. 10 Q. I'm showing you now, Mr. Holmes, Exhibit 7 11 to your deposition. 12 A. Okay. 13 Q. This is the promissory note we've talked a 14 good bit about already. Do you recognize this 15 document? 16 A. So far. 17 Q. It's a one-page document. Did you agree 18 that this is, in fact, the promissory note that was 19 entered into between THAG and Jones Nissan on 20 February the 28th of 2017 to account for the portion 21 of the purchase price that was to be financed by 22 Jones Nissan? 23 A. This looks more relevant, absolutely. 24 Q. You agree that's your signature at the 25 bottom of the document?
Page 74 1 A. We didn't have one. 2 Q. Who handled the accounting or bookkeeping 3 for THAG? 4 A. That was done out of our Pawleys Island 5 store. That would have been by Ms. Lana Barthelmes. 6 She was the head controller by then. 7 Q. And she was employed by THAG? 8 A. Yes. 9 Q. Did she have a written employment 10 agreement? 11 A. No, not really. 12 Q. What do you mean "not really"? 13 A. No, she may have had -- you know, they 14 might have had a conversation -- changes or 15 whatever. They may have had a payroll sheet. I 16 could check to see if they did have some things like 17 that, if that's important to this point. 18 Q. I'm curious to know if she had a formal 19 employment agreement. 20 A. Okay. All right. We'll find that out. 21 Q. Sitting here today, you do not know the 22 answer to that? 23 A. No, sir. 24 Q. In 2016 at the time the asset purchase 25 agreement was entered into between THAG and Jones	Page 76 1 A. It looks like it. It appears to be. 2 Q. All right. 3 A. This is the only document I can recall 4 right here. This other one, I have no idea where 5 that came from. So you can't even call that one an 6 asset purchase agreement because I don't -- it 7 doesn't fit that. 8 Q. The face amount of the promissory note 9 that we've marked as Exhibit 7 is \$650,000, correct? 10 A. That is correct. 11 Q. The note is pretty short so we will just 12 read it. It says, "For value received, the 13 undersigned" -- who is the obligor -- "promises to 14 pay to the order of Jones Nissan, Inc.," -- who will 15 be the holder-- "payable at Sumter, South Carolina 16 the sum of \$650,000, with interest at the rate of 6 17 percent per annum, past due interest to bear 18 interest at the same rate principal and interest 19 being payable as follows: In 59 consecutive equal 20 annual installments of \$12,566.32 and a sixtieth 21 consecutive installment of the balance then due, all 22 in accordance with the amortization schedule 23 attached hereto and made a part hereof." You agree 24 that this is the promissory note that THAG entered 25 into with Jones Nissan, correct?

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1 A. It looks familiar, yes.

2 Q. And do you admit that for several months

3 after this deal closed, THAG, in fact, made monthly

4 payments to Jones Nissan in the amount of \$12,566.32

5 per payment?

6 A. I agree that payment was made, \$12,566,

7 but I don't believe it came from THAG.

8 Q. Who did it come from?

9 A. Nissan of Sumter, would be my

10 recollection.

11 Q. But you agree that you entered into this

12 promissory note on behalf of THAG, correct?

13 A. It looks like it, yes, sir.

14 Q. Why did you do that?

15 A. I'm not sure, unless they were -- the only

16 party that had -- I'm not sure -- that was able to

17 do it.

18 Q. The next paragraph of the note says --

19 A. Or maybe we tried to get it through Nissan

20 of Sumter -- I don't know. Let me just stop there.

21 I'm not sure.

22 Q. Okay. The next paragraph of the

23 promissory note says, "Provided, however, that

24 should default be made in the payment of said

25 principal, or any installment thereof, or said

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1 interest, or any portion thereof on the due date,

2 the holder hereof, his successors and assigns, may

3 at his/her option declare the entire remaining

4 balance immediately due and payable. The obligor

5 hereunder agrees to pay all costs of collection,

6 including a reasonable attorney's fee, in case

7 payment shall not be made at maturity. Obligor does

8 not waive demand, presentment, notice of nonpayment,

9 dishonor, protest, and notice of protest."

10 So, Mr. Holmes, do you agree with me that

11 per the language of the final paragraph of this

12 note, that THAG is responsible for any attorney's

13 fees that are associated with collecting any

14 outstanding portion of this note that must be

15 pursued by Jones Nissan?

16 A. You know, I think it says more than that,

17 is what I say. I know you want to get to that

18 particular thing, but I think this encompasses the

19 entire agreement of \$650,000 where THAG is

20 responsible for and whatever language is said in

21 there, I agree with that document.

22 Q. But as part of that, you agree that THAG

23 is responsible for any attorney's fees associated

24 with pursuing and trying to collect on any

25 outstanding portion of the promissory note, right?

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1 A. Does it say that? Okay. "Obligor agrees

2 to pay in full" -- yeah, that's what the contract

3 says.

4 Q. And you voluntarily agreed to that on

5 behalf of THAG, right?

6 A. I'm just saying we signed this contract,

7 whatever it was, and so that's what matters.

8 Q. Exhibit 8 to your deposition is the pledge

9 agreement that was entered into between THAG and

10 Jones Nissan.

11 A. Okay.

12 Q. It was apparently entered into on February

13 28 of 2017, if you look in that first paragraph. Do

14 you see that?

15 A. I do.

16 Q. What was the purpose of this agreement?

17 A. To secure the \$650,000 note, it looks

18 like.

19 Q. And if you look in paragraph one where it

20 says "security interest."

21 A. Uh-huh.

22 Q. It says there, "The pledgor hereby pledges

23 to the lender and gives and grants the lender a

24 continuing and unconditional security interest in

25 the following described property." And then in the

Page 80

1 next paragraph down it describes Merrill Lynch

2 account number 250 having a portfolio value of

3 \$650,000, as more fully described in the pledged

4 collateral account control agreement, right?

5 A. I see it, yes, sir.

6 Q. And the purpose of this agreement was just

7 to confirm the terms and conditions of the \$650,000

8 sum of money that was going to be deposited into the

9 specified Merrill Lynch account to serve as

10 collateral for the financed portion of the debt,

11 right?

12 A. Yes, that was the intent.

13 Q. If you go down to paragraph four where it

14 deals with warranties of the pledgor, it says, "The

15 pledgor represents and warrants" --

16 A. I can't see it.

17 Q. I'm sorry. I need to move you down. I

18 forgot. So right here, paragraph four.

19 A. Yes.

20 Q. It says, "The pledgor represents and

21 warrants and so long as the indebtedness remains

22 unpaid shall be deemed continuously to represent and

23 warrant that." And then subparagraph B right here

24 says, "The pledgor is the owner of the collateral

25 free of all security interest or other encumbrances

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1 except the security interest." What was the purpose
2 in making that warranty?
3 A. I don't know.
4 Q. Do you agree that you eventually violated
5 that warranty or breached that warranty?
6 A. You know, I signed the document, you know.
7 Whether or not I understood what I was signing is
8 two different things.
9 Q. Did you ever ask anyone any questions
10 about the terms and conditions of this pledge
11 agreement before you signed it?
12 A. I probably didn't at the moment.
13 Q. Do you acknowledge that the \$650,000 that
14 you initially deposited into Merrill Lynch account
15 250 were subsequently transferred out of that
16 account and into another Merrill Lynch account?
17 A. I don't know exactly what happened to it.
18 Q. Well, you were the person who authorized
19 the transfer that was subsequently made, aren't you?
20 A. I didn't even know I could.
21 Q. So is it your testimony you did not
22 authorize the transfer?
23 A. I don't know. I don't know how that --
24 how that transaction actually happened. There's a
25 myriad of sequence of events that went through and

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1 as a result of audits and things like that that we
2 were undergoing, so I'm not sure exactly what
3 happened at that point in time.
4 Q. Did anyone other than you during this
5 2017-2018 time frame have authority to authorize
6 trades out of the Merrill Lynch accounts for which
7 THAG was the account holder?
8 A. Well, everything was discussed by every
9 different thing. And I think maybe the funds could
10 have gotten transferred without -- I mean, without
11 knowing, in the heat of the moments of needing cash.
12 Q. But even if that was the scenario, you
13 were the guy who authorized the transfer, right?
14 A. I don't know if I could have.
15 Q. Well, if you couldn't, no one else on
16 behalf of THAG could have done so, could they?
17 A. You know, it could have been initiated --
18 it could have been initiated by other people.
19 Q. Who, because I want to name them in the
20 lawsuit as well? So who would they be?
21 A. You know, it could have been initiated by
22 controllers or whatever else, and then, you know,
23 finally at the time of whatever it is. And I
24 remember this account was also under scrutiny by
25 Nissan Motor Corporation, the whole account.

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1 Q. So is it your testimony that Nissan Motor
2 corporation had authority to initiate transfers out
3 of this Merrill Lynch account 250 that we have been
4 talking about?
5 A. No, I'm not saying that they have
6 authority, but they was, you know, requesting that
7 these funds -- I knew that they was asking \$1
8 million to be put in Sumter after an audit.
9 Q. Did A.V. Fleming have authority to
10 initiate transfers out of this Merrill Lynch account
11 250?
12 A. I don't think so, no, sir.
13 Q. Did Marcus Sanchez have authority to
14 initiate transfers out of account 250?
15 A. Initiate them, yes, he probably had the
16 authority to initiate it.
17 Q. Did Nathaniel Curtis have that authority?
18 A. No.
19 Q. Did Corlice Goode have that authority?
20 A. No.
21 Q. The people who did have that authority
22 would have been you, right?
23 A. Yes.
24 Q. And perhaps Marcus Sanchez?
25 A. Yes.

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1 Q. And perhaps Nissan Motor Corporation?
2 A. I don't know if they would have had that,
3 but they could have suggested that the funds be put
4 into the dealership operating account. They
5 probably did.
6 Q. If you look in paragraph six of this
7 particular exhibit, it deals with covenants of the
8 pledgor.
9 A. Uh-huh.
10 Q. And it says, "The pledgor" -- and then if
11 you look in subparagraph B right here -- "will keep
12 the collateral free from all security interest or
13 other encumbrances except the security interest."
14 Do you agree that you breached that covenant as soon
15 as you transferred the \$650,000 out of the account
16 that you had pledged to Jones Nissan?
17 MR. RAMSEY: Object to the form.
18 THE WITNESS: No, I wasn't -- I don't
19 necessarily agree to that.
20 EXAMINATION RESUMED BY MR. HUDSON:
21 Q. Why do you not agree to that?
22 A. You know, there was no -- I don't think
23 the account was actually pledged.
24 Q. What do you mean?
25 A. I don't know how it could have been

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1 transferred if it was pledged.

2 Q. I'm not following you. Explain to me what

3 you mean.

4 A. You're saying these funds were transferred

5 out of that account, which was controlled, but,

6 obviously, it looks like they were.

7 Q. How did that happen?

8 A. I'm not sure.

9 Q. Was it your intent not to have the account

10 actually pledged as part of the deal?

11 A. No, it wasn't my intent.

12 Q. Once you deposited the \$650,000 into

13 Merrill Lynch account 250, did you understand that

14 the account was pledged at that point in time?

15 A. I think that was my rough understanding.

16 I didn't think about it that much, but yeah.

17 Q. Did you ever come to learn that the

18 account had not been effectively pledged?

19 A. At some point, yeah.

20 Q. When was that?

21 A. When Nissan actually took the money out of

22 the account.

23 Q. So how did you learn that the account had

24 not been pledged?

25 A. Well, we were trying to come up with all

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1 kinds of funds to get them -- to satisfy their

2 audit, and we just said, "We need this amount" and

3 they said, "Okay, we'll send it to you."

4 Q. Who said, "We'll send it to you"?

5 A. Who was it? Merrill Lynch.

6 Q. And so that's when you realized that the

7 account had not been properly pledged?

8 A. I don't know about that. It just said it

9 wasn't pledged.

10 Q. Did you ever notify Jones that there

11 seemed to be a question as to whether or not the

12 account had been properly pledged?

13 A. No.

14 Q. Why not?

15 A. Because it was -- I mean, I never entered

16 it not to pay them. I mean, I never had -- I never

17 had a thought process of not getting them satisfied.

18 Q. But once you learned that the account was

19 not pledged, did you ever reach out to either of the

20 Jones brothers to say, "Hey, listen, this account

21 that we intended as part of our agreement to be

22 pledged is not, so I'm going to withdraw some

23 portion of the \$650,000 out of it, I just want to

24 make sure you're okay with that." Did you ever have

25 that discussion?

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1 A. No, I never had that discussion with them.

2 Q. Why not?

3 A. I don't know. You know, just like I never

4 had the discussion about the \$650,000 being pledged

5 with the asset purchase agreement with Nissan Motor

6 Company.

7 Q. Well, the \$650,000 that was pledged as

8 collateral for the Jones Nissan deal doesn't have

9 anything to do with Nissan Motor Company, does it?

10 A. I mean, I'm not sure.

11 Q. What I hear you saying --

12 A. In going back and thinking about it.

13 Again, at the moment, no, I didn't think it did.

14 Q. Did Nissan Motor Company pressure you to

15 transfer money to it that was intended for Jones

16 Nissan?

17 A. I don't think they saw the accounts. They

18 said they want everything available to satisfy their

19 thing or the notes were going to be in default.

20 Q. Well, during the course of those

21 discussions, did you tell anybody from Nissan Motor

22 Corporation that the \$650,000 in Merrill Lynch

23 account 250 was intended to be pledged to Jones

24 Nissan?

25 A. No, I didn't tell anybody.

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1 Q. And you agree that you should have told

2 Nissan Motor Corporation that?

3 A. I don't know. I mean, I haven't thought

4 about it. I don't know at the time.

5 Q. But you would agree with me --

6 A. You got to understand, at the time, these

7 stores were in financial duress, if you know what

8 that is. All of them were under major financial

9 duress. And we were trying to -- and the only way

10 to pay anybody back is we kept trying to get -- keep

11 these companies running. And that's what the whole

12 intent was to keep these companies running so that

13 we could actually pay our shareholders and

14 stockholders, because at the point when they came

15 in, there was no questions about anything, they

16 wanted the money or the keys to the dealership

17 Q. You agree with me that you transferred to

18 Nissan Motor Corporation money that belonged to

19 Jones Nissan?

20 A. No.

21 Q. Why do you not agree with that?

22 A. I just didn't see it that way.

23 Q. Why not?

24 A. I'm not sure. I mean, at that time, I

25 just didn't see -- I wasn't privy to -- we were

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1 under a lot of financial strain, so I wasn't
2 thinking as clearly as I would be today. And if I
3 had the chance to do things all over, I probably
4 would have done them much differently.

5 Q. The reason you don't see it that way is
6 because Nissan Motor Corporation was a larger
7 creditor to you at the time than Jones Nissan,
8 right?

9 A. Nissan Motor Company -- at that time, I
10 wasn't having -- I was having -- the issues we were
11 having were financial issues and not enough money in
12 the deal, being undercapitalized.

13 Q. But you needed to do what you could to
14 keep Nissan Motor Corporation content because they
15 had also awarded you that store in Lugoff, right?

16 A. Yes, they did award me the store in
17 Lugoff. Also, I had another Nissan store that was
18 in Orangeburg too, as well, that we were all trying
19 to keep those going.

20 Q. But if there was to be a creditor that you
21 couldn't make good on your obligations with, your
22 thought was it's better for that creditor to be
23 Jones Nissan than Nissan Motor Corporation, true?

24 A. No, I didn't make any delineation of not
25 paying any creditor, never.

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1 Q. Well, how is that possible since you took
2 the \$650,000 that you knew had been set aside for
3 Jones Nissan and transferred it to Nissan Motor
4 Corporation?

5 A. I'm not sure. I mean, that question that
6 you asked, I don't know if that's relevant to the --
7 however the funds were transferred, I don't know,
8 but we were paying Jones their money out of Nissan
9 of Sumter on a monthly basis based out of
10 profitability. It was never intended on not paying
11 them, to give them \$650,000. That's not the
12 premises of how I was thinking. All loans that we
13 go into are to be paid back by the operations and
14 the daily operations of the business, not by
15 something that's secured out there.

16 Q. Well, that's not the agreement you entered
17 into with Jones Nissan, is it?

18 A. Well, if that's not, then I was -- we were
19 totally confused about it.

20 Q. Did you have a lawyer advising you during
21 the negotiations with Jones Nissan?

22 A. I mean, the Weathers Law Firm actually put
23 the deal -- actually did the asset purchase
24 agreement, but not the one that I saw earlier.

25 Q. Was the Weathers Law Firm involved in the

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1 collateralized account agreement with Merrill Lynch?

2 A. I don't know. I believe the opposing
3 counsel's attorney was.

4 Q. Well, they both were, right?

5 A. I don't know.

6 Q. Were you present at the closing?

7 A. If I can -- I think I was. I'm not sure.

8 Q. Where did the closing take place?

9 A. Typically, the closing took place in
10 Pawleys Island.

11 Q. And that's where this one took place,
12 isn't it?

13 A. I'm not sure. Typically.

14 Q. And you were there for it, right?

15 A. Usually I am, if it happens that way, but
16 we've had some closings that you didn't have to go
17 to.

18 Q. Right. But Mr. Weathers was also present
19 at this one, right?

20 A. Once again, I don't recall that particular
21 one. I'm sorry. Maybe I should, but I don't.

22 Q. If you look at paragraph eight of this
23 pledge agreement, subpart A says, "Each of the
24 following events or conditions shall constitute an
25 event of default hereunder." And subparagraph I

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1 says, "The pledgor's failure to pay any indebtedness
2 when due." Do you agree with me that you had
3 breached this particular condition of the pledge
4 agreement?

5 A. You know, I'm not sure. And at this point
6 in time, it seems like to me I should have been --
7 we should have been doing this when we first -- when
8 we first entered into all these agreements.
9 However, I didn't have this same tenacity that we're
10 having today, I didn't have that --

11 Q. Do you agree with me --

12 A. -- or I probably wouldn't have signed any
13 of these documents.

14 Q. Do you agree with me that you've breached
15 this particular condition of the pledge agreement?

16 A. I'm not aware of it. I haven't seen that.

17 Q. That's not my question. Do you admit that
18 you have breached this particular condition of the
19 pledge agreement?

20 A. I'm not sure what I believe.

21 Q. Why are you not sure?

22 A. I guess they say ignorance is no excuse of
23 the law, and I guess this is where I'm getting at
24 right now.

25 Q. Well, you can see that you have not paid

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1 Jones Nissan the face value of the promissory note
2 in full, don't you?

3 A. Round about that, you know. Maybe that
4 one, but we paid him in a whole lot of other ways.

5 Q. Had you paid him the \$650,000 plus
6 interest that is due on the promissory note we've
7 already looked at?

8 A. Yes.

9 Q. You've paid them that entire sum of money?

10 A. Yes. It may not be directly that way, but
11 in other forms. And we can count it and add it and
12 you can apply it how you want to.

13 Q. What is the specific sum of money that
14 you, or THAG, or any of your other LLCs, have paid
15 towards the face value of the promissory note, which
16 is \$650,000?

17 A. Well, it may not have been to the
18 promissory note, but it was to the Jones family, the
19 Jones brothers, which to me is one and the same.

20 Q. What does that mean, it may not have been
21 to the promissory note?

22 A. I mean, it may not have been applied to
23 that particular note, but it was given to the Jones
24 brothers.

25 Q. And some other debt that you owed, right?

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1 A. No, it wasn't a debt. It was a way to pay
2 them more money.

3 Q. Why would you do that if you did not
4 legally owe the money that you were apparently
5 paying?

6 A. Just good customers, I guess.

7 Q. Explain that to me.

8 A. Well, I mean, it was a way to do business.
9 And they said, "Hey, we want \$30,000 for Lakeside
10 facility to get you started."

11 Q. Is there a lease agreement to that effect?

12 A. Yes.

13 Q. Where?

14 A. I saw it in your asset purchase document.

15 Q. Okay. Where is it?

16 A. If you go back to the third amendment --
17 the last amendment of this asset purchase agreement,
18 which I said that's not valid, that document.

19 Q. All right. Here?

20 A. Yes.

21 Q. Okay. Show me what you're talking about.

22 A. Wait a minute. No, I tell you what. This
23 \$32,500 was the amount of the lease agreement. It
24 would have been in a lease agreement on the
25 facility.

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1 Q. All right. So where is it?

2 A. I don't see the lease agreement. It would
3 have been in a lease agreement. I'm not sure if you
4 have that or not.

5 Q. I don't have the lease agreement. Do you
6 have it?

7 A. Yes, sir, I'm sure we do. I would have to
8 give it to you.

9 Q. And now is the first time we're hearing
10 about this and that lawsuit has been going on for
11 multiple years.

12 A. That's strange, because that was a big
13 contention.

14 Q. So just go ahead and give me your story on
15 how you were making these payments.

16 A. Well, once again, we had -- on some of the
17 complaints that we sent was on number 55, "Jones
18 Nissan breached the contract with THAG in the
19 following particulars: Misrepresented the material
20 rate at the concern of the market value of the
21 dealership. Charging an exorbitant amount of rent
22 to THAG in exchange for its use of the dealership
23 property, representing that THAG would be allowed to
24 rent a 1.5 acre lot when it was only allowed to use
25 .25. Not renting THAG sufficient space to display

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1 its inventory." And all this is coming to stem
2 about, you know, for not even a half an acre lot,
3 \$32,000 a month is a major exorbitant amount of
4 rent. But, in essence, to get part of some of this
5 goodwill paid or whatever, we agreed to do that to
6 get started along the way.

7 Q. It sounds to me like you've got a document
8 in front of you, which is probably your
9 counterclaim. Is that what you're looking at?

10 A. Yes.

11 Q. What else do you have in front of you?

12 A. Just that. I mean, it's just some series
13 of what's in my head and what I remember. I don't
14 have it in another document.

15 Q. That's the only document you've got in
16 front of you right now?

17 A. Yes.

18 Q. So this lease agreement that you're
19 referencing, is it in writing?

20 A. Yes, sir.

21 Q. And you have a copy of it, is that right?

22 A. Yes, I believe we do.

23 Q. What did that agreement state, as far as
24 the amount of monthly rent that you or THAG was
25 supposed to be paying to Jones Nissan for the

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1 dealership?

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2 A. We estimated it to be somewhere around --
3 I mean, not estimated, but I think, if I can recall,
4 it was like \$30,000 -- it was \$25,000 to \$30,000 a
5 month.

6 Q. And that's in writing, correct?

7 A. Yes, sir.

8 Q. That's in a lease agreement?

9 A. Yes, sir, unless you know something that I
10 don't, in asking that.

11 Q. No, I'm asking. I want to see it. I want
12 to see that document that you're apparently relying
13 on. Can you provide it to me?

14 A. Yes, sir, I will.

15 Q. But you with agree with me that that
16 document, whatever it says, is something that's
17 separate and apart from the promissory note,
18 correct?

19 A. Yes.

20 Q. That's a separate agreement altogether,
21 right?

22 A. Correct.

23 Q. So whatever money may be owed under the
24 lease agreement is confined to that particular
25 document, right?

1 A. Yes. I don't think they
2 cross-collateralized.

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3 Q. Right. And whatever money is owed under
4 the promissory note is confined to that particular
5 document, right?

6 A. Yes.

7 Q. But it's your testimony here today that
8 because you have paid Jones Nissan rent under this
9 lease agreement that you consider it to be
10 exorbitant, you thought this ought to also be in
11 satisfaction of the money you owed under the
12 promissory note; is that your testimony?

13 A. Yes, part of it, but I also think -- not
14 only that, I also think the fact that the
15 declination decline of mine and THAG and Nissan's
16 financial arrangement, we -- THAG and Nissan of
17 Sumter were the only ones that suffered in this
18 agreement, in this arrangement. Millions of dollars
19 that were lost.

20 And today, for an example, I get a call
21 today from the manufacturer on these two dealerships
22 that we inherited is that, "Hey, what's your plans
23 going forward? You can't hit market values in this
24 area. What do we think about getting out?" This is
25 what I'm left holding the bag with.

1 Now, I'm not blaming anybody, but I'm a Page 99

2 little bit perturbed that this will continue to keep
3 going on like this over this, and when somebody --
4 when millions of dollars have been profited on my
5 behalf and THAG's behalf and it wasn't me. Millions
6 of dollars has been profited from this right here in
7 some first generation car dealer -- not second or
8 third -- that was trying to do the right thing and
9 got -- and at the end of the day, it didn't work
10 out. I'm not blaming anybody for my shortcomings,
11 I'm not. And I don't mean to get emotional and all
12 this stuff, but, however, this is just the hand that
13 we're dealt with.

14 Q. Well, tell me this. Just as a matter of
15 principle, do you believe in honoring the deals that
16 you make or not?

17 A. I certainly do the very best I can to.

18 Q. But you're not willing to testify under
19 oath today that you owe my clients an outstanding
20 sum of about \$360,000 on a promissory note that you
21 signed, is that right?

22 A. That might be very much the case for this
23 obligation, but I think your clients owe me more
24 than that.

25 Q. Well, okay. Where is the documentation to

1 that effect to support your belief?

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2 A. I don't have -- I mean, I didn't have good
3 enough attorneys to help me write the agreement on
4 my behalf.

5 Q. I mean, it sounds to me like you just want
6 to negotiate -- or renegotiate the deal on the back
7 end. That's what you want to happen here, isn't it?

8 A. Well, I mean, no. I'm just trying to get
9 everything satisfied, you know, that should be. I
10 don't have anything else to give to this.

11 Q. It sounds like Nissan Motor Corporation
12 does, since you gave them the \$650,000 that you
13 intended to pledge to Jones Nissan. You agree with
14 that, don't you?

15 A. I don't know now. I don't know what it
16 is, but I just know that I was the one left without
17 any dealership.

18 Q. But would you agree with me that Nissan
19 Motor Corporation rather pressured you to take the
20 \$650,000 that had been set aside as collateral for
21 the Jones Nissan deal and had you transfer it to
22 them so you could work on satisfying their debt?
23 That's what they did, isn't it?

24 A. Well, I agree that Nissan came in and
25 says, "Hey, you have this audit, you are

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1 undercapitalized and at this point, we want you to
2 put the money in to capitalize the store. We don't
3 care how you do it, but you better do it."
4 Q. And they pressured you to do that, didn't
5 they?
6 A. You know, I don't know. Maybe it would be
7 a good thing to get Nissan Motor Company in here
8 with us and let's depose them to see what they
9 think.
10 Q. I tend to agree with you. That's why I'm
11 just asking you these questions. But it sounds like
12 they pressured you to take the \$650,000?
13 A. There was a lot of pressure those days.
14 They were in the store doing their financial audit.
15 Q. Are there documents from the financial
16 audit that they did of the Nissan of Sumter location
17 that you purchased?
18 A. Yes.
19 Q. Do you have these documents?
20 A. Yes, I'm sure we do. I have to try to
21 figure out where that is.
22 Q. Give them to me, please, and give them to
23 Mr. Ramsey so he can get them to me.
24 A. All right. I'll do that.
25 Q. But just so we've got a clear record, you

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1 agree with me that Nissan Motor Corporation
2 pressured you to give to them the \$650,000 that had
3 been collateralized for Jones Nissan, right?
4 A. You know, I don't know if they knew that
5 particular -- well, what I'm saying is they saw --
6 they knew we had banking at Merrill Lynch, and it
7 was part of the overall thing, and it was hard to
8 tell that there was a pledge agreement in the
9 overall account.
10 Q. How do you know that?
11 A. Well, it didn't say it. It just says,
12 "Hey, you have this much money," and it included
13 everything.
14 Q. But you knew by virtue of having signed
15 the pledge agreement, the collateralized account
16 agreement, that that \$650,000 was intended to be
17 pledged for Jones' benefit, right?
18 A. Intended to be held, I did, but it was our
19 intent also to make sure it got back.
20 Q. If you look at subparagraph E of this
21 "Default" section in Exhibit 8, it says, "The
22 pledgor shall pay all costs and expenses incurred by
23 the lender in enforcing this security agreement,
24 realizing upon any collateral and collecting any
25 indebtedness, including a reasonable attorney's fee

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1 whether suit is brought or not and to the extent of
2 pledgor's liability for repayment of any
3 indebtedness, shall be liable for any deficiency in
4 the event that disposition of the collateral does
5 not satisfy the indebtedness in full."
6 So you agree with me, would you not, that
7 THAG, LLC, is responsible for all costs incurred by
8 Jones Nissan in trying to be made whole on the
9 balance due under the promissory note, correct?
10 A. No, I don't agree with that at all, but I
11 I do agree that the language says that in this
12 document.
13 Q. You just disagree with the language, is
14 that what you're saying?
15 A. I don't know if that's what I'm saying.
16 I'm just saying I understand what this document --
17 how it reads.
18 Q. Well, do you agree that it's controlling
19 in this scenario or not?
20 A. I don't think, you know -- to be honest, I
21 don't think that the document is relevant for me to
22 -- I don't believe that it's relevant to -- the
23 circumstances where we got -- I think all the
24 intentions were good and meant well and it's just
25 that we got caught and, you know, I'm still holding

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1 the bag on a lot of different legal issues too, as
2 well.
3 Q. But you signed this document? Is that
4 your signature on page 4?
5 A. It looks like it.
6 Q. And if we go back up to subparagraph F,
7 this is paragraph 9, so it's paragraph 9,
8 subparagraph F it says, "The terms 'lender' and
9 'pledgor' as used in this agreement includes the
10 heirs, personal representatives, and successors or
11 assigns of those parties," right?
12 A. Yeah, it looks like that says that, heirs.
13 I don't know what it means, but yeah.
14 Q. Do you agree with me that Nissan of
15 Sumter, LLC, became an assign of THAG, LLC, during
16 the course of this business deal with Jones Nissan?
17 A. By all indications, it looks that way.
18 Q. Now, if we look at Exhibit 11 -- excuse
19 me, Exhibit 9 to your deposition, this is Assignment
20 of Asset Purchase Agreement. And the first
21 paragraph says, "This assignment of asset purchase
22 agreement is made by and between THAG, LLC,
23 hereinafter 'assignor' and Nissan of Sumter,
24 hereinafter 'assignee' and shall be effective as of
25 February 28, 2017."

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1 So according to the first paragraph of
2 this agreement, it looks like the asset purchase
3 agreement that was Exhibit 1 to your deposition was
4 assigned to Nissan of Sumter, LLC, by THAG, LLC, in
5 February of 2017, correct?

6 A. Yeah, it looks like that. I don't know
7 why, but it does.

8 Q. Why was that assignment made?

9 A. I don't know, unless the entity of Nissan
10 of Sumter wasn't formed yet. I'm not sure, but
11 that's what I thought -- that's originally who I
12 thought the whole deal was made through was Nissan
13 of Sumter, LLC.

14 Q. In looking at the Secretary of State's
15 website -- and I can send this to you, if we need to
16 see it -- but their records show that Nissan of
17 Sumter, LLC, was formed on August the 19th of 2016,
18 so it would have been months before this assignment
19 of asset purchase agreement was apparently entered
20 into.

21 A. Yeah, and it could have been we got a
22 directive from Nissan that they wanted it to be its
23 own separate corporation and didn't want to be a
24 part of the THAG group. And I know that they wanted
25 real estate to be in Nissan of Sumter real estate

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1 holdings, not affiliated with THAG. That was at
2 their request, because they didn't want those
3 particular entities and any other ones to be
4 cross-collateralized with the other entities that
5 they didn't hold agreements -- the first agreements
6 with.

7 Q. I have not seen a signed copy of this
8 assignment agreement. Do you have a signed copy?

9 A. I don't know. Maybe we do. And I don't
10 know how it arrived, whether Weathers generated this
11 or not, but I know we had to get something like this
12 for Nissan of Sumter from NMAC to do land -- to do
13 real estate holdings, because we went down the
14 street and bought the Goodwin's property and it had
15 to be a different entity than THAG, since Nissan
16 Motor Corporation of America -- because that's where
17 we're actually going to move the building to, we had
18 to have a new entity set for that.

19 Q. Fred Weathers is identified as the
20 registered agent for Nissan of Sumter, LLC. How
21 long has he been doing your legal work?

22 A. I think ever since we got to Pawleys
23 Island, 2011 or 2012.

24 Q. Do you still use him?

25 A. Yes.

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1 Q. What's he currently doing for you?

2 A. He's still the registered agent of some of
3 the -- I mean, of THAG, because we got another
4 lawsuit last week that had to be -- that he sent us
5 that came in.

6 Q. What is that lawsuit having to do with?

7 A. It's having to do with Myrtle Beach
8 Mitsubishi, a title that wasn't filed properly, and
9 the local attorney there has been after it for a
10 while --

11 Q. Who is that?

12 A. -- and any other thing that he can come up
13 with for THAG.

14 Q. Exhibit 10 to your deposition is the
15 Notice of Default that was sent by Jack Erter, who
16 represented Jones Nissan in this deal to THAG, LLC,
17 on August the 20th of 2019, and it's directed to
18 your attorney, Terry L. Holmes, member manager. Do
19 you see that?

20 A. Yes, sir.

21 Q. Have you seen this notice of default
22 before?

23 A. I'm not sure. When was it? August 20th.
24 Possibly.

25 Q. Is the address that's indicated for THAG

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1 up there in the "to" portion of the letter, correct?

2 A. I don't think the address is correct.

3 Q. What is the correct address for THAG?

4 A. I think it's 8983 Ocean Highway.

5 Q. And if you look in the asset purchase
6 agreement, which we've marked as Exhibit 1, you
7 would seem to be correct. It looks like it's Terry
8 L. Holmes, 8983 Ocean Highway, which is different
9 from what's on there. So is it your belief that
10 you've never seen this notice of default prior to
11 today?

12 A. I don't -- yeah, I don't recall it.

13 Q. When did you first learn that efforts were
14 being made to collect the balance on the promissory
15 note?

16 A. Probably -- I don't know. I think we had
17 conversations where I was still trying to -- even
18 after the dealerships had closed, I was trying to
19 pay them, and at a point, they didn't want any more
20 of the checks that I was sending.

21 Q. In Exhibit 10 at the end of the first
22 paragraph it says, "As per the terms of the note,
23 demand is hereby made upon you for the full payment
24 of the entire outstanding balance in the amount of
25 \$360,035.15." Do you see where I am?

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1 A. Yes.

2 Q. Do you agree that as of August the 20th of

3 2019, that is the amount of money that THAG owed to

4 Jones Nissan under the promissory note?

5 A. You know, I didn't have any record of

6 verifying that. I didn't know what we had paid. I

7 would imagine something like that.

8 Q. You would agree with me that Jones --

9 excuse me. Would you agree with me that THAG has

10 not made any payment on the \$360,035.15 debt

11 subsequent to this August 20, 2019 letter, correct?

12 A. After August 19th, yes, I agree, I have

13 not made any more payments.

14 Q. Exhibit 11 is correspondence to Merrill

15 Lynch from Mr. Erter dated August 22 of 2019, and

16 this is providing notice to Merrill Lynch of Jones

17 Nissan's exclusive control of account 250 per the

18 terms of the pledge agreement that we previously

19 looked at, okay?

20 A. Okay.

21 Q. Do you agree with me that as of August the

22 22nd of 2019, there was not an amount of money in

23 Merrill Lynch at 250 sufficient to cover the

24 outstanding balance that was owed on the note?

25 A. Yes, it looks like that.

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1 Q. What had been done with the money that was

2 supposed to be in Merrill Lynch account 250?

3 A. I don't know, but the -- I know we had to

4 give Nissan NMAC, we had to pay for that audit. I

5 know funds came out of there or whatever, just to

6 get them satisfied so we could keep on going some

7 time in 2018, I think.

8 Q. Did Nissan ever explain to you what would

9 happen if you did not get the Nissan of Sumter store

10 sufficiently collateralized?

11 A. No, they didn't go to that depth, I think,

12 to say that. But you violate all their codes in a

13 franchise agreement when you do own property and it

14 makes things very difficult, then i.e., everything

15 you have on the table stops and eventually defaults

16 in floor plan, and restrictions of credit lines, all

17 the above.

18 Q. Do they stop sending you inventory?

19 A. They will.

20 Q. Did they threaten that in this 2018 time

21 frame that you just mentioned?

22 A. Well, you know, that's what happens if you

23 can't -- you know, that's the thing. They become --

24 they become unsecured.

25 MR. HUDSON: All right. Let's take a

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1 quick break. I need to use the restroom, then

2 we'll come back.

3 THE WITNESS: Okay.

4 (Whereupon, a recess was taken.)

5 EXAMINATION RESUMED BY MR. HUDSON:

6 Q. Exhibit 12 should be on your screen right

7 now.

8 A. Yes, sir.

9 Q. This appears to be a letter to Jones

10 Nissan authored by you. Down at the bottom is a

11 copy of a cashier's check. I will just read the

12 letter. It says, "Good morning, Mr. Jones. I am

13 forwarding a check in the amount of \$2,500. Due to

14 the excessive debt and demands, I was forced to sell

15 most of the dealerships and assets. I am forced to

16 only send a portion of my payments as agreed upon.

17 As I get my affairs in order, I intend to bring my

18 payments back to the agreed-upon amount. I

19 appreciate your understanding in this matter as I

20 rectify my financial situation." Did you prepare

21 this letter?

22 A. I did.

23 Q. Why?

24 A. I just wanted to let them know what the

25 circumstances I was in and what my intent was.

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1 Q. What circumstances were you in at the

2 time?

3 A. They were highly impaired, greatly

4 impaired and diminished by -- I don't know -- 80, 90

5 percent.

6 Q. All right. Let's just take it sentence by

7 sentence. In this letter, the letter appears to be

8 undated, but the cashier's check at the bottom has a

9 date of August 14, 2019, right?

10 A. Yes.

11 Q. All right. So you say, "Good morning, Mr.

12 Jones." Which Jones brother were you addressing

13 this letter to?

14 A. John, I believe, because he was the one

15 that I had mostly contact with -- well, the younger

16 brother.

17 Q. I think John is younger, I believe. I may

18 be mistaken on that. In any event, the second

19 sentence says, "Due to the excessive debt and

20 demand." What do debt and demand -- what do you

21 mean by that?

22 A. The leverage of the -- I was highly

23 leveraged and I was overleveraged, which violated

24 most of the bank covenants. And as they found, the

25 leverage conditions wasn't there and, I mean, the

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1 liquidity wasn't there, then they no longer wanted
2 to be a part of any of our operations. So
3 immediately demands for floor plan pools,
4 immediately mortgages were called and forbearance
5 agreements were issued at that time, and they gave
6 me either I immediately need to find a buyer or
7 something to rectify because they no longer wanted
8 to do business with me, and that was Allied Bank
9 where it started at the beginning.

10 Q. You then say, "I was forced to sell most
11 of the dealerships and assets." What dealerships
12 and assets are you referring to?

13 A. All the THAG entities, which was all of
14 them, which were Chrysler Jeep Dodge, Myrtle Beach
15 Mitsubishi, Nissan of Orangeburg, is the first
16 three. Subsequently, Nissan of Sumter, once we
17 filed -- when I put that together.

18 Q. Next sentence says, "I am forced to only
19 send a portion of my payments as agreed upon."
20 There you're referring to the payments as specified
21 by the promissory note, right?

22 A. Yes, the one that was \$12,000 a month,
23 whatever that was.

24 Q. That's right. So in this letter in the
25 August of 2019 time frame, you were acknowledging

Page 114
1 the payments that THAG was supposed to make under
2 the promissory note, right?

3 A. Yes.

4 Q. The next sentence says, "As I get my
5 affairs in order, I intend to bring my payments back
6 up to the agreed-upon amount." And there, you're
7 just referencing the payments that are specified in
8 the promissory note, right?

9 A. Correct.

10 Q. "I appreciate your understanding in this
11 matter as I rectify my financial situation." What
12 steps did you take to rectify your financial
13 situation?

14 A. Well, what I tried to do was -- and the
15 intent was to put my focus into the two dealerships
16 that were left over. And then hopefully, to try to
17 get a profit out of it, because they were
18 unprofitable stores, and that's why I ended up with
19 them, nobody wanted them. But my intent was to try
20 to turn those around, and focus on those, and try to
21 get those profitable so that I could actually make
22 the payments to them.

23 Q. Did you have any dealerships that were
24 profitable at this point in time?

25 A. No. As a matter of fact, they were

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1 totally uncaptialized. But my thought was if I was
2 there, which I had never been, hopefully I could get
3 those things -- put my hands on them and get those
4 things turned around.

5 Q. You don't say anything in this letter
6 about thinking you had already paid Jones Nissan
7 enough money under the agreement or just thinking it
8 was a bad deal. Why is that?

9 A. At that particular point, I hadn't had
10 enough time to reflect. I was in survival mode and
11 surviving all of this. I mean, it was just a
12 detrimental effect of what I -- in the same year,
13 whenever as I was digging out of this, I lost my
14 21-year-old son during this process and was also
15 going through a divorce.

16 Q. You don't say anything about possibly
17 renegotiating or modifying the deal either. Why is
18 that?

19 A. Like I said, I hadn't had any chance to
20 really reflect on it. I just know that, hey, we had
21 stopped making those payments and we need to try to
22 continue them as best as we possibly can until we
23 figure out what to do. But my intent was to try to
24 come together with the financial situation. But as
25 time went on, my financial situation got worse.

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1 Q. Has it improved at all since then?

2 A. No. You know, then we went through COVID,
3 in which I had dealerships to walk out and also
4 other litigation matters that popped up continuously
5 and just hadn't gotten better. And I'm still in a
6 legal battle with my spouse now in trying to get
7 that resolved.

8 Q. The \$2500 payment that you attempted to
9 make in August of 2019 involves a cashier's check.
10 Why was that?

11 A. Well, I didn't have any other way of
12 paying the money from another entity. I don't know
13 why. I just went and got a cashier's check.

14 Q. Is that because all your other accounts
15 were running low on money?

16 A. Yes. Well, I mean, THAG didn't have any
17 money, or Nissan of Sumter; they didn't exist
18 anymore.

19 Q. If you look at the remittance on this
20 cashiers check that's at the bottom of Exhibit 12 it
21 says, "Terry Holmes." Why is your name there?

22 A. I think that's just what the bank had put
23 there, because I went and got the cashier's check.

24 Q. And that's essentially because you were
25 THAG at that point in time, right?

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1 A. No, it was just that's where the check
2 came from.

3 Q. Why didn't it say THAG in the remitter
4 line?

5 A. That just says, "Nissan of Sumter."

6 Q. That was my next question. Why didn't it
7 say either one?

8 A. Because it was no thing. It was just the
9 bank, they just went -- I don't think they even
10 asked me, they just put my name on it.

11 Q. Are you the person who asked that this
12 check be prepared?

13 A. Yes.

14 Q. Which First Citizens branch did you go to
15 to get this check?

16 A. It probably was in Florence.

17 Q. Who is Alyssa Cautten?

18 A. I have no idea. Wait a minute. You know,
19 that may have been -- that may have been Cheraw.
20 Cheraw has a branch too. Alyssa sounds familiar.

21 Q. I'm showing you Exhibit 13 now. This is a
22 cashier's check that's dated September the 27th of
23 2019. Do you see that?

24 A. Yes, sir.

25 Q. This is also in the amount of \$2500 made

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1 payable to Jones Nissan, right?

2 A. Correct.

3 Q. And here the remitter line says, "Nissan
4 of Sumter"?

5 A. Correct. Okay.

6 Q. What was this check intended for?

7 A. The same principal.

8 Q. It was a payment on an outstanding
9 promissory note?

10 A. Yes, sir.

11 Q. And there's a handwritten note above the
12 check this says, "Please deliver to Nissan at Jones
13 Chevrolet." Whose handwriting is that?

14 A. I don't know. I don't know. Nissan of
15 Orangeburg letterhead. I don't know, because it was
16 -- it looks like Nissan of Orangeburg letterhead.
17 I'm not sure how that came about.

18 Q. What was the status of Nissan of
19 Orangeburg as of September 2019?

20 A. Nissan of Orangeburg was closed but was
21 sold before Sumter. Sumter was the last one. I
22 think Orangeburg was done in June.

23 Q. Of 2019?

24 A. Yes, sir.

25 Q. So you think this just might have been

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1 some leftover letterhead you had readily available
2 at the time?

3 A. You know, in the office that -- my office
4 manager would have been Stacy. She worked out of
5 Nissan, but she still remained there to do it. So
6 -- in Sumter. Okay. So what probably happened is
7 she -- "Please deliver to Nissan Jones." I got it to
8 Stacy, because she was still over Sumter as office
9 manager, and she just told them to deliver it to
10 Nissan at Jones Chevrolet, I imagine.

11 Q. Next is Exhibit 14 to your deposition.

12 A. Yes, sir.

13 Q. And I want you to take a look at this
14 first one, Mr. Holmes, and I'll just kind of give
15 you my thought process on it. But these are
16 documents that have been provided to me by my
17 client, okay. And they appear to be payment
18 receipts for all of the payments that were made
19 under the promissory note beginning in March of 2017
20 and going through June of 2017, I believe. What we
21 will find with this series of documents is they are
22 on Jones Nissan letterhead, they specify the amount
23 that was paid. So, for instance, here it's
24 \$12,566.32.

25 A. Okay.

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1 Q. And it says, "Paid by check." The comment
2 is "note payment," presumably referring to a payment
3 under the promissory note, okay?

4 A. Okay.

5 Q. And then you've just got other details as
6 you work down the document. And I've got these cash
7 receipts. If you look here at the bottom, it says
8 "Cash receipt, customer copy."

9 A. Uh-huh.

10 Q. So these documents just substantiate those
11 payments that were made. Do you acknowledge that
12 either THAG, LLC, or Nissan of Sumter, LLC, or one
13 of your other LLCs made payments under the
14 promissory note in the amount of \$12,566.32 from
15 March of 2017 through June of 2019?

16 A. Yes, I'm aware that I think they were all
17 supposed to be coming from Nissan of Sumter.

18 Q. Right. Do you recall receiving a cash
19 receipt for each payment that was made under the
20 promissory note during the 2017 through 2019 time
21 frame?

22 A. Do I remember receiving anything?

23 Q. Yes, sir.

24 A. Let's go back to the -- let's go back to
25 the top of this document. Okay. This is Jones

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1 receiving this money. So are you saying they gave
2 cash? Is that what you're saying?
3 Q. Well, you see the Jones Nissan letterhead
4 on the top --
5 A. Correct.
6 Q. -- where my cursor is moving around.
7 A. Absolutely.
8 Q. Then down at the bottom, it says, "Cash
9 receipt, customer copy"?
10 A. Uh-huh.
11 Q. So I'm curious to know if when a monthly
12 payment was made by one of your LLCs to Jones Nissan
13 on the promissory note, was any type of receipt
14 provided to you or your LLCs to confirm that the
15 payment had been made?
16 A. No. If you go back up at the top of this
17 document, if you will, it says, "\$12,566 paid by
18 check," and I think our check would have been the
19 only -- I don't know if they gave us receipts or
20 not, I have no idea. But our check registers would
21 have shown where it was paid in a check form.
22 Q. Who typically delivered the note payments
23 to Jones Nissan?
24 A. That would have been our office controller
25 at Nissan of Sumter in Orangeburg. She ran both of

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1 the stores. It would have been her.
2 Q. What's her name?
3 A. Stacey Wagers.
4 Q. How do you spell her last name?
5 A. It's Stacey Smoak, S-m-o-a-k.
6 Q. And what was her position with the
7 company?
8 A. Office manager, controller for the Nissan
9 of Orangeburg and Sumter.
10 Q. Does she have a formal employment
11 agreement with either of those entities?
12 A. No, she had a play plan, I guess.
13 Q. How was she paid?
14 A. On payroll, salary.
15 Q. What was her salary in 2017?
16 A. I can't recall. Somewhere around \$6,000
17 to \$7,000 a month, I would imagine.
18 Q. \$6,700 a month or \$6,000 or \$7,000?
19 A. No, \$6,000 or \$7,000, somewhere in that
20 range.
21 Q. Got you. Six or seven?
22 A. Yes, sir.
23 Q. What's her current status? Where is she?
24 A. The last time I talked to her, she was
25 with the Chrysler Jeep Dodge store in Orangeburg.

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1 The new owner is Platinum, or something like that,
2 is the Chrysler Jeep store.
3 Q. Who owns that store?
4 A. She was released by Mr. Johnson and went
5 to Tony Thomas is the operator there at that store,
6 the dealer. Yeah, she would have made all
7 transactions for that operation and also Lou Goss.
8 Any of that stuff, she paid.
9 Q. All right. Let's just work through these,
10 the next payment that was made under the note --
11 A. I need to go after Nissan for all this
12 stuff.
13 Q. Do you agree with me that a payment in the
14 amount of \$12,566.32 was made to Jones Nissan for
15 the promissory note in April of 2017, correct?
16 A. Yes, it looks like it.
17 Q. Okay. And if you look midway down the
18 document, you can see Jones Nissan is entering the
19 payment into their records on about April the 18th
20 of 2017, I believe?
21 A. Uh-huh.
22 Q. Do you agree with me that a payment was
23 made on the promissory note in May of 2017, as well,
24 in the amount of \$12,566.33?
25 A. Yes, it looks like it.

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1 Q. Do you agree with me that a payment was
2 made --
3 A. Yes.
4 Q. -- in May of 2017 in the same amount?
5 A. Yes.
6 Q. Do you agree with me that a payment was
7 made in the same amount in July of 2017?
8 A. It looks like it. I agree.
9 Q. Do you agree that a payment was made in
10 the same amount on the promissory note in August of
11 2017?
12 A. Uh-huh.
13 Q. "Yes"?
14 A. Yes.
15 Q. Thank you. Do you agree with me that a
16 payment was made in the same amount in September of
17 2017?
18 A. Yes, it looks like it. Yes, sir.
19 Q. Do you agree with me that a payment was
20 made in the same amount under the note in October of
21 2017?
22 A. Yes.
23 Q. Do you agree that a payment was made in
24 the same amount under the note in November of 2017?
25 A. Yes.

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1 Q. And if you look up here in the highlighted
2 portion, it indicates that the check was from Island
3 Real Estate Holdings, LLC. Are you familiar with
4 that company?

5 A. Yes, I am. What date is that?

6 Q. November the 1st of 2017 is when the
7 payment is entered into Jones' records.

8 A. Okay.

9 Q. What is Island Holdings, LLC?

10 A. It was a real estate account for -- it
11 held the mortgage for the Chrysler Jeep Dodge store
12 in Pawleys Island.

13 Q. Were you the sole member of that LLC?

14 A. Yes, sir.

15 Q. Why would the payment to Jones Nissan have
16 been coming from Island Real Estate Holdings, LLC,
17 in November of 2017?

18 A. I have no idea, unless one of the stores
19 didn't have money or whatever. I'm not sure.

20 Q. Is this the time frame where things might
21 have started to head south a little bit?

22 A. September 17th?

23 Q. Well, early November of 2017.

24 A. No, I think probably 2018 is when they
25 started -- when we realized they were heading south,

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1 and it could have been November. As a matter of
2 fact, it absolutely was, because we -- I'm not sure
3 when the bankruptcy proceedings were or whatever we
4 were trying to do, but I don't recall the dates.

5 Q. And this is another entry pertaining to
6 November of 2017. It looks like a payment in the
7 amount of \$10 was made representing the balance on
8 the November note payment. Do you recall that?

9 A. No, I don't. I mean -- I'm sorry, I don't
10 recall any of these transactions.

11 Q. All right. Do you agree with me that in
12 December of 2017, a payment would have been made to
13 Jones Nissan on the promissory note in the amount of
14 \$12,566.32?

15 A. I agree.

16 Q. Do you agree a payment in that same amount
17 would have been made under the note in January of
18 2018?

19 A. Correct.

20 Q. This one also came from Island Real Estate
21 Holdings, LLC?

22 A. Yes, it appears to be.

23 Q. Payment in the same amount would have also
24 been made under the note in February of 2018,
25 correct?

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1 A. Correct.

2 Q. A payment in the same amount would also
3 have been made under the note in March of 2018,
4 correct?

5 A. Wait a minute. I think I might have a
6 clear understanding of what that is now, what had
7 happened. It's probably about the time this audit
8 was coming in from Nissan of Sumter. They came in
9 and there could have been -- and we had to change
10 it, because there could be no record of this loan
11 being paid off because this was -- what we
12 classified it as, what we call is an off-the-book
13 transaction. Nowhere on our dealership books is
14 this note.

15 Q. So, in other words, you didn't want Nissan
16 Motor Corporation to be aware of this note deal?

17 A. Correct.

18 Q. Why was that?

19 A. It would have voided all covenants. We
20 would have been outside of the covenants of the
21 liquidity in the store.

22 Q. Did you know that when you entered into
23 this promissory note agreement with Jones Nissan?

24 A. Not to that degree. Not to this degree of
25 how it played out, no. It was just a broad

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1 transaction.

2 Q. But you understood it to some degree?

3 A. Yes, I did, which goes back to the point
4 of this APA document. You know, that could never be
5 -- because those documents go to the manufacturer.

6 Q. You agree with me that a payment was made
7 under the promissory note in the amount of
8 \$12,566.32 in April of 2018, correct?

9 A. I agree.

10 Q. Payment was made in that same amount under
11 the note in May of 2018, correct?

12 A. I concur.

13 Q. Payment was made in that same amount under
14 the note in June of 2018, right?

15 A. I concur.

16 Q. A payment was made under the note in that
17 same amount in July of 2018, correct?

18 A. I would concur.

19 Q. Payment was made in that same amount under
20 the note in August of 2018, correct?

21 A. Correct.

22 Q. Payment was made in that same amount under
23 the note in September of 2018, correct?

24 A. Yes.

25 Q. Payment was made in that same amount under

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1 the note in October of 2018, correct?

2 A. Correct.

3 Q. Payment was paid in that same amount under

4 the note in November of 2018, correct?

5 A. Correct.

6 Q. Payment was made under the note in that

7 same amount in December of 2018, correct?

8 A. Correct.

9 Q. Payment was made under the note in that

10 same amount in January of 2019, correct?

11 A. Correct.

12 Q. Payment was made under the note in that

13 same amount in February of 2019, correct?

14 A. Correct.

15 Q. Payment was made in that same amount under

16 the note in March of 2019, correct?

17 A. Correct.

18 Q. Payment was made under the note in April

19 of 2019 in that same amount, correct?

20 A. Correct.

21 Q. Payment was made under the note in that

22 same amount in May of 2019, correct?

23 A. Correct.

24 Q. Payment was made under the note in that

25 same amount in June of 2019, correct?

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1 A. Correct.

2 Q. Payment was made under the note in that

3 same amount in July of 2019, correct?

4 A. Correct.

5 Q. And then I think that is the final payment

6 that my clients have a record of. So that payment

7 in the amount of \$12,566.32 was made for the final

8 time under the promissory note in July of 2019. You

9 agree with that, don't you?

10 A. I do. Now, Mr. Hudson, how do we pick

11 this up again because apparently it's going to take

12 some more time? Can we reschedule -- can we finish

13 it at another date?

14 Q. We need to go ahead and knock it out

15 today. You got somewhere you need to be?

16 A. I do. I got a couple banking transactions

17 I need to try to make it to before the banks close

18 so we don't overdraw at the bank.

19 MR. HUDSON: I was not aware of that. We

20 moved the start time up so we could try to get

21 the whole thing completed today. Let's go off

22 the record real quick.

23 (Whereupon, a discussion was held off the record.)

24 MR. HUDSON: Mr. Holmes, has indicated he

25 needs to get to the bank before it closes

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1 today. It's 4:00 now, so we're going to try to

2 reconvene at 4:45 or as close thereto as we can

3 to get this deposition completed today.

4 THE WITNESS: Okay.

5 (Whereupon, a recess was taken at 4:00 p.m. and

6 reconvened at 5:25 p.m.)

7 EXAMINATION RESUMED BY MR. HUDSON:

8 Q. Let me jump back to Exhibit 7, before we

9 move forward to some of the other ones. This is the

10 promissory note that we discussed earlier?

11 A. Yes, sir.

12 Q. So this paragraph in the middle that says

13 -- it just specifies how the payments are to be made

14 and it says, "In 59 consecutive equal annual

15 installments of \$12,566.32."

16 A. Okay.

17 Q. At the time that you signed this note on

18 or about February the 28th of 2017, was it your

19 intention to make the payments in accordance with

20 this note?

21 A. Yes, absolutely with this particular note

22 Exhibit F. Absolutely, it was my intent. I agreed

23 to do that.

24 Q. And you say Exhibit F. That's how it was

25 attached to the Complaint. For purposes of the

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1 deposition, it's Exhibit 7.

2 A. It's Exhibit 7. Okay.

3 Q. You might not be able to see that on your

4 end.

5 A. Absolutely.

6 Q. Okay. I'm going to jump forward to

7 Exhibit 16. These are some Merrill Lynch documents

8 and they're kind of hard to see --

9 A. Sure.

10 Q. -- so let's do the best we can.

11 A. Now, John, were you privy to the mediation

12 we had before?

13 Q. I was not.

14 A. You were not. Okay.

15 Q. I was not. Can you see this document all

16 right?

17 A. I can.

18 Q. If I need to enlarge it, I'll try, but

19 what I'm going to show you now are various documents

20 that I received from Merrill Lynch pursuant to a

21 subpoena that was sent earlier in the case.

22 A. Okay. You got one from them. You were

23 able to get a document. Okay. Go ahead.

24 Q. Yes. This appears to be --

25 A. But you see Lana's name on there? That's

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1 Lana's name on there. She's an authorized agent, I
2 told you.

3 Q. Yes. This is the authorization for the
4 loan management account that was in the process of
5 being opened. And if you look up here in the top
6 right-hand corner, it shows LMA account number, I
7 think that's SLP-02247. Do you see that?

8 A. Yes, sir, LMA, that sounds familiar. What
9 is that?

10 Q. Loan management account.

11 A. Okay.

12 Q. And this account was apparently opened in
13 the name of THAG, LLC, if you look here at the top.

14 A. All right. Makes sense.

15 Q. All right. And paragraph two says, "The
16 transactions contemplated herein, the agreement and
17 any other loan document are hereby approved and
18 authorized in all respects and any of the persons
19 whose names and signatures are set forth below," and
20 then it has your name and your signature, correct?

21 A. Yes, my name and signature. Yes.

22 Q. And you're identified as the managing
23 manager of THAG on this document?

24 A. That is correct.

25 Q. The other name that's on here is Lana

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1 Barthelmes?

2 A. Yes.

3 Q. Who is Lana Barthelmes?

4 A. Lana was my controller for the entire
5 group, office controller.

6 Q. Okay. So did she also have signatory on
7 this particular loan management account?

8 A. Yes.

9 Q. What was the reason for that?

10 A. What was the reason for that? Well, Mr.
11 Hudson, I wasn't -- my day-to-day operations wasn't
12 inside dealerships, just so we know. What my role
13 was, I was more of a political platform manager,
14 where I dealt with the executives of Ford Motor
15 Credit Company, NMAC, and all that stuff. And
16 that's -- and so I was on the board of directors of
17 these various companies. The day-to-day operations,
18 for them, I'm more of a figurehead per se. So I
19 can't sign every check. I can't do all those
20 things. So I have to rely on the people that I have
21 in those things to do those various matters for me,
22 particularly when you're talking about eight
23 dealerships doing almost \$100 million in sales per
24 year. So when you talk about these agreements
25 pursuant to paragraph two or whatever, I don't know

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1 -- I never seen those. I don't do that. I rely on
2 these people here that's on these documents, Mark
3 Sanchez and them, to make sure they read them and if
4 it's okay, it doesn't hurt me, fine, here is a piece
5 of paper, "Sign it, boss, we're good to go." That's
6 how I did business.

7 Q. I understand. Did you sign this
8 particular document?

9 A. Yes, sir, it looks like it.

10 Q. All right. Let's go to the -- I think
11 it's the third page of it, and it's got what appears
12 to be your signature and your name below it, right?

13 A. Absolutely.

14 Q. And it's dated April the 20th of 2017?

15 A. Okay. I get it.

16 Q. All right.

17 A. That's the LMA account. Okay. That's
18 when we opened it, I guess. Okay.

19 Q. Well, that's right. And I think the
20 document we've looked at is just the authorization
21 form for that particular account, which means these
22 are the people who have authority to write checks on
23 the account or make transactions through that
24 account?

25 A. Absolutely.

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1 Q. And if we look at this next document, this
2 says, "Loan Management Account - Borrower
3 Application"?

4 A. Uh-huh.

5 Q. Are you with me up top?

6 A. Yes, sir.

7 Q. And this is for LMA account SLP-02247?

8 A. Yes. You know who we need in this
9 meeting, or whatever, we need Mark Sanchez in here,
10 because he's the one that filled out all these forms
11 and everything that's related to and pursuant to
12 these agreements or whatever. He's the one that
13 needs to answer this. He's my right-hand man for
14 this stuff.

15 Q. So this particular document that we're
16 looking at, this application, is any of the
17 handwriting on this yours?

18 A. No. You'll see, most documents don't have
19 any handwriting that's mine.

20 Q. Whose handwriting is this?

21 A. What document is this?

22 Q. This is the application for account number
23 2247.

24 A. You know, this doesn't look like any of my
25 people's handwriting.

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Page 137 1 Q. Well, down at the bottom, you'll see 2 "Terry L. Holmes, member"? 3 A. Correct. 4 Q. And the applicant is THAG, LLC. Do you 5 see that? 6 A. I do. 7 Q. So can you tell me who filled this out on 8 THAG's behalf? 9 A. I absolutely cannot. 10 Q. Who was authorized to do so as of this 11 April 2017 time frame? 12 A. To fill this document out? 13 Q. Yes, sir. 14 A. I don't know, you know. It's kind of 15 puzzling to me, because as I look at this, there's 16 only a couple of people that can fill those out. 17 Number one, it's going to be Mark Sanchez's. Number 18 two, it's going to be Lana Barthelmes'. That 19 doesn't look like any of their handwriting. So 20 because of that, I would say that that's a Bank of 21 America employee. 22 Q. But that's speculation on your part? 23 A. Yes, sir, because the type of business 24 "automobile dealer," that's not quite how we would 25 fill that out, I don't think.	Page 139 1 process of trying to get up and running at this 2 point in time, April of 2017? 3 A. April of 2017, let's see. April of 2017, 4 we got -- we had opened Cheraw Chevrolet, which 5 would have been the last one. And then Nashville 6 Ford, I think, maybe was in June of 2017 -- May or 7 June of 2017, something along those lines. At the 8 same token, there was a point in Elizabeth City, 9 North Carolina, a Chevrolet store that they had 10 given to me and this is, "Terry, here is a deal. We 11 want you to take that." The manufacturer, the 12 Chevrolet dealer approached me. They said, "Terry, 13 we want you to take that dealership in Elizabeth 14 City, North Carolina." We had done all the 15 paperwork for business for that and that's just how 16 it was working for me, but we need the capital to do 17 that. 18 And by that time, I looked around and saw, 19 "Oh, shit, all these dealerships are in trouble, all 20 of them." So I'm saying, "Okay. Hey, Chevrolet, 21 let me just tell you, I've got to do something that 22 I don't normally do. I got to tell you we're having 23 trouble and I can't do the one in Elizabeth City. I 24 got to come back and do it." I even had a store in 25 -- one offered to me, Mitsubishi, I was offered one
Page 138 1 Q. What was the reason that this particular 2 account was being opened at this point in time? 3 A. The LMA account for -- I guess this is 4 Merrill Lynch. What this account did, it 5 essentially, as it was explained to me, was, "Hey, 6 we got this account, we can borrow against this 7 account and still have the principal balance in this 8 account and borrow against it and not really 9 necessarily deal with the principal." So you're 10 actually a credit line that you use to borrow 11 against your own assets. 12 Q. Why was there a need for that type of 13 account at that point in time? 14 A. Because at that point in time, we were on 15 a roll to buy, you know -- once again, I told you 16 there was 10 dealerships. And at that time, you 17 know, it was maybe 25 that I thought it looks like 18 we were in an expansion mode that we could actually 19 do it. But in order to do it, you needed funds to 20 be able to put down, you know, for existing 21 dealerships or part of the working capital into the 22 thing, it would be at least 25 percent, if not more. 23 So that's why you would need capital and it would 24 need to be somewhat unencumbered. 25 Q. What dealerships were you hoping or in the	Page 140 1 to me in Jacksonville, North Carolina. That one was 2 going on the books. I had to back up quickly when I 3 saw, "Wait a minute. There's trouble. We're not 4 meeting our current financial obligations right 5 now." 6 So we got those two going. Then we come 7 back and I did everything I possibly could to 8 bolster the sales. I got my fellow dealers to come 9 in town to help me to try to figure out ways to 10 increase these sales, but we couldn't. We couldn't 11 meet the demand that we had already set up. So that 12 was a fast track, or whatever. I just didn't have 13 the personnel behind me. I had outsold my personnel 14 behind me to be able to operate in a daily fashion. 15 So that is where the trouble was. 16 And so the intricacies of these inner 17 documents, I have no idea of what they were. My job 18 at this point in time in this career was to go out 19 and find dealerships. 20 Q. But whoever is filling out these documents 21 or executing these documents on THAG's behalf should 22 only do so with proper authority, right? 23 A. Yes, sir. I mean, and they thought they 24 had proper authority. We all thought we did. We 25 all thought that the money was in the bank and we

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1 were doing very well. So I had no reason to
2 challenge those people that actually filled these
3 documents out in anything that they was doing,
4 because it looked like, on the surface, we were
5 doing well.

6 Q. The only person from THAG who would be
7 authorized to give another employee or
8 representative authority to sign legal documents on
9 behalf of THAG would be you, right?

10 A. Now -- okay. The legalities of it, yes.
11 The legalities of it, yes, you are absolutely right,
12 Mr. Hudson. But did that actually happen all the
13 time? No, it didn't.

14 Q. And my point is, because you were the sole
15 member and the owner of THAG, you were the person
16 who had the authority to say, "Mark Sanchez, you've
17 got authority to sign contracts on our behalf or
18 Ms." -- is it Lana Barthelmes?

19 A. Yes.

20 Q. "You have authority to do that." That
21 permission and authorization had to come from you to
22 those other people, right?

23 A. Yes, sir. In our business, there's an
24 element of -- after a while, there becomes an
25 element of trust in our business. So like I was

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1 saying, in the scheme of -- in what you're saying
2 the theory of it and the practicality of it, yes, it
3 should be run by the letter of the law. Does it
4 automatically happen that way? Would we wing it?
5 Do I stop a deposition at four o'clock and the guys
6 call me and says, "Boss, we need money in the bank
7 and can you go get it to us?" -- I don't even know
8 why we need the money -- "and go transfer and
9 whatever," that happens. That's the real world.

10 Q. Is that what just happened now?

11 A. That's what just happened now.

12 Q. Where is that money coming from that
13 you're getting to those guys who need it?

14 A. Inner company from one store to the next.

15 Q. So in this particular scenario that we
16 just took the break for, what stores were involved
17 in that transfer?

18 A. Cheraw Chevrolet and Nashville Ford.

19 Q. Money was going from which store to which
20 store?

21 A. They were going from one store to the
22 next.

23 Q. Which store was providing money to the
24 other?

25 A. Both of them were -- both of them are

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1 impaired, both of them.

2 Q. So what's the source of the funds going to
3 each?

4 A. The sources of the funds is borrowed
5 money.

6 Q. So where were you borrowing upon from that
7 you were sending to Cheraw Chevrolet?

8 A. Whichever, from the bank account -- well,
9 in that case, Nashville Ford. We took money out of
10 their operating account to prop up Cheraw's bank
11 account so that they could pass their -- so that
12 they could pay off their floor plan. And when the
13 contracts are cashed, then we'll take the money back
14 out of Cheraw and send it back to Nashville.

15 Q. And where is the money coming from that
16 you needed to provide to Nashville?

17 A. Where is the money coming from that we got
18 out of Nashville? It was already in Nashville.

19 Q. No, I thought you said you had to get
20 money to give to both stores, meaning Cheraw and
21 Nashville?

22 A. And we do. We have to get them to both of
23 them, but just not today.

24 Q. So today you only had to get money to
25 Cheraw?

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1 A. Yeah, today Cheraw needed money.

2 Q. But Nashville did not need any today?

3 A. Not today, but they need their money back
4 to meet their -- they just didn't pay their
5 obligation today.

6 Q. Moving down to the next Merrill Lynch
7 document, this is a document up top that says,
8 "Additional pledge and control rider to loan
9 management account agreement adding additional
10 securities accounts." Do you see that?

11 A. I do.

12 Q. And the top right-hand corner indicates
13 that this also pertains to account 2247. Do you see
14 that?

15 A. I do.

16 Q. Midway down, if you read paragraph one, it
17 talks about granting of security interest in
18 additional securities accounts. Do you see that?

19 A. I do.

20 Q. Okay. Are you familiar with what this
21 paragraph does legally?

22 A. No.

23 Q. All right. Well, I'm just going to read
24 it for the record. So paragraph one says, "Grant of
25 Security Interest in Additional Securities Accounts.

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Page 145 1 Pledgor hereby confirms its prior grant to the bank 2 under the LMA agreements in the securities account 3 and/or other collateral, and does hereby, as 4 security for the performance of borrower's 5 obligations and those of any guarantor and/or other 6 pledgor under the LMA agreement, assign, transfer, 7 pledge, grant, and convey to bank a continuing, 8 first priority lien and security interest in all of 9 its right, title, and interest in each of the 10 additional securities accounts listed below and 11 maintained at Merrill Lynch and/or bank, including 12 any successor or replacement accounts and all 13 monies, debts, claims, securities, securities 14 entitlements, financial assets, investment property, 15 instruments, certificates of deposit, general 16 intangibles of any sort now or hereafter held, 17 maintained or administered in, or credited to any 18 such securities account." 19 And then if you go down to the table 20 immediately below, it says, "List additional 21 securities accounts to be pledged." The account 22 listed there is SLP -- that might be a S -- but I 23 think it's SLP-02250. Do you see that? 24 A. I do. 25 Q. So what this means is this account 2250 is	Page 147 1 A. I don't know. I mean, I don't really 2 understand what happened. So I mean, I don't know 3 -- I think you -- I think you understand it, so 4 that's what it is. I don't really get this deep. 5 Q. Who does get that deep for THAG? 6 A. Actually, the people that are my -- my 7 people that are working for me, they should. I 8 don't know if they do, but they would probably have 9 a much better understanding of it than I do, 10 unfortunately. 11 Q. Well, let's go to the signature page of 12 this particular document. It looks like your 13 signature is there at the bottom, right? 14 A. Yes, sir. 15 Q. And you signed that on October the 30th of 16 2017? 17 A. It looks like that, yes, sir. 18 Q. Would you have read this document before 19 you signed it? 20 A. No, sir, I don't read these documents. I 21 would be lying to you if I said I did. 22 Q. Do you agree with me that you should read 23 these documents before you sign them? 24 A. Apparently, it looks like I should. I 25 don't know where I get all the time in a day to do
Page 146 1 being pledged as additional security for the loan 2 management account 2247 that is being opened up with 3 Merrill Lynch, right? 4 A. Sure. 5 Q. And that SLP-02250 account is the one that 6 was opened up specifically to serve or to hold the 7 collateral of the \$650,000 that was being financed 8 by Jones Nissan as part of the purchase of that 9 Sumter Nissan dealership, right? 10 A. Sure. 11 Q. So in this document, it appears that 12 account 2250 is being pledged as collateral for a 13 new account that THAG was opening, which is account 14 2247, right? 15 A. I guess. 16 Q. Do you agree with me that by pledging 17 account 2257 as collateral for account 22 -- excuse 18 me. Do you agree with me that by pledging account 19 2250 as collateral for account 2247, THAG breached 20 the pledge agreement, as well as the promissory note 21 that it had previously entered into with Jones 22 Nissan? 23 A. If you say so. I mean, you're way over my 24 head with this. 25 Q. Well, do you agree with that, or not?	Page 148 1 that. But to be honest with you, I do not read any 2 of these documents at all. 3 Q. You just sign them and go on about your 4 business? 5 A. Yes. I said, "Hey, give me an overview of 6 what this is. What does this do?" "Well, Boss, 7 this is a good deal. This is what we have to do to 8 get this deal done." I read it, everything looks 9 good, all right. 10 Q. Did you ask anyone for an overview of this 11 particular document that you've just gone through? 12 A. Do what now? 13 Q. Did you ask anyone for a summary or 14 overview of this exhibit we just discussed? 15 A. I don't think so, because it probably came 16 to me from my bank. Here is the thing. What am I 17 going to change in it? How could I change the form 18 when I need to get done with something? It is what 19 it is. The attorneys have you -- you guys have 20 drawn it up and the bank has made that agreement. 21 Q. Maybe it's not a matter of changing 22 anything in the document, but just making the 23 decision not to sign the document because you're 24 concerned about what it might accomplish. 25 A. And you are probably correct in that

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1 assumption. I just never looked at it that way.
 2 That's why I'm sitting here, I guess.
 3 Q. This is an account statement. Can you see
 4 that?
 5 A. Okay.
 6 Q. It's kind of cut off certain portions.
 7 A. You know, if this thing -- if everybody
 8 went by the letter of the law on these documents
 9 that was performed, how did this all happen? Where
 10 was it downsized? How did this happen? The bank
 11 attorneys, all this, how did this happen? Why
 12 didn't I get stopped? Why didn't we get stopped
 13 with this collateralized account? I mean, how were
 14 we able to document if it was secured or not?
 15 That's my question. How did it happen?
 16 Q. That's my question. All right. This is
 17 the account statement for --
 18 A. Well, Mr. Hudson, if you're asking me to
 19 tell you this answer, I can't -- there is no way I
 20 can tell you that.
 21 Q. All right. Look at this account statement
 22 for account 2247.
 23 A. Okay.
 24 Q. And this is the statement for November 1,
 25 2017 through November 30th, 2017.

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1 A. Okay.
 2 Q. Are you with me so far?
 3 A. I am.
 4 Q. So this is the loan management account
 5 that we just saw the application for that was opened
 6 around April of 2017, okay?
 7 A. Okay.
 8 Q. And down here, if you can see my cursor
 9 where it says "Collateral"?
 10 A. Yes.
 11 Q. The indication is that there was pledged
 12 collateral in the account of about 3.3 million
 13 dollars during this November 2017 time frame.
 14 A. Okay.
 15 Q. Why was there a need --
 16 A. Which we can't see that, because of the --
 17 you guys are on a screen right there that's blocked
 18 out.
 19 Q. Hang on. You need to be able to see what
 20 I'm talking about. Are you not able to see my
 21 screen right now?
 22 A. We're able to see the screen, but we can't
 23 see the dollar amounts associated with the available
 24 credit at this time and the collateral.
 25 Q. Do you see my cursor?

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1 A. Now we see it, yes, sir.
 2 Q. Okay. Can you see the numbers now?
 3 A. Yes.
 4 Q. And the number I'm specifically looking at
 5 is beside the pledged collateral description. And
 6 the amount is \$3,373,591.45, right?
 7 A. Correct.
 8 Q. Why was there a need to have such a
 9 significant amount of pledged collateral in that
 10 account 2247 as of November 2017?
 11 A. I don't know. But I do know that Allied
 12 saw this statement, or a statement like this, and
 13 that's where everything hit the rubber, and met the
 14 road, and all that kind of stuff, because they were
 15 looking for a certain amount of liquidity that we
 16 didn't have. They called the -- they called the
 17 floor plan line for us. That's where it all started
 18 to snowball, because they saw we didn't have the
 19 liquidity that we didn't have, that they thought we
 20 had.
 21 Q. And what is the role that Allied Bank
 22 plays in all of this? What debt did they hold or
 23 what were they underwriting or funding?
 24 A. They were funding the floor plan with
 25 Island Chrysler; they were funding the mortgage with

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1 Island Chrysler; they were funding the floor plan
 2 with Myrtle Beach Mitsubishi; they were funding the
 3 mortgage, I believe, for Myrtle Beach Mitsubishi;
 4 they were funding the floor plan of Nissan of
 5 Orangeburg; and the SBA was funding Orangeburg's
 6 real estate. So when they saw this or something
 7 similar or one month or whatever, they says, "Oh,
 8 you don't have liquidity. We're done with you,
 9 Terry, we're done," \$3 million. So that represented
 10 a total of about \$20 million that they called and
 11 said, "We are done with you. We suggest you find
 12 new floor plans." So you have 90 days to find a new
 13 floor plan source, and mortgages, and all that for
 14 these three entities, in which we didn't have any
 15 money, 90 days. December 24th at 7:00, they were
 16 still calling me Christmas Eve night to say, "Where
 17 is our money? Do you have this floor plan charge?"
 18 Q. Not one of those entities about which
 19 Allied was concerned was Nissan of Sumter, LLC, was
 20 it?
 21 A. No, it was not concerned with Sumter.
 22 Q. They were concerned with the dealerships
 23 around the coast?
 24 A. The coast and Orangeburg.
 25 Q. And Orangeburg?

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1 A. Yes, sir.

2 Q. Do you agree with me that this pledged

3 collateral sum of \$3.3 million includes the \$650,000

4 that had previously been deposited into an account

5 2250 with Merrill Lynch?

6 A. I don't know. There should be a breakout

7 somewhere, but I don't know if it was. Wait a

8 minute. Let's think about this. Does this give you

9 an account number anywhere on this statement?

10 Q. Well, I've picked and chosen some

11 documents to keep us from getting overwhelmed with

12 paper, but let me show you some additional documents

13 to see if we can kind of put it together. So this

14 is a transaction report from this November 1, 2017

15 through November 30, 2017 time frame for account

16 2247. Can you see all that?

17 A. I can.

18 Q. All right. Down towards the bottom, it

19 says, "your collateral," and then beneath that it

20 says, "pledged collateral accounts."

21 A. Yes.

22 Q. Are you with me so far?

23 A. Yes.

24 Q. And it's got two accounts identified. One

25 is 2213 in the name of THAG; the other one is 2250

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1 in the name of THAG, right?

2 A. Correct.

3 Q. So this document tells us that the two

4 accounts that are pledged as collateral for account

5 number 2247 are those two documents down at the

6 bottom -- or these two accounts, rather, down at the

7 bottom, right?

8 A. Yes.

9 Q. I'm going to jump ahead a couple. All

10 right, Mr. Holmes. If you look at this document

11 that I've got up on the screen, it's dated May the

12 2nd of 2017 over here on the left-hand side. Do you

13 see that?

14 A. Yes.

15 Q. And it says, "Review your recent transfer.

16 As you requested, we have transferred cash or

17 securities from your account. Please take a moment

18 to review the transfer details below." And down

19 below it says you've got \$649,710.67 that has been

20 transferred from account 2250 to account 2213,

21 right?

22 A. Well, yes.

23 Q. What was the reason for that particular

24 transfer at that point in time?

25 A. I have no idea. \$649,710.67?

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1 Q. Yes, sir.

2 A. What is that? 5-2-17?

3 Q. That's right.

4 A. At about that time, we bought the

5 Nashville Ford store, so I don't know. It could

6 have been to capitalize that store. But to be

7 honest with you, I don't have an idea; I'm just

8 speculating.

9 Q. But you agree with me that this \$649,710

10 sum came from the account that was specifically

11 opened to collateralize the debt owed to Jones

12 Nissan, right?

13 A. Repeat that question, Counsel.

14 Q. This \$649,710 amount was transferred out

15 of account 2250, which was specifically opened to

16 hold the \$650,000 that was to collateralize the debt

17 owed to Jones Nissan under the promissory note,

18 right?

19 A. No, I wasn't aware of that.

20 Q. You weren't aware of what?

21 A. I wasn't aware that that was -- the

22 account that was specifically pledged to the Jones

23 account, I wasn't aware of that, and I also wasn't

24 aware of how that could actually happen.

25 Q. I'm going to jump back to Exhibit 8. This

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1 is the pledge agreement we looked at earlier.

2 A. Okay.

3 Q. Do you see that?

4 A. Yes, sir, I can.

5 Q. Down here in paragraph one, it talks about

6 the security interest that THAG is giving to Jones

7 Nissan on February the 28th of 2017.

8 A. Okay.

9 Q. All right. And right here in paragraph

10 one, it says, "The pledgor hereby pledges to the

11 lender and gives and grants lender a continuing and

12 unconditional security interest in the following

13 described property and in all increases in income,

14 dividends, distributions, and profits therefrom and

15 in all substitutions therefore and in all proceeds

16 thereof in any form. Merrill Lynch account number

17 250, having a portfolio value of \$650,000, is more

18 fully described in the pledged collateral account

19 control agreement." So the important part is this

20 250 number with the description of the account here,

21 okay?

22 A. Okay. 250. Okay. 250, that is where you

23 get the account number. Okay.

24 Q. That's right. And so then if we go back

25 to the document we were previously on, what this

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1 confirmation of transfer dated May 2, 2017 shows us
2 is that there's \$649,710.67 going from Merrill Lynch
3 account number 2250 to account 2213, right?
4 A. Yes, sir.
5 Q. Okay. And what I was wanting you to agree
6 with me on, that this document shows that \$649,000
7 and change is going from the account that was opened
8 specifically to hold the pledged collateral to Jones
9 Nissan, which would be Merrill Lynch account number
10 2250, to a different account which would be Merrill
11 Lynch account number 2213, for some reason in this
12 May 27, 2017 time frame. Do you agree with me?
13 A. Yes, and that transaction is unbeknownst
14 to me. Let's -- when was the pledge account -- this
15 is 5-2-17. When was the pledge account actually
16 opened?
17 Q. The pledge account was -- this is Exhibit
18 6 that we're looking at. On January the 19th of
19 2017, Merrill Lynch sends a verification of deposit
20 to THAG showing that the value of account 250 as of
21 January the 19th of 2017 is \$650,000. Do you see
22 that?
23 A. Jest.
24 Q. So around January 29, 2017, that account
25 was up and running and had \$650,000 in it.

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1 A. Man, this is like a forensic study.
2 Q. Well, we made some progress on it, that's
3 for sure. So now that we've been through that
4 process, can you tell me why, on May the 2nd of
5 2017, \$649,000 would have been transferred from
6 Merrill Lynch account 2250 to Merrill Lynch 2213?
7 A. No, sir, I can't.
8 Q. Do you agree with me that that \$649,000
9 sum should not have been transferred out of account
10 2250 at that point in time?
11 A. You know, I would say so. I'm just not --
12 after looking at this and going through it, I'm not
13 as -- my flow isn't following as good as it was
14 earlier. 2218, I don't know what account that is.
15 I also see the big account where \$3.3 million is
16 already pledged. And where is the \$3.3 million --
17 what did we do with the \$3.3 million beginning for
18 that account, which leads me to say, Hey, there's a
19 lot more stuff happening out there behind the scenes
20 other than your secured account and that's what
21 happened in the whole scheme of things. We didn't
22 know what was going on.
23 Q. Well, since those accounts belong to THAG,
24 you should have known, right?
25 A. Hey, you know what? If the IRS come in

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1 and sit down, they're gonna say you should know
2 where every dollar went, every dollar accounted for,
3 but the reality is I don't. I guess that's probably
4 why I'm still not in those operations.
5 Q. Here is another transfer confirmation
6 document from Merrill Lynch. This one is dated May
7 the 31st of 2018.
8 A. Uh-huh.
9 Q. And it's sent to THAG, LLC, at 8983 Ocean
10 Highway of Pawleys Island.
11 A. Okay.
12 Q. That's the correct address for THAG,
13 right?
14 A. Yes, sir.
15 Q. And what this note shows is on May the
16 31st of 2018, \$909,000 was transferred from Merrill
17 Lynch account 2250 to Merrill Lynch account 3535.
18 A. 2250 seems familiar.
19 Q. That's the pledged collateral account that
20 was opened for the Jones Nissan transaction.
21 A. So somehow now it's got \$900,000 in it?
22 Q. It looks like, yes, money was put back
23 into it for some reason, but then transferred out
24 back in May of 2018. Can you tell me why?
25 A. We don't even know what the balance is in

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1 that account, or whatever it is now, if that money
2 is going back in it. I think we need an accountant
3 -- I think -- what we need is an accountant to go
4 through this and figure it out.
5 Q. Have you asked an accountant to do that?
6 A. No, sir, I hadn't had a reason to do that,
7 at least for this particular exercise, but that's
8 probably what needs to happen to give you answers to
9 the questions that you're looking for.
10 Q. Oh, we're going to get those questions
11 answered, I promise you. If it's just a question of
12 how and when we'll get there.
13 A. I get it. I'm probably not going to be
14 very helpful in giving you that information; that's
15 all I'm saying. I want you to have it, because the
16 reality is "Hey, we're broke." So if you can help
17 me find some money that should have been there, I'm
18 all for it.
19 Q. All right. Let's look at this transaction
20 summary. This is, again, a Merrill Lynch document.
21 This is from --
22 A. And, furthermore, I don't know how much
23 more I need to be doing this. I don't know how much
24 more I need to be trying to go through these numbers
25 and stuff like that, because I don't know how far

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1 this goes out other than this particular date. And
2 I don't want to be talking about something going
3 through this that could come up some other way with
4 the government or something like that that might put
5 me in harm's way, or jeopardy's way, or that type of
6 stuff.

7 Q. Well, Mr. Holmes, this is your company.

8 A. And I understand. I get it. But by the
9 same token, I don't want to have to go through --
10 what I'm saying, I'm not equipped and prepared to
11 answer these questions. I don't want to be doing
12 something that -- not at your expense, but maybe it
13 gets to some other way for tax reporting or some
14 type of stuff that alleges something down the road
15 to another entity.

16 Q. I can't help you with that. I'm just here
17 to ask questions in the case that I brought on
18 behalf of my clients, so that's what I'm going to
19 keep doing.

20 A. And I certainly understand that. But for
21 me to try to come up with these numbers that I'm not
22 equipped to answer, I could possibly be putting
23 myself in harm's -- outside of this case to other
24 fiduciary responsibilities to other companies,
25 that's all I'm telling you, from a legalistic type

1 thing.

2 Q. I'm going to ask these questions. If you
3 decide you need to plead the Fifth, that's -- you
4 know, that's your decision to make.

5 A. And I'm glad you brought that up. And I
6 think -- I'm glad you brought that up. And we
7 should have been there, because I'm not equipped to
8 answer these particular questions, because I didn't
9 keep any books or any of that type of stuff. And I
10 don't want to be somewhere -- I mean guilty of
11 misappropriating funds or something like that that
12 was outside of my control that gets even outside of
13 our control from that particular point.

14 Q. Let's look at this transaction.

15 A. Me pleading the Fifth may be something
16 that we need to do with that. I didn't even know
17 that was an option until we actually talked about
18 it.

19 MR. RAMSEY: Let's do this. Let's let Mr.
20 Hudson ask his question.

21 Mr. Hudson, if he believes he might need
22 to plead the Fifth, I think you would be okay
23 with me conferring with him to see if that's
24 something he could do just for that one.

25 Let's let him keep asking questions.

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1 MR. HUDSON: Yes, I think if you need to
2 confer for the purpose of determining whether
3 or not to assert the privilege, the rules
4 certainly allow that.

5 MR. RAMSEY: Let's move forward, because I
6 don't know that it's necessarily something that
7 he's going to ask that you'll feel that you
8 need to do that.

9 EXAMINATION RESUMED BY MR. HUDSON:

10 Q. All right. Mr. Holmes, so this is an LMA
11 transaction summary, similar to a document we looked
12 at a short while ago. Again, this is for account
13 2247, but this one is for the time frame November
14 1-20-18 through November 30, 2018. Do you see all
15 that?

16 A. Yes.

17 Q. The last transaction that is shown on this
18 document is dated November the 29th, and it appears
19 to be a transfer from account 2250 in the amount of
20 \$635,794.29. Do you see that?

21 A. Yes.

22 Q. Why was that transfer made out of account
23 2250 at that point in time?

24 A. I don't know.

25 Q. Do you agree with me that that transfer

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1 should not have been made out of account 2250 at
2 that point in time?

3 A. I don't know, either. I don't know enough
4 information to elaborate on that.

5 Q. Well, the way the pledge agreement worked
6 with Jones Nissan is the collateralized account was
7 always supposed to have sufficient funds on deposit
8 in it to satisfy the outstanding balance due under
9 the promissory note, right?

10 A. I understand.

11 Q. And by making this transfer on November
12 the 29th of 2018 in the amount of \$635,000 and
13 change, you would agree with me that THAG or Nissan
14 of Sumter, LLC, whatever the case may be, breached
15 the promissory note by making that transfer, right?

16 A. I don't agree with you, because I don't
17 understand.

18 Q. What don't you understand?

19 A. I don't understand any of these
20 transactions on this page.

21 Q. Why do you not understand them?

22 A. I'm just unfamiliar with them. I don't
23 have enough source documents to be able to account
24 for where the money came from, and how it went, and
25 what the purpose of the sources and uses of these

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Page 165 1 funds. I don't know. 2 Q. Well, let me ask you this question. 3 A. Okay. 4 Q. This document we're looking at indicates 5 that account 2250, along with account 2213, is 6 pledged as collateral for account 2247. Do you see 7 that? 8 A. Okay, I see pledged collateral accounts, 9 yeah, those two accounts, yes, sir, 2250 and 2213. 10 Q. 2250 is the important one, because that's 11 the one that was open for the Jones Nissan deal, 12 right? 13 A. Yes, sir, I think they're all important. 14 Q. But the one that's important to me is 15 2250. 16 A. I understand. 17 Q. Do you agree with me that by pledging 18 account number 2250 as collateral for account 2247, 19 you breached the pledge agreement that you signed 20 for purposes of the Jones Nissan transaction? 21 A. No, I don't agree with you. 22 Q. Why do you not agree with me? 23 A. Because I don't know what actually 24 happened. 25 Q. Why does that matter? The pledged	Page 167 1 continuously to represent and warrant that." Then 2 subparagraph B says, "The pledgor is the owner of 3 the collateral, free of all security interests or 4 other encumbrances except the security interest." Do 5 you agree with me that once account 2250 was pledged 6 as collateral for account 2247, THAG was in breach 7 of subpart B of paragraph four? 8 A. I guess. I'm not relating to this very 9 much. I'm sorry, I'm just not, when it comes to 10 that. 11 Q. Paragraph six on the next page deals with 12 covenants of the pledgor. It says, "The pledgor" -- 13 A. Excuse me, sir. Where did this document 14 come from? Whose document is this? 15 Q. This is Exhibit 6. This is the pledge 16 agreement that was entered into on February the 28th 17 of 2017 by THAG and Jones Nissan. 18 A. Nobody ever read this to me. 19 Q. Well, sir, isn't that your signature on 20 the bottom of page 4? 21 A. It is, but the way we're going over it 22 now, nobody never did this to me. 23 Q. Well, did you read the document yourself? 24 A. No, sir, I did not. 25 Q. Were you able to read at the time?
Page 166 1 collateral account agreement or -- or the pledge 2 agreement said that the account that was pledged for 3 purposes of the Jones Nissan deal was not to serve 4 as collateral or a security for any other 5 transaction. What is difficult to understand about 6 that? 7 A. I don't know. Are you asking me why does 8 it matter? And that's my question to you. I don't 9 know. Why does it matter? 10 Q. Look, we can go back through all these 11 documents and we will stay here until midnight, if 12 we need to get clear on it. 13 A. I don't know if we need to, because we're 14 probably not going to get much clearer than we 15 already are. Let me use the restroom. Can I take a 16 five-minute break? Thank you. 17 (Whereupon, a recess was taken.) 18 EXAMINATION RESUMED BY MR. HUDSON: 19 Q. Mr. Holmes, we're back to Exhibit 8, which 20 is the pledge agreement. 21 A. Okay. 22 Q. Paragraph four, which talks about 23 warranties of the pledgor says, "The pledgor 24 represents and warrants, in so long as the 25 indebtedness remains unpaid, shall be deemed	Page 168 1 A. Apparently -- I mean, I did not read it. 2 Q. And I'm not trying to be flippant in 3 saying that. But, I mean, if you had the desire to 4 read this document before signing it, you would have 5 been able to do that, correct? 6 A. I just don't review these documents. I 7 don't ever review them. 8 Q. But you should, though, before you sign a 9 legal document like this, right? 10 A. I understand that. I understand that now. 11 I just don't know how it's helping me at this 12 particular point. 13 Q. Paragraph six -- 14 A. I mean, that's what I should do, but I 15 don't see where that's going to happen. Go ahead, 16 Counselor. 17 Q. Paragraph six on page 2 of the pledge 18 agreement says, "The pledgor," and then in subpart 19 B, "will keep the collateral free from all security 20 notice or other encumbrances except the security 21 interest." Do you agree with me that when THAG 22 assigned account 2250 as collateral from account 23 2247, it was in breach of the covenant in subpart B 24 of paragraph six? 25 A. I'm unaware, counselor. I'm sorry.

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1 Q. What are you not aware of? 2 A. I'm just not aware of the breach between 3 the accounts and all those things. 4 Q. Well, it's really quite simple. Do you 5 agree with me that when account 2250 was assigned as 6 collateral for account 2247, that that constituted a 7 breach of subpart B of paragraph six in this pledge 8 agreement? 9 A. I don't agree, because I don't understand. 10 Q. How did that action not constitute a 11 breach of subpart B of paragraph six? 12 A. I can't explain that to you. 13 Q. Do you agree with me -- 14 A. Most of the things that we've identified, 15 the documents are from the very beginning within the 16 first hour. I think we kind of said that already. 17 Now, I'm not sure about anything with this. 18 Q. Let's look at subpart C of paragraph six. 19 It says, "The pledgor will not assign, sell, 20 transfer, deliver, or otherwise dispose of the 21 collateral or any interest therein or attempt to do 22 the same without the prior written consent of the 23 lender." 24 A. I get it. I hear it. 25 Q. Do you agree with me that when THAG	Page 169 1 to that sale? 2 A. No, sir. I read -- I looked at the 3 highlight points, was the numbers correct, but the 4 wording of it, I didn't read it. 5 Q. You agree with me that you should have, 6 don't you? 7 A. Probably, or somebody should have. 8 Q. Did you hire anybody to read the document 9 for you and summarize them for you? 10 A. Well, yeah, I have people that kind of 11 summarizes them. 12 Q. Who was that? 13 A. Well, for one would have been Mark 14 Sanchez, would be one of them. 15 Q. Did he tell you you shouldn't sign the 16 documents? 17 A. No. 18 Q. All right. Mr. Holmes, this is another 19 transaction report from Merrill Lynch. This one for 20 account 2213 for the time frame April 29 of 2017 21 through May the 31st of 2017. Do you see this? 22 A. Yes, sir, I do. 23 Q. We look down in this section entitled, 24 "Other Debits or Credits." It indicates on May the 25 2nd, there was a transfer from account 2250 in the
1 assigned account 2250 as collateral for account 2247 2 it breached subpart C of paragraph six? 3 A. I don't know. 4 Q. The answer is "yes," isn't it? 5 A. I don't know. I mean, I think you're 6 assuming that or you figured that, I just don't 7 know. You are over my head now, Counsel, with that. 8 Q. Well, explain to me how the assignment of 9 account 2250, in the scenario I just described, 10 would not constitute a breach. 11 A. And I certainly don't mean not to be 12 cooperating with you, because that's what I want to 13 do. But at this point, I just don't know how all of 14 this -- it's not resonating with me. Paragraph 6-C 15 to 2250, the account 2250, I don't know how all that 16 ties together. I know what you're probably leading 17 me to try to say to go through it. I mean, I 18 understand that. But to be real with you, I don't 19 know, because I haven't even read these forms 20 whatsoever; so I can't relate to it that way. 21 Q. Did you read any of the documents that 22 constituted the transaction documents for the deal 23 with Jones Nissan before you signed them? 24 A. Absolutely not. 25 Q. You didn't read a single document related	Page 170 1 amount of \$649,710.67 cents. Do you see that? 2 A. Yes, sir. 3 Q. So that transfer would have gone from 4 account 2250 to account 2213. And that would have 5 been roughly two months -- or, I guess, three months 6 after the pledge agreement was entered into for 7 account 2250 as part of the Jones Nissan deal. Why 8 was \$649,000 transferred out of account 2250 on or 9 about May the 2nd of 2017? 10 A. That's a good question, Counselor. I 11 don't -- I certainly don't know. 12 Q. It should not have been, should it? 13 A. Once again, I don't know. Is the account 14 you're talking about the pledged accounts, which is 15 2020, something like that, 2250. 16 Q. 2250 is the pledged account. 17 A. Okay. And that's the one you said 18 six-hundred-some-thousand came out of? 19 Q. If you look here, May the 2nd, it says, 20 "transfer from account 2250" -- 21 A. Okay. 22 Q. -- in the amount of \$649,710.00 to account 23 2213." 24 A. 2213. Okay. 25 Q. All right. Why did that transfer take

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1 place? 2 A. I don't know. It looks like it was -- I 3 mean, from the looks of this, it looks like it was 4 money being transferred back and forth into the 5 account. And it looks like it was an active 6 account, which looks like at some point, you showed 7 me \$900,000 that went into it. 8 Q. I will agree with you that the records 9 seem to indicate that money was going out of and 10 then back into account 2250 over the 2017 and 2018 11 time frame. I'm just trying to understand why. 12 A. You know, I don't know the answer to that. 13 Q. You agree with me that when this transfer 14 was made on May the 2nd, that that was a violation 15 and a breach of the pledge agreement, right? 16 A. Well, it looks like the whole account, the 17 way it was operating, was not operating as it was 18 intended to. And for some reason, I don't know if 19 it was allowed to be able to do that. Should we 20 have been able to move money in and out of that 21 account? It seems like it was happening quite a 22 lot. So I don't know if it was set up correctly or 23 not -- 24 Q. When you entered into -- 25 A. -- or how the accounts got on in, because	Page 173 1 A. You're absolutely correct, counsel. Other 2 than what my people tell me, you know, and all these 3 documents, I never read them. You know, we've done 4 this office full of documents. 5 Q. We can go back through these specific 6 exhibits, if we need to, but I just want to make 7 sure I'm crystal clear on this. So Exhibit 1 to 8 your deposition is the asset purchase agreement. Is 9 it your testimony that you never read that document 10 before you signed it? 11 A. Exhibit 1. Let's look at that. I want to 12 look at which one, because there was one asset 13 purchase agreement I don't know anything about. 14 Q. All right. This is the first page and 15 I'll take you -- it's got 24 pages. 16 A. Okay. 17 Q. We can scroll through them all, if you 18 want. 19 A. And this is about what I do. It looks 20 like a standard APA. 21 Q. So the signature page is on page 19 of the 22 document? 23 A. Yes, that's it. 24 Q. Did you read this APA before you signed 25 it?
Page 174 1 when we have different accounts, we probably had 2 maybe 20 or 30 different banking -- 20 or 30 3 different bank accounts. 4 Q. When you entered into the pledge agreement 5 with Jones Nissan, did you intend to honor it? 6 A. Yes. I mean, I intended to pay Jones 7 their full amount of money that we said as I agreed 8 to pay any shareholder or any stockholder that we 9 bought or any lender that we borrow money from. 10 Q. Well, if you didn't read the pledge 11 agreement before you signed it and didn't know what 12 was in it, how did you intend to go about honoring 13 the agreement? 14 A. You know, that's a good question, you 15 know, from that standpoint. And it looks like maybe 16 we were honoring that agreement, because the money 17 kept going in and out of the account, from at least 18 our understanding. I don't know, based off of what 19 you're saying, the pledge account, that you could 20 not touch it. You know, I don't know if that was 21 the understanding that we had or what it was. I'm 22 not sure. 23 Q. Well, if you didn't read it, how could you 24 have any understanding of what the agreement 25 required?	Page 175 1 A. Not all of it. Very little of it, to be 2 honest with you. 3 Q. Are you able to tell me which portions you 4 did, in fact, read? 5 A. It looks like the part that has the 6 numbers in it. I don't really know if I read very 7 much of it at all other than the fact because, you 8 know, okay \$500, it can't be over \$100,000. Okay. 9 I think probably what I was looking at was exhibits 10 and how was it going to play out in the dollars. 11 Q. Exhibit 2 is the first amendment to the 12 asset purchase agreement. Did you read this 13 document before you signed it? 14 A. No. 15 Q. Exhibit 3 is the second amendment to the 16 asset purchase agreement. Did you read this 17 document before you signed it? 18 A. Exhibit 3, I didn't read it. Somebody 19 just probably told me what the differences between 20 the two were, why we needed to -- why we needed to 21 sign another exhibit. 22 Q. Who told you that? 23 A. Well, it could have been Weathers or it 24 could have been whoever saw a need to do an exhibit 25 -- another exhibit.

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Page 177 1 Q. Weathers was your attorney? 2 A. Yes, sir, I believe he was at that 3 particular point in time. But it could have been 4 Nissan says, "You know what? You guys need to do 5 another exhibit and this one has got to say this," 6 and it may be one sentence that's in there. As long 7 as we find that one sentence is what they wanted to 8 get us past the road, that's what it was. 9 Q. Exhibit 4 is the third amendment to the 10 asset purchase agreement. This is the one that 11 deals with seller financing? 12 A. Yes, this one I did not see at all. 13 Q. Did you read this document before you 14 signed it? 15 A. I didn't see it because, first of all, 16 this particular document is not an asset purchase 17 agreement. 18 Q. I know. It's amendment to the asset 19 purchase agreement. 20 A. I mean, it's not an amendment to the asset 21 purchase agreement. 22 Q. What do you mean? 23 A. It doesn't speak to the asset purchase 24 agreement and it doesn't have this language in it. 25 I'm not used to seeing that.	Page 179 1 Q. Is that your signature on the bottom of 2 the last page of this exhibit? 3 A. It appears to be. 4 Q. But you signed this document without 5 reading it like you did the others, correct? 6 A. I never saw this. I would scroll through 7 it, or whatever, but this particular one, it only 8 speaks to seller financing. It doesn't make sense 9 to me, because in the scheme of things, I wanted to 10 do the Jones deal. I wanted to do the Jones deal. 11 I wasn't going to do anything that was going to mess 12 this deal up off the table. I wasn't going to do 13 that because it was -- I thought it was going to be 14 part of the success to our future, this particular 15 deal, and I was doing what the manufacturers asked 16 me and wanted me to do. This was outside the 17 manufacturers there, so certainly -- and I probably 18 said too much anyway. I wouldn't agree with this 19 particular document. 20 Q. The issue of seller financing was very 21 important coming down the home stretch of this 22 agreement, wasn't it? 23 A. Yes. In order for this deal to have been 24 put together, yes, the seller financing was, 25 absolutely, unless we wouldn't have had to find some
Page 178 1 Q. Let's look at it. We're on the first page 2 of Exhibit 4, which is the third amendment to the 3 asset purchase agreement. Do you see that up top? 4 A. I do. 5 Q. And then about five paragraphs down, it 6 states, "Paragraph three of the asset purchase 7 agreement shall be amended by adding the following," 8 and then it references paragraph 3-A-3, which talks 9 about seller financing, right? 10 A. Yeah, I just don't know how it ties into 11 that even paragraph three. I mean -- 12 Q. It's amending paragraph three, is what the 13 document says. 14 A. Sure, I see that. I just don't know if 15 that's even optional. If that's a part of -- that 16 would have to be -- you would have to get 17 manufacturer's approval to add this in. 18 Q. Did you do that? 19 A. No, we didn't do it. Because like I'm 20 telling you, I don't remember seeing this document 21 whatsoever or else this would have -- this document 22 right here would have voided all the other 23 transactions, this document. 24 Q. Then why did you sign it? 25 A. I don't even know how it got signed.	Page 180 1 more. 2 Q. Right. If the seller had not been willing 3 to finance \$650,000 of the agreed-upon purchase 4 price, this deal would not have gotten done, right? 5 A. Yes, and the sellers are aware of that 6 too. 7 Q. But you were also aware of that, correct? 8 A. Yes, as well as the sellers. 9 Q. Well, I understand. But the sellers 10 aren't the ones claiming that they never saw this 11 third amendment to the APA like you are. So the 12 seller's position is yes, that's a valid amendment, 13 and the reason that amendment was done is because 14 the deal was not going to happen unless we were 15 willing to finance \$650,000 worth of the purchase 16 price. 17 A. The seller wasn't in a position to make 18 that argument. 19 Q. What are you talking about? 20 A. The sellers -- this argument of saying 21 that the deal couldn't happen unless if this was put 22 in an asset purchase agreement, they didn't have the 23 -- they didn't have the ability to do that. That 24 was strictly a buyer's situation to do that, and 25 they know that.

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1 Q. I don't understand what you're trying to
2 indicate. Bottom line is they indicated they were
3 willing to finance \$650,000 worth of the purchase
4 price, right?

5 A. Yes, but an off-record transaction.

6 Q. What do you mean "off-record"? It's part
7 of the APA?

8 A. No, it was not. It was not. That was not
9 a part of the manufacturer's agreement, the APA for
10 the manufacturer to sign off on that, that was not.

11 Q. Mr. Holmes, Jones Nissan didn't sign off
12 on anything with the manufacturers with respect to
13 the deal with Jones Nissan, and you did; so it
14 sounds like you're just trying to confuse things and
15 muddy the waters. Is that what's going on at this
16 point?

17 A. Absolutely not, Counselor. What I'm
18 trying to do is clarify that this third amendment
19 came up somewhere and wasn't part of our original
20 asset purchase agreement because for an asset -- the
21 asset purchase agreement has to be signed off on by
22 the manufacturer to say, okay, we have this
23 document, we have everything that includes this
24 deal, they have that. And that -- they wasn't privy
25 to this information. So that -- you know, so what

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1 I'm telling you is that's not a purpose of the asset
2 purchase agreement as it is just a promissory note,
3 which I did tell you I did see the promissory note,
4 which we have, which we both shared collectively.
5 But this one, where it came from, I don't know.

6 Q. Do you understand how these amendments
7 work?

8 A. I do.

9 Q. How do they work?

10 A. Well, it may be -- we might have to amend
11 it because we can't close by a certain date. Well,
12 that amendment will have to be produced to say,
13 "Hey, we need to extend our contract and this is the
14 reason why," so that's an amendment to the first
15 thing.

16 Q. The amendment modifies the language that's
17 in the original document?

18 A. Correct.

19 Q. So that is what this third amendment is
20 accomplishing. It is modifying the language that's
21 in the original APA that the parties executed.

22 A. So you're saying that that doesn't have --
23 the amendments don't have to be approved by the
24 manufacturer; is that what you're saying?

25 Q. I'm not saying either way. I mean, that's

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1 what you have been telling me and I'm just curious
2 to know why.

3 A. Well, I mean, that's their only record of
4 the deal being sold. There isn't any disclosure
5 documents, there isn't any of those. But they have
6 to approve everything that -- to the seller of the
7 transaction. They have to approve it. And that's
8 -- this is their legal form -- this is their legal
9 form.

10 Q. Whose legal form?

11 A. The manufacturer.

12 Q. So you're telling me the manufacturer,
13 meaning Nissan Motor Corporation, came up with this
14 third amendment to the asset purchase agreement?

15 A. No. I mean, that is absolutely not what
16 I'm telling you. I'm actually telling you the
17 contrary. What I'm telling you is that all
18 amendments, all APAs have to be set up, and then
19 they will -- then once they approve this, then they
20 will give us a letter of approval saying it's okay
21 for you to buy this deal. So they wouldn't do that
22 without an asset purchase agreement. You won't get
23 manufacturer's approval. That's how they give you
24 manufacturer's approval. And in this particular
25 sense, they wouldn't have given me manufacturer's

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1 approval if they have seen this document, that is
2 what I'm telling you.

3 Q. Then why did you sign it if you knew it
4 might jeopardize the manufacturer's approval?

5 A. What I'm telling you, I don't remember
6 signing it and I wouldn't have signed it if I saw
7 this.

8 Q. Well, how do you explain your signature
9 being present on the last page of the agreement --
10 or amendment rather?

11 A. I don't. I can't explain that other than
12 it wasn't my real signature. It's definitely not
13 the printing of my name. I didn't do that.

14 Q. So at 6:77 on Thursday night, are you now
15 testifying that you did not sign this amendment on
16 December the 29th of 2016?

17 A. No, I'm not saying that. I'm saying I
18 don't recognize this document.

19 Q. Well, I'm not focused on the document so
20 much as your signature in particular. How did your
21 signature get on here?

22 A. You know, I don't know. Let's go back and
23 look at this. Can you scroll the document for me?

24 Q. What part do you want to see?

25 A. Pages 1, 2, 3. You know, I don't know,

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1 because here is the thing with this. Usually what
2 we'll do is we will initial each page, so that's the
3 original page to that document.

4 Q. Have you seen that with any of the other
5 documents we have been looking at for the past five
6 hours?

7 A. Not this set, but I've seen them -- I had
8 them with other documents.

9 Q. I mean, it sounds to me like you didn't
10 pay the attention that you should have to this deal
11 as a whole. Is that a fair assessment?

12 A. Well, I mean we could say that. But I'm
13 saying back to this document here, as that one, I
14 don't agree with and I don't know where it came
15 from.

16 Q. Are you contesting the validity of this
17 third amendment to the APA?

18 A. Maybe. I don't know.

19 Q. Well, now is the time. You know, you've
20 got to pick a path and travel with it at this point.
21 So is this document valid or not, in your view?

22 A. I can't -- I don't -- I don't know for
23 several different reasons.

24 Q. What are those reasons?

25 A. Well, I mean like we have been saying,

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1 this -- a manufacturer's approval, they would have
2 to give us this document, they would have to have
3 this directly to them to give us approval to proceed
4 with the buy-sell agreement. And also, Nissan North
5 America that is financing the deal would have to
6 have this amendment too. And I'm saying if they saw
7 this amendment, it would have probably killed the
8 deal.

9 Q. Well, did you send this amendment to them
10 and ask them to approve it?

11 A. No, sir, I didn't. That's what I'm trying
12 to tell you.

13 Q. Why not?

14 A. Why didn't I send it?

15 Q. Right.

16 A. Because it wasn't -- it's not a part of
17 the asset purchase agreement.

18 Q. Well, the amendment says it is part of the
19 asset purchase agreement, so how do you explain
20 that?

21 A. I can't. We can't get a satisfactory
22 answer on this particular document, so I don't know
23 what path we take, how do we rule this. So right
24 now, I am contesting the validity of that document
25 and of that asset purchase agreement, the third

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1 amendment. I don't mean no harm by it, I'm just
2 telling you.

3 Q. Right. Now that you've read it, you're
4 contesting it. I get it.

5 A. No, that I saw it. And the physical thing
6 that -- you know, I see all those documents right
7 here. Let's go back to the warranty of pledgor. I
8 saw that too, but I don't know what that means.
9 Security interest, I saw that too. Delivery of
10 collateral, I see that, but I don't know what that
11 means, but I do know what it means by seller
12 financing in bold writing. That sticks out like a
13 sore thumb.

14 Q. And that was a specific point that was
15 negotiated between the parties in order to try to
16 get the deal consummated, right?

17 A. Well, once again, I'm just going back to
18 that document and what you were saying, that I
19 should have read it, and did I read it or not. And
20 that is very bold, it stands out as something that's
21 very important, you need to see this.

22 Q. Sure, it does. And then if you look at
23 Exhibit 7, that promissory note is consistent with
24 the seller financing language that we just saw in
25 Exhibit 4, right?

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1 A. Well, yeah, this one is, yeah, what a
2 promissory note looks like to me.

3 Q. And it's for a face value of \$650,000,
4 right?

5 A. I get it. Yes, sir.

6 Q. And did you sign this promissory note, or
7 do you want to change your testimony about that?

8 A. Did I sign it? I mean, my signature is on
9 all of them. You know, I don't know how valid -- I
10 mean, did I do it? There's some things I don't
11 sign. There's a lot of stuff I don't sign.

12 Q. I understand. But did you sign this
13 document, Exhibit 7?

14 A. I would believe so. I'm not sure, but I
15 am aware of the agreement.

16 Q. And this document, Exhibit 8, which is the
17 pledge agreement, this is also entirely consistent
18 with the third amendment to the APA that we just
19 looked at?

20 A. Is it an agreement to the APA. It looks
21 like it.

22 Q. It deals with the \$650,000 that's to be
23 financed by the seller, right?

24 A. Yes, sir.

25 Q. You acknowledge that you signed this

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1 pledge agreement? 2 A. Yeah, it looks like it. 3 MR. RAMSEY: I was just asking if you know 4 about how much longer you have. 5 MR. HUDSON: I don't. It just depends on 6 how he responds to some of these questions. I 7 feel like we're backtracking. 8 MR. RAMSEY: Sure, I don't want to put 9 limits on you, but if we could try to wrap up 10 by 7:00 or so. I mean, if you go to 7:30, I'm 11 not going to sit here and whine and complain 12 but... 13 MR. HUDSON: I've got to be longer than 14 that, I can tell you. 15 MR. RAMSEY: All right. 16 THE WITNESS: You know what? Why don't we 17 reconvene another time? I mean, I don't want 18 to put you guys -- I don't want to disrespect 19 you or whatever, but I certainly wasn't 20 prepared to go this late. 21 MR. HUDSON: Well, I'm not going to agree 22 to anything at this point. Let's just keep 23 going. If it gets to the point where you guys 24 have an issue, we can talk about it, but let's 25 keep going.	Page 189 1 A. No, I think I was probably about 80 2 percent owner. 3 Q. Okay. How long were you an 80 percent 4 owner of Pawleys Limited? 5 A. You know, I think that company probably 6 lasted two years. 7 Q. Did you draw income from that company? 8 A. I didn't draw -- I didn't draw any income 9 from it, but we dissolved it. And I think there was 10 some outstanding shares that we sold and there was 11 some income produced off of that once we got rid of 12 it. It wasn't very much. 13 Q. How much was it? 14 A. At best, I want to say about 100K. 15 Q. What was done with the money? 16 A. What was done with all the money? Trying 17 to keep these dealerships alive. Remember I told 18 you we were losing at a rate of \$500,000 a month? 19 Q. Did you pay taxes on the money that was 20 gathered from the dissolution of Pawleys Limited -- 21 or distributed, I gather? 22 A. Did I pay taxes? 23 Q. Yes. 24 A. Of course I did, John. 25 Q. Who would have handled your taxes at that
Page 190 1 MR. RAMSEY: I'll let you know when we 2 reach that point at about 7:30, and hopefully 3 we can terminate by agreement at that time. If 4 not, then we will do what we need to do. 5 EXAMINATION RESUMED BY MR. HUDSON: 6 Q. All right. Look at Exhibit 17, Mr. 7 Holmes. This is a document that came from -- I 8 believe it was one of your tax returns. And under 9 this part 7-B up towards the top, there's some 10 language that says, "Taxpayer is an owner of an 11 automobile dealership that reinsures certain finance 12 and insurance products sold to vehicle owners by the 13 dealership with a reinsurance company. Either the 14 dealership or at least one of its owners or someone 15 related to the dealership or one of its owners owns 16 20 percent of the reinsurance company." And then if 17 you look down further on the document, there's 18 reference to a Pawleys Limited as being the 19 reinsurance company. What is Pawleys Limited? 20 A. It was a -- yeah, it was a reinsurance 21 company at one point in time that we had, that we 22 tried to reinsure some of the insurance companies 23 some warranties. 24 Q. So you were a 20 percent owner of Pawleys 25 Limited at some point in time, is that right?	Page 192 1 point in time? 2 A. My tax return would be my accountants, my 3 current accountants. 4 Q. Exhibit 18, it's a Notice of Filing 5 Foreign Judgment. I believe this emanates from 6 litigation that was brought by THAG, Nissan of 7 Orangeburg, Nissan of Sumter, and you individually 8 in Georgia -- I think it was Gwinnett County -- by 9 Automobile Protection Corporation. Tell me about 10 that litigation, please. 11 A. When is this? When is this document here? 12 Q. Well, this was filed in 2021 here in South 13 Carolina, the 22nd of September, 2021, but the 14 Georgia litigation was earlier. 15 A. I think it was in that stack. 16 Q. Tell me what you're looking for and I will 17 tell you if I can get you to it. 18 A. I said everything is in there in that 19 document that tells you about it. 20 Q. It looks like the judgment sum in Georgia 21 was \$693,525.43. Do you see that? 22 A. Yes, sir. 23 Q. Has that judgment been satisfied? 24 A. Yes, I think it has. 25 Q. You paid that entire amount?

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Page 193 1 A. No. 2 Q. How much did you pay? 3 A. I think that judgment was about -- I don't 4 know -- I want to say it was about \$550,000. 5 Q. When was the final payment made? 6 A. I'm not sure of the exact date. 7 Q. How about year? 8 A. It would have been last year. 9 Q. 2022? 10 A. Yes, sir. 11 Q. How did you come up with the funds to pay 12 \$550,000 to satisfy that judgment? 13 A. I don't know if I'm at liberty to discuss 14 that. 15 Q. Why not? 16 A. I don't know. 17 Q. Well, I think you are. And if you refuse 18 to, we can just ask the Court to give us a ruling on 19 it as we move forward. Are you subject to some kind 20 of confidentiality agreement? 21 A. Yeah. I mean, there is some 22 confidentiality stuff that's out there. I just will 23 say it got satisfied somehow. 24 Q. Who paid the funds that satisfied the 25 judgment?	Page 195 1 of the funds that were used to satisfy this 2 judgment? 3 A. It is simple. I had to borrow what I 4 could to satisfy to get the judgment to go away. 5 Q. Who did you borrow those funds from? 6 A. Well, I mean, I don't want to discuss that 7 portion of it, but they were just -- it was just 8 borrowed money. 9 Q. Then I want you to tell me who you 10 borrowed that money from. 11 A. I understand. 12 Q. Are you going to do that, or not? 13 A. I just said, you know, what I felt 14 comfortable in saying. 15 Q. Well, the way a deposition works is you 16 have an obligation to answer my questions, unless 17 you are instructed not to by your attorney, and I 18 have heard no instruction from your attorney not to 19 answer that question. 20 A. I did. I mean, I answered to the best of 21 my ability without, you know, getting into the 22 possibility of any other legal issues. 23 Q. Well, I'm just going to be candid with 24 you. If you're not going to respond to my question 25 with the information I'm seeking, I'm going to file
Page 194 1 A. Like I said, I mean I'm not really at 2 liberty to discuss that at this moment in time. 3 Q. Is there a written agreement that 4 prohibits you from disclosing those details? 5 A. Is there a written agreement? 6 Q. Yes. 7 A. Not that I'm aware of. 8 Q. Well, why do you think that you're not 9 allowed to discuss the details of the payment of the 10 judgment? 11 A. I don't know. I have to refer back to you 12 on that. 13 Q. That's not going to be good enough. 14 MR. RAMSEY: John, I was just saying off 15 the record real quick, let me talk to him and 16 see what his reason is for thinking he can't 17 disclose -- you're wanting to know like the 18 source of the funds? 19 MR. HUDSON: I am. 20 MR. RAMSEY: Okay. Let me talk to him off 21 the record for a second. 22 (Whereupon, a discussion was held off the record.) 23 MR. RAMSEY: We're back on. 24 EXAMINATION RESUMED BY MR. HUDSON: 25 Q. All right. Mr. Holmes, what is the source	Page 196 1 a motion to the Court and try to compel this 2 testimony. So we can go down that road, if we need 3 to, and maybe the judge says you don't have to tell 4 me. I don't know how he would rule. But I feel 5 it's fair game. And since my client is owed in 6 excess of \$360,000, this is a relevant line of 7 questioning. 8 MR. RAMSEY: Let me go off the record real 9 quick to talk about how he's going to respond. 10 (Whereupon, a discussion was held off the record.) 11 MR. RAMSEY: Sorry, John. Go ahead and 12 ask your question again. 13 EXAMINATION RESUMED BY MR. HUDSON: 14 Q. What's the source of the funds that you 15 used to satisfy the APCO judgment? 16 A. You know, John, once again, they were 17 borrowed funds and I am probably just going to plead 18 the Fifth on that so I don't -- to protect me and 19 other clients that was in it. 20 MR. HUDSON: Chris, I'm going to ask 21 you-all to put the substance of your recent 22 discussions on this issue on the record so we 23 can take this up with the Court. I just don't 24 think it's proper for him to not answer this 25 question. He's gotten to be very evasive with

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1 a lot of the questions over the latter half of
2 the deposition, so I just want to have it on
3 the record at this point.

4 MR. RAMSEY: Mr. Holmes and I discussed
5 the fact that he did borrow the funds. Once he
6 told me where he borrowed them from and what
7 they were designated for, he was concerned that
8 he may get in some type of trouble, possibly
9 criminal, if it came to light that those funds
10 were not used in the way that they had been
11 designated, so that's the basis for his
12 pleading the Fifth. He does not want to
13 incriminate himself by saying exactly where the
14 funds came from and exactly what they were
15 designated for originally.

16 EXAMINATION RESUMED BY MR. HUDSON:

17 Q. Mr. Holmes, did you borrow these funds
18 that were used to satisfy the APCO judgment from an
19 individual or an entity of some sort?

20 A. It wasn't an individual.

21 Q. It was an entity of some sort?

22 A. Yes.

23 Q. Was it a financial institution?

24 A. Yes.

25 Q. What was the name of the financial

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1 institution?

2 A. I mean, I think we already answered that.

3 I've answered enough of what I was going to answer
4 with that.

5 Q. You're not going to tell me the name of
6 the financial institution?

7 A. No, sir.

8 Q. Did you borrow 100 percent of the funds
9 that were used to satisfy the APCO judgment?

10 A. Yes, they were borrowed, all of them.

11 Q. Are you still paying off the loan that you
12 took out to pay off the APCO judgment?

13 A. Yes.

14 Q. How much is owed on that loan?

15 A. I don't remember.

16 Q. Is that loan formalized with
17 documentation?

18 A. Yes.

19 Q. Do you have that documentation?

20 A. No, I don't.

21 Q. Was the loan taken out by you individually
22 or one of your LLCs?

23 A. One of the LLCs.

24 Q. Which one?

25 A. I don't remember.

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1 Q. Was it THAG?

2 A. John, can we go to your next question?

3 I've answered as many questions as I can about that
4 particular thing.

5 Q. Have you reached out to this funding
6 source to try to get funds to satisfy my client's
7 claim?

8 A. I can't. I mean, we exhausted all
9 possibility of that in this particular time was the
10 judgment that was on the dealership was prohibiting
11 them actually going to start an action to remove the
12 store from me, and with that, there's no way to pay
13 anybody.

14 Q. Say that again. I didn't follow what you
15 said.

16 A. You can't have -- it's against the
17 manufacturer's agreements to have judgment on the
18 dealership.

19 Q. So that's why you took the steps you did
20 to satisfy this APCO judgment?

21 A. Yes, sir.

22 Q. So if my clients were to get a judgment
23 against you, would you take similar steps to satisfy
24 their judgment?

25 A. Well, we tried to settle your client's --

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1 your client's obligation a month ago and thought we
2 had reached an agreement to do that, and unbeknownst
3 to me, what changed their mind, I have no idea.

4 Q. I'm not talking about settlement, I'm
5 talking about a judgment. My question was if my
6 clients get a judgment against you, would you take
7 similar steps to try to satisfy that judgment that
8 you've taken with respect to the APCO judgment?

9 A. You know, I'm not aware. I'm not sure
10 about it. I don't know if I even -- probably I
11 don't even have the wherewithal or the ability to go
12 and do that anymore.

13 Q. Robert Malone is your CPA?

14 A. Yes, sir.

15 Q. And that's your individual CPA, right?

16 A. Yes.

17 Q. How did you get to Mr. Malone in
18 Chattanooga, Tennessee?

19 A. He was referred.

20 Q. Who referred him?

21 A. I'm not sure how it came out. It wasn't
22 Rob Malone, it was HHM Corporation.

23 Q. How long have you been using Mr. Malone?

24 A. It seems like 2017 -- 2016 or 2017.

25 Q. And what's his connection to HHM?

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Page 201 1 A. He works for the firm. The actual 2 accountant's name was Travis Horton. 3 Q. Yes, I notice Exhibits 21 and 22 to the 4 deposition are valuation reports. One is for Cheraw 5 Chevy Buick, LLC; Exhibit 22 is for Nashville Ford 6 of Georgia, LLC. These two valuation reports were 7 prepared by HHM, right? 8 A. Yes, sir. 9 Q. How did you get to HHM? Was that through 10 Robert Malone? 11 A. HHM is a parent company, is the accounting 12 firm. Rob works for the accounting firm. 13 Q. I got you. The name of Robert's Company 14 is Henderson, Hutcherson and McCullough, LLC? 15 A. That is HHM. 16 Q. I got you. That makes sense. 17 A. I think it's a firm that has probably 40 18 or 50 car accountants. They only do car 19 dealerships. 20 Q. That firm does specialize in auto 21 dealerships? 22 A. Yes, sir, that's all they do. And I think 23 I probably met them at one of our trade 24 associations. 25 Q. So at present, how many auto dealerships	Page 203 1 A. Maybe 2019 -- 2018 or 2019, one of those 2 two. 3 Q. What's your monthly rent? 4 A. It's like \$1200 a month. 5 Q. Does anyone live there with you? 6 A. Well, my niece does. 7 Q. Who is that? 8 A. Symone Gaymon. 9 Q. And she is your brother or sister's 10 daughter? 11 A. My sister's daughter. And she currently 12 works at the Chevrolet dealership. 13 Q. In Cheraw? 14 A. Yes, sir. 15 Q. That's the only Chevy dealership you 16 currently have? 17 A. Yes, sir. 18 Q. Who owns the dirt on which that dealership 19 operates? 20 A. It has a mortgage. 21 Q. Who holds that mortgage? 22 A. We do. 23 Q. Is it Cheraw Chevrolet Holdings? 24 A. Well, no, GMAC, General Motors is on it. 25 And we're trying to get it financed as we speak,
Page 202 1 do you own? 2 A. These two right here that you have the 3 valuation reports on. 4 Q. And those are the only two? 5 A. Yes, sir. 6 Q. Is THAG, LLC, still a going concern? 7 A. No. 8 Q. Does it generate any revenue at present at 9 all? 10 A. Absolutely no. 11 Q. Was anybody maintaining the books and 12 records for THAG? 13 A. Well, I mean, it doesn't operate, but HHM 14 is the accounting for all of our deals. 15 Q. Your 2020 tax return indicates a residence 16 address of 1556 Casilda Drive in Florence. Do you 17 still live there? 18 A. Yes, sir, still live there. 19 Q. Is that house owned or leased? 20 A. Leased. 21 Q. Who is the landlord? 22 A. Chandler Pointe. 23 Q. Is that an apartment or a house? 24 A. It's a townhouse. 25 Q. How long have you lived there?	Page 204 1 which takes a lot to buy it. 2 Q. GMAC is General Motors Acceptance Corp? 3 A. That is correct. 4 Q. And it's your testimony that they hold the 5 mortgage on the Cheraw Chevy property? 6 A. Yes. 7 Q. And you-all make a monthly mortgage 8 payment to GMAC Mortgage holdings? 9 A. Yes, sir. 10 Q. What is that payment? 11 A. I don't remember. 12 Q. Can you ballpark it? 13 A. I want to say maybe ten grand, somewhere 14 in that area. 15 Q. You don't have any ownership interest in 16 GMAC holdings? 17 A. You mean Chevrolet, General Motors? 18 Q. Yes, sir. 19 A. No. I wish. 20 Q. How about the dirt on which the Nashville 21 dealership is located? Who owns that? 22 A. Ford Motor Credit. 23 Q. Over the course of your career, have you 24 owned the dirt to any of your dealership locations? 25 A. Yes, pretty much all of it -- all of them.

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Page 205 1 Q. Do you still own -- 2 A. They were financed. 3 Q. Do you still own any of those properties? 4 A. No, I don't own any of them. I think the 5 Lugoff property is still in a forbearance agreement. 6 I don't think we've settled that yet. Even though 7 Mr. Johnson was supposed to be buying it, I'm not 8 sure where he is with it. 9 Q. When did you get rid of the Sumter Nissan 10 dealership? 11 A. I think the final asset purchase agreement 12 -- some time in, I want to say, August of 2019. 13 Q. How much did you sell it for? 14 A. I didn't sell it for anything, he just 15 assumed the operation. There was no value. He paid 16 for some of the assets and I got stuck with the 17 debt. 18 Q. Who assumed the operation? 19 A. Mr. T.J. Johnson. 20 Q. How did you find him? 21 A. I don't know. I don't remember. I think 22 he found me. 23 Q. Do you know him personally? 24 A. No, not really. Just a business 25 associate.	Page 207 1 A. No. 2 Q. Any side been accused of drinking or doing 3 drugs? 4 A. No. 5 Q. Do you still talk to your wife? 6 A. Yes, sometimes. 7 Q. How would you characterize your current 8 relationship? 9 A. It's strained, because of the litigation 10 process. 11 Q. Do you-all have any children together? 12 A. We do. 13 Q. How many? 14 A. Two. 15 Q. How old are they? 16 A. 36 and 31. 17 Q. Where do they live? 18 A. The 36-year-old lives in Alpharetta, 19 Georgia; the 31-year-old lives in Myrtle Beach, 20 South Carolina. 21 Q. What are your kids' names? 22 A. Brittanie and Salena Holmes. 23 Q. Do you currently provide your children any 24 sort of monthly allowance for living expenses or 25 otherwise?
Page 206 1 Q. What's the current state of that Nissan 2 dealership? 3 A. I mean, we were supposed to -- he finished 4 building a building and started a new operation 5 right down the street. 6 Q. Do you know if he's profitable? 7 A. I think they're all very profitable, very 8 profitable. 9 Q. You're currently in the process of going 10 through a divorce, is that right? 11 A. That is correct. 12 Q. And your wife's name is Pamela A. Holmes? 13 A. That is correct. 14 Q. What is the status of the divorce? 15 A. We're waiting for a trial date. 16 Q. What is the -- 17 A. We're in final discovery. 18 Q. Why are you-all getting divorced? 19 A. Irreconcilable differences. 20 Q. Is it a fault-based divorce? 21 A. No, sir. 22 Q. Has either side been accused of 23 infidelity? 24 A. No. 25 Q. Any side been accused of abuse?	Page 208 1 A. No. 2 Q. They're self-sufficient? 3 A. Yes. 4 Q. Are they married? 5 A. Yes. 6 Q. Do they both keep the last name Holmes? 7 A. No. 8 Q. What last name do they go by? 9 A. Their husband's last name. One is White 10 and the other is Goofingan. 11 Q. I'm sorry. Say that last one again. 12 A. Goofingan, G-o-o-f-i-n-g-a-n. 13 Q. Just give me a snapshot of your current 14 monthly expenses. You told me you pay about \$1200 a 15 month in rent. What other financial liabilities do 16 you currently have? 17 A. I pay my wife \$3,000 a month right now 18 until we reach an agreement, and just miscellaneous 19 credit card bills, and stuff like that. I pay about 20 \$1,000 on my credit card bill. 21 Q. \$1,000 total or on each? 22 A. No, \$1,000 total. Well, I say it averages 23 about \$1500. 24 Q. How many credit cards do you currently 25 carry?

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Page 209 1 A. Just one. 2 Q. What type is it? 3 A. It's a MasterCard by Chase. 4 Q. What's the current balance on it? 5 A. Approximately \$40,000. 6 Q. Any type of insurance premiums that you 7 have to pay on a monthly basis? Health insurance, 8 life insurance, anything? 9 A. Any type of -- yes, I got life insurance 10 policies. 11 Q. What are those premiums monthly? 12 A. I estimate at probably \$400 -- well, yeah, 13 about \$300. 14 Q. That's monthly? 15 A. Yes sir. 16 Q. Who are the companies that underwrite the 17 policy or policies? 18 A. The name of them? 19 Q. Yes, sir. 20 A. I think Northwestern is one and Assurity 21 is the other one, I want to think. I'm not aware. 22 I can find that information out for you. 23 Q. Are they term policies or whole life 24 policies? 25 A. I don't know the difference. They don't	Page 211 1 A. Yes. And medical retirement. 2 Q. What was the reason for that? 3 A. Propane explosion. 4 Q. Do you receive a monthly check from the 5 government? 6 A. Yes, I do. 7 Q. How much is it for? 8 A. Approximately \$2,000 a month. 9 Q. What do you receive from the dealership 10 each month? 11 A. \$4,000. 12 Q. And that is from Cheraw Chevy, Nashville, 13 or both? 14 A. Both. 15 Q. So you receive \$4,000 per month combined 16 from those two dealerships? 17 A. Yes, and I get a 10 percent -- I just 18 started getting a 10 percent bonus of profit, if 19 it's profitable. 20 Q. Who made that decision to give you a 10 21 percent bonus based on profitability? 22 A. I did. 23 Q. Is Cheraw Chevy currently profitable? 24 A. Slightly. It depends on -- 25 Q. What's its monthly revenue on average
Page 210 1 have a cash value, if that's what you mean. 2 Q. That is. So it sounds like they're both 3 term policies? 4 A. Yes, sir. 5 Q. Is Nissan of Sumter, LLC, still a going 6 concern? 7 A. No, sir. 8 Q. When was the last time it generated any 9 revenue? 10 A. I think probably June or July of 2019. 11 Q. And that company was founded solely to 12 operate the dealership that you purchased from Jones 13 Nissan? 14 A. That is correct. 15 Q. What are all of your current sources of 16 income, Mr. Holmes? 17 A. I get salary from the dealership and I get 18 medical retirement from the military. 19 Q. When did you serve in the military? 20 A. 1985 to 1992. 21 Q. What branch? 22 A. U.S. Air Force. 23 Q. Did you see any combat? 24 A. No. 25 Q. Did you receive an honorable discharge?	Page 212 1 right now? 2 A. Monthly revenue? 3 Q. Yes, sir. 4 A. I don't know. Maybe close to a million 5 dollars. 6 Q. Per month? 7 A. Yes. 8 Q. That's pretty good, isn't it? 9 A. No. 10 Q. What do you strive for? I don't have that 11 knowledge. 12 A. Well, let's clarify that. Now, when you 13 might say "revenue," you know, if you sell a \$70,000 14 vehicle or \$80,000, they're expensive. If you sell 15 ten of those, that's about \$100,000, so that number 16 just doesn't mean anything. The profitability of 17 the store would be marginal or just breakeven. 18 Q. I understand that you got expenses that 19 come out of the revenue number. 20 A. Lots of them. 21 Q. I mean, Cheraw is not that populous of an 22 area, so that revenue number sounded pretty good to 23 me. I was assuming you would be profitable out of 24 that, but that's not the case? 25 A. No, sir, not when you build in some of the

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Page 213 1 write-downs on the cars and all those adjustments. 2 Q. Do you carry a cell phone? 3 A. Yes, sir. 4 Q. Who is your provider? 5 A. Verizon. 6 Q. What's your cell phone number? 7 A. 843-833-1353. 8 Q. Is that the only cell phone you carry? 9 A. Yes, sir. 10 Q. Do you write that off as a business 11 expense? 12 A. Yes. 13 Q. Where do you currently hold bank accounts? 14 A. The banks? Are you asking what banks I 15 use? 16 Q. Yes, sir. 17 A. Bank of America and BB&T -- well, Truist 18 and First Citizens. 19 Q. Are the accounts at each of those 20 institutions in your individual name? 21 A. Yes, sir. 22 Q. Do you hold any accounts under any other 23 names? 24 A. No, sir. 25 Q. Where does Cheraw Chevy hold accounts?	Page 215 1 A. I do. 2 Q. How much? 3 A. \$1,300. 4 Q. What's the address of that house? 5 A. 555 West Houston Drive. 6 Q. H-o-w-s-t-o-n? 7 A. H-o-u-s-t-o-n. 8 Q. Houston? 9 A. Houston. 10 Q. And what city or town is that in? 11 A. Kathleen, Georgia. 12 Q. What part of Georgia is that in? 13 A. That's middle Georgia, Warner Robins-Macon 14 area. 15 Q. Aside from that property, do you own any 16 tracks of land? 17 A. Yes, I have -- my family property in 18 Unadilla, Georgia. It's just raw farmland. 19 Q. How many acres? 20 A. 30. 21 Q. Is it actively farmed? 22 A. Yes. 23 Q. Who does that? 24 A. A local farmer. I don't know. It's ten 25 people that owns the farm, so it just maybe pays
Page 214 1 A. First Citizens Bank. 2 Q. Any other places? 3 A. No, sir. 4 Q. Do you have any savings accounts? 5 A. No, sir. 6 Q. Do you have any retirement accounts? 7 A. No, sir, none to speak of. Maybe \$3,000. 8 Q. Where is it at? 9 A. Bank of America. 10 Q. Do you have any brokerage accounts? 11 A. No, sir. 12 Q. Do you currently own any real property? 13 A. Yes. 14 Q. Where? 15 A. We have a property in Houston County, 16 Georgia. 17 Q. Who owns that? 18 A. It's in my name. 19 Q. What's the purpose for having a property 20 in Georgia? 21 A. I lived there. I grew up there, and I 22 moved. That's where I'm from. 23 Q. Okay. Do you lease the house out? 24 A. I do. 25 Q. Do you receive monthly rent from it?	Page 216 1 enough for the taxes. 2 Q. Those ten people are all part of your 3 extended family? 4 A. Yes, sir. 5 Q. Brothers, sisters, aunts, uncles? What's 6 the makeup? 7 A. Yeah, aunts and uncles. 8 Q. Vehicle-wise, do you own any? 9 A. No, sir. 10 Q. Just use something through the company? 11 A. Yes, sir. 12 Q. I notice on your tax return, you appeared 13 to have a plane at some point, is that right? 14 A. We did. 15 Q. How was that titled? 16 A. How was it titled? 17 Q. Yes, sir. 18 A. I don't remember. Maybe it was THAG, LLC. 19 I'm not sure. I can find out for you. 20 Q. Was that a business expense? 21 A. Yes, sir. 22 Q. When did you get rid of that? 23 A. 2017, 2018. 24 Q. Did you lease the plane or own it? 25 A. Own it. Well, it was financed.

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1 Q. Why did you get rid of it?

2 A. We couldn't afford -- we sold the

3 companies and couldn't afford to expense it.

4 Expense reduction.

5 Q. Do you own any boats?

6 A. No, sir.

7 Q. I've seen reference to a company called

8 THAG Strategic Investment Services, LLC. Was that

9 company different from THAG, LLC?

10 A. Yes.

11 Q. What's the difference?

12 A. You know, I don't know. We just kind of

13 -- it was set up as another holding company of

14 another holding company. They're not active.

15 Q. Is it still in existence?

16 A. Yes.

17 Q. Is it still a going concern?

18 A. Yes.

19 Q. Does that company still generate revenue?

20 A. No.

21 Q. Has THAG, LLC, ever paid any dividends?

22 A. No.

23 Q. Does it or has it ever held periodic

24 meetings?

25 A. No.

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1 Q. What steps, if any, does it take to

2 maintain corporate formalities?

3 A. What steps does THAG -- can you repeat

4 your question again, sir?

5 Q. What steps, if any, has THAG taken during

6 the course of its existence to maintain corporate

7 formalities, meaning to convene board meetings, keep

8 meeting minutes, maintain corporate books and

9 records, things of that nature?

10 A. You know, I don't know. Very minimum to

11 do. I mean, the annual registrations may be paid to

12 keep the companies open for these litigations and

13 stuff like that, but nothing in excess of whatever

14 the going concerns have done, so it doesn't own

15 anything.

16 Q. Does that hold true with respect to Nissan

17 of Orangeburg, LLC, as well?

18 A. Yes, sir.

19 Q. Or excuse me, Nissan of Sumter, LLC, is

20 what I meant to ask you.

21 A. Yes, sir. John, I have to take a quick

22 potty break again.

23 MR. HUDSON: That's fine. We're about

24 done, though, but go ahead and take that.

25 (Whereupon, a recess was taken.)

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1 EXAMINATION RESUMED BY MR. HUDSON:

2 Q. All right. I've put up Exhibit 20, which

3 is a marital asset summary --

4 A. Yes, sir.

5 Q. -- I was provided a few months ago, I

6 believe.

7 A. I wasn't aware, but go ahead.

8 Q. This is dated December the 31st of 2019?

9 A. Yes.

10 Q. Is that the date of your separation?

11 A. Yes.

12 Q. When was this asset summary prepared?

13 A. Probably -- I mean, maybe June, July of

14 this year.

15 Q. You mean of last year?

16 A. Yes.

17 Q. Of 2022?

18 A. 2022, yes, sir.

19 Q. Why was this prepared?

20 A. It's something that the attorneys wanted

21 to request.

22 Q. Who prepared it?

23 A. Both attorneys. I mean, both accountants

24 prepared it.

25 Q. And when you say "both," that would have

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1 been Mr. Malone?

2 A. Yes. Well, not -- his firm. It's kind of

3 a forensic -- Blake Kinder is the one that did it.

4 Q. Are there any revisions or amendments that

5 need to be made to this document to make it

6 currently more accurate than it is?

7 A. Yeah, maybe a little bit. There's still

8 discovery going.

9 Q. What can you identify for me right now

10 that would need to be amended to make it more

11 accurate?

12 A. I think she has more -- she has more money

13 than what we put in there for her.

14 Q. Does your wife work?

15 A. No. I was hoping you would have her

16 deposed.

17 Q. I'm trying. I'll get there.

18 A. All right. That's what I'm talking about.

19 Everybody needs to feel this.

20 Q. I think this is on the third page, but it

21 identifies several lawsuits against THAG. Section 8

22 goes A through H. Just give me a general summary of

23 Dewanda Jacobs versus THAG; Janet McCarty; Jasmine

24 Sherman. Tell me what each one is about. You don't

25 have to be very detailed.

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1 A. The first one is EasyCare, APCO; Jones,
2 which is you. Dewanda Jacobs, I'm not sure. I
3 mean, that may have been Monsanto, a customer, slip
4 and fall, I think. Janet McCarty, I don't know who
5 that is. Jasmine Sherman, I'm not sure who that is.
6 Sokai Media Advertising Agency. Keith Shifflet, I
7 believe that one was settled.

8 Q. What was that suit about involving Keith
9 Shifflet?

10 A. I believe it's been settled.

11 Q. Right. But what did it have to do with?

12 A. It had to do with missing information off
13 of his vehicle. It was a vehicle claim.

14 MR. HUDSON: All right. Just for the
15 record, I want to state that I'm going to
16 reserve the right to file a motion on the
17 portion of the testimony that involved the
18 source of funds for the APCO settlement and try
19 to compel additional testimony on that. So I'm
20 going to reserve the right to reopen this
21 deposition, but otherwise, I am done with my
22 questioning.

23 THE WITNESS: All right. Thank you.

24 MR. RAMSEY: E-transcript is good for me.

25 THE COURT REPORTER: What about signature?

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1 MR. RAMSEY: We'll waive it.

2 - - -
3 (Witness excused.)

4 - - -
5 (Time Noted: 7:55 p.m.)
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CERTIFICATE OF REPORTER

I, Eileen Thompson, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify, that the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

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 29th day of March, 2023 at Liberty, Pickens County, South Carolina.

Eileen Thompson,
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
October 17, 2024

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EXHIBIT 2

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC; Terry L.
Holmes; and Merrill Lynch, Pierce, Fenner &
Smith, Incorporated,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

AFFIDAVIT OF JAMES E. JONES

PERSONALLY appeared before me, James E. Jones, who first being duly sworn, deposes
and says:

1. My name is James E. Jones. I am over 18 years of age and am competent to make this affidavit.
2. I am the secretary and treasurer of Jones Nissan, Inc. ("Jones Nissan"), which owned the Jones Nissan automobile dealership in Sumter, South Carolina, from 1990 until early 2017. My brother, John Jones, and I were actively involved in the negotiation and sale of the dealership to THAG, LLC and Terry Holmes in 2017. Accordingly, I am familiar with the details of the sale transaction, particularly the financing aspect of the deal that was accomplished through the use of a Promissory Note ("Note") and other documents that memorialized the terms of the parties' financing agreement.
3. A copy of the Note is attached as **EXHIBIT 1** and incorporated herein by reference.

The Note required monthly payments, inclusive of principal and interest, to be made as follows:

In fifty nine (59) consecutive, equal annual installments of Twelve
Thousand Five Hundred Sixty Six and 32/100 (\$12,566.32) and a
sixtieth consecutive installment of the balance then due, all in

accordance with the amortization schedule attached hereto and made a part hereof.

The Note set an interest rate for the loan of Six Percent (6.00%) per annum. Attached as **EXHIBIT 2** is a copy of the amortization schedule referenced in the Note and made a part thereof. I wrote the handwritten sentence on the bottom of page 3 during late August or early September of 2019 after I learned that the collateralized funds that should have been on deposit in THAG's pledged Merrill Lynch account were no longer there. It has come to my attention that my notation is incorrect insofar as I stated only 30 payments are due and owing, when in fact there are 31 such payments due and owing.

4. Once the sale transaction between Jones Nissan and THAG, LLC and Terry Holmes was finalized, I gave a copy of the amortization schedule to Nectie Oliver, Jones Nissan's Controller, and requested that she handle receipt and processing of the payments due under the Note in accordance with Jones Nissan's normal business practices.

5. Jones Nissan received monthly Note payments from March 2017 through July 2019. Each monthly payment totaled either \$12,566.32 or \$12,566.33. Set forth immediately below is a schedule of the monthly Note payments received by Jones Nissan:

		DATE PAID	AMOUNT
1	March, 2017	03/17/2017	\$12,566.32
2	April, 2017	04/18/2017	\$12,566.32
3	May, 2017	05/8/2017	\$12,566.33
4	June, 2017	06/16/2017	\$12,566.33
5	July, 2017	07/6/2017	\$12,566.33
6	August, 2017	08/10/2017	\$12,566.33

7	September, 2017	09/01/2017	\$12,566.33
8	October, 2017	10/02/2017	\$12,566.33
9	November, 2017	11/01/2017	\$12,566.32
10	December, 2017	12/01/2017	\$12,566.32
11	January, 2018	1/10/2018	\$12,566.32
12	February, 2018	02/01/2018	\$12,566.32
13	March, 2018	03/01/2018	\$12,566.32
14	April, 2018	04/02/2018	\$12,566.32
15	May, 2018	05/07/2018	\$12,566.32
16	June, 2018	06/01/2018	\$12,566.32
17	July, 2018	07/01/2018	\$12,566.32
18	August, 2018	08/03/2018	\$12,566.32
19	September, 2018	08/28/2018	\$12,566.32
20	October, 2018	10/03/2018	\$12,566.32
21	November, 2018	11/01/2018	\$12,566.32
22	December, 2018	12/04/2018	\$12,566.32
23	January, 2019	01/07/2019	\$12,566.32
24	February, 2019	02/01/2019	\$12,566.32
25	March, 2019	03/05/2019	\$12,566.32
26	April, 2019	04/11/2019	\$12,566.32
27	May, 2019	05/03/2019	\$12,566.32
28	June, 2019	06/05/2019	\$12,566.32
29	July, 2019	07/02/2019	\$12,566.32

	TOTAL		\$364,423.34

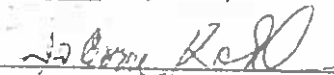
6. The monthly payments required by the Note stopped after July 2019. In August 2019, Jones Nissan received a cashier's check in the amount of \$2,500.00 along with correspondence from Terry Holmes explaining why he was not making the full \$12,566.32 payment as required by the Note, and a copy of that correspondence and cashier's check is attached as **EXHIBIT 3** and incorporated herein by reference. Jones Nissan never negotiated this check.

7. At present, Jones Nissan has received 29 Note payments totaling \$364,423.34. At present, 31 Note payments totaling \$389,555.98 remain outstanding. The outstanding balance consists of \$360,035.15 in principal and \$29,520.83 in interest.

FURTHER AFFIANT SAYETH NOT.


James E. Jones

SWORN TO AND SUBSCRIBED before me
this 25 day of April, 2023.



NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 5-31-2023

EXHIBIT 1

EXHIBIT F

\$650,000.00

February 28, 2017
Sumter, SC

FOR VALUE RECEIVED, the Undersigned (the "Obligor") promises to pay to the order of Jones Nissan, Inc. (the "Holder"), payable at Sumter, South Carolina, the sum of Six Hundred Fifty Thousand and No/100 (\$650,000.00) Dollars, with interest at the rate of Six Percent (6.00%) per annum, past due interest to bear interest at the same rate; principal and interest being payable as follows:

In fifty nine (59) consecutive, equal annual installments of Twelve Thousand Five Hundred Sixty Six and 32/100 (\$12,566.32) and a sixtieth consecutive installment of the balance then due, all in accordance with the amortization schedule attached hereto and made a part hereof.

PROVIDED, HOWEVER, that should default be made in the payment of said principal, or any installment thereof, or said interest, or any portion thereof, on the due date, the Holder hereof, his successors and assigns, may at his/their option declare the entire remaining balance immediately due and payable. The Obligor hereunder agrees to pay all costs of collection, including a reasonable attorney's fee, in case payment shall not be made at maturity. Obligor does hereby waive demand, presentment, notice of non-payment, dishonor, protest, and notice of protest.

THAG, LLC

By: 22/11
Terry L. Holmes
Its

EXHIBIT 3

EXHIBIT

Holmes 12 3-23-23 ET

Jones Nissan
1230 Broad St.
Sumter, Sc. 29150

Good Morning Mr Jones.

I am forwarding a check in the amount of \$2500.00. Due to the excessive debt and demands, I was forced to sell most of the dealerships and assets. I am forced to only send a portion of my payments as agreed upon. As i get my affairs in order, I intend to bring my payments back to the agreed upon amount. I appreciate your understanding in this matter, as I rectify my financial situation.

Sincerely
Terry Holmes

THIS DOCUMENT HAS A VOID BACKGROUND • MICROPRINT BORDERS AND SIGNATURE LINE • WATERMARK PRESENT. HOLD UP TO LIGHT TO VIEW.

Cashier's Check



First Citizens Bank

First Citizens Bank & Trust Company
Raleigh, North Carolina

66-1252/531

Branch No. 301

0500571691

August 14, 2019

Date

Pay to the order of ****JONES NISSAN****

\$ 2,500.00

****Two Thousand Five Hundred Dollars and 00/100****

Notice To Customers
The purchase of an Indemnity Bond or an Insurance Bond may be required before an official check of this bank will be replaced or refunded in the event it is lost, misplaced or stolen.

Remitter ****TERRY L HOLMES****

05-10050M (02/17)

Ayssa Cautlen

Dollars

⑈0500571691⑈ ⑆053112521⑆ 223980198101⑈994990

R.244

EXHIBIT 3

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC; Terry L.
Holmes; and Merrill Lynch, Pierce, Fenner &
Smith, Incorporated,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

**AFFIDAVIT OF KAREN H. ("NEECIE")
OLIVER**

PERSONALLY appeared before me, Karen H. ("Neechie") Oliver, who first being duly sworn, deposes and says:

1. My name is Karen H. Oliver and I go by "Neechie." I am over 18 years of age and am competent to make this affidavit.
2. I am currently the Controller for Jones Buick GMC, Inc. in Sumter, South Carolina, and have served in this position since approximately 2000. I previously served as the Controller for Jones Nissan, Inc. ("Jones Nissan") from approximately 1990 until the dealership sold in 2017, and I still perform certain work for Jones Nissan on an as-needed basis.
3. As the Controller for Jones Nissan, my job duties included, among other things, maintaining the company's books and financial records, reviewing the company's financial records, preparing financial statements and quarterly tax reports for the company, ensuring company accounts were balanced, and processing payments received by the company. As the Controller for Jones Nissan, I was familiar with—and remain familiar with—the company's business records, including its financial and accounting records.

4. As the Controller for Jones Nissan, I am familiar with the Promissory Note ("Note") at issue and the payments it required. A copy of the Note is attached as **EXHIBIT 1** and incorporated herein by reference. In particular, the Note required monthly payments, inclusive of principal and interest, to be made as follows:

In fifty nine (59) consecutive, equal annual installments of Twelve Thousand Five Hundred Sixty Six and 32/100 (\$12,566.32) and a sixtieth consecutive installment of the balance then due, all in accordance with the amortization schedule attached hereto and made a part hereof.

The Note set an interest rate for the loan of Six Percent (6.00%) per annum. Attached as **EXHIBIT 2** is a copy of the amortization schedule referenced in the Note and made a part thereof.

5. As Jones Nissan's Controller, I was involved in receiving and processing the payments made on the Note. Jones Nissan began receiving monthly Note payments in March 2017, and the payments were made continually and consistently through July 2019. Each monthly payment—with two exceptions where the November 2017 and December 2017 payments were initially \$10.00 short and were supplemented by separate \$10.00 cash payments—was made by check and totaled either \$12,566.32 or \$12,566.33. Each monthly payment was drawn on an account in the name of THAG, LLC, THAG, Inc., Island Real Estate Holdings, LLC or Nissan of Sumter, LLC. Set forth immediately below is a schedule of the monthly Note payments received by Jones Nissan:

		DATE PAID	AMOUNT
1	March, 2017	03/17/2017	\$12,566.32
2	April, 2017	04/18/2017	\$12,566.32
3	May, 2017	05/8/2017	\$12,566.33
4	June, 2017	06/16/2017	\$12,566.33

5	July, 2017	07/6/2017	\$12,566.33
6	August, 2017	08/10/2017	\$12,566.33
7	September, 2017	09/01/2017	\$12,566.33
8	October, 2017	10/02/2017	\$12,566.33
9	November, 2017	11/01/2017	\$12,566.32
10	December, 2017	12/01/2017	\$12,566.32
11	January, 2018	01/10/2018	\$12,566.32
12	February, 2018	02/01/2018	\$12,566.32
13	March, 2018	03/01/2018	\$12,566.32
14	April, 2018	04/02/2018	\$12,566.32
15	May, 2018	05/07/2018	\$12,566.32
16	June, 2018	06/01/2018	\$12,566.32
17	July, 2018	07/01/2018	\$12,566.32
18	August, 2018	08/03/2018	\$12,566.32
19	September, 2018	08/28/2018	\$12,566.32
20	October, 2018	10/03/2018	\$12,566.32
21	November, 2018	11/01/2018	\$12,566.32
22	December, 2018	12/04/2018	\$12,566.32
23	January, 2019	01/07/2019	\$12,566.32
24	February, 2019	02/01/2019	\$12,566.32
25	March, 2019	03/05/2019	\$12,566.32
26	April, 2019	04/11/2019	\$12,566.32
27	May, 2019	05/03/2019	\$12,566.32

28	June, 2019	06/05/2019	\$12,566.32
29	July, 2019	07/02/2019	\$12,566.32
	TOTAL		\$364,423.34

6. At present, Jones Nissan has received 29 Note payments totaling \$364,423.34. At present, 31 Note payments totaling \$389,555.98 remain outstanding. The outstanding balance consists of \$360,035.15 in principal and \$29,520.83 in interest. I calculated these principal and interest sums by adding the monthly principal and interest payments due for payments 31 through 60 as shown on the amortization schedule attached as **EXHIBIT 2**.

7. Each time Jones Nissan received a monthly Note payment, I, as Controller, would enter the payment in the company's books, generate a receipt, and then deposit the payment in the company bank account. I would also notate each payment received on the amortization schedule when it came in; the handwritten annotations on **EXHIBIT 2**, with the exception of the handwritten sentence at the bottom of page 3, are mine. This was my regular practice as Controller for the company, and these records were kept in the course of the company's regularly conducted business activity. Attached as **EXHIBIT 3** and incorporated herein by reference is a copy of the receipt for each Note payment received by Jones Nissan.

FURTHER AFFIANT SAYETH NOT.

Karen H. Oliver
Karen H. "Neecie" Oliver

SWORN TO AND SUBSCRIBED before me
this 25 day of April, 2023.

Karen E. Smith

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: MARCH 25, 2025

EXHIBIT 1

EXHIBIT F

\$650,000.00

February 28, 2017
Sumter, SC

FOR VALUE RECEIVED, the Undersigned (the "Obligor") promises to pay to the order of Jones Nissan, Inc. (the "Holder"), payable at Sumter, South Carolina, the sum of Six Hundred Fifty Thousand and No/100 (\$650,000.00) Dollars, with interest at the rate of Six Percent (6.00%) per annum, past due interest to bear interest at the same rate; principal and interest being payable as follows:

In fifty nine (59) consecutive, equal annual installments of Twelve Thousand Five Hundred Sixty Six and 32/100 (\$12,566.32) and a sixtieth consecutive installment of the balance then due, all in accordance with the amortization schedule attached hereto and made a part hereof.

PROVIDED, HOWEVER, that should default be made in the payment of said principal, or any installment thereof, or said interest, or any portion thereof, on the due date, the Holder hereof, his successors and assigns, may at his/their option declare the entire remaining balance immediately due and payable. The Obligor hereunder agrees to pay all costs of collection, including a reasonable attorney's fee, in case payment shall not be made at maturity. Obligor does hereby waive demand, presentment, notice of non-payment, dishonor, protest, and notice of protest.

THAG, LLC

By: Terry L. Holmes

Terry L. Holmes
Its

EXHIBIT

Holmes 7 3-23-23 E

R.251

EXHIBIT 2

Act # 295A
int 801

EXHIBIT

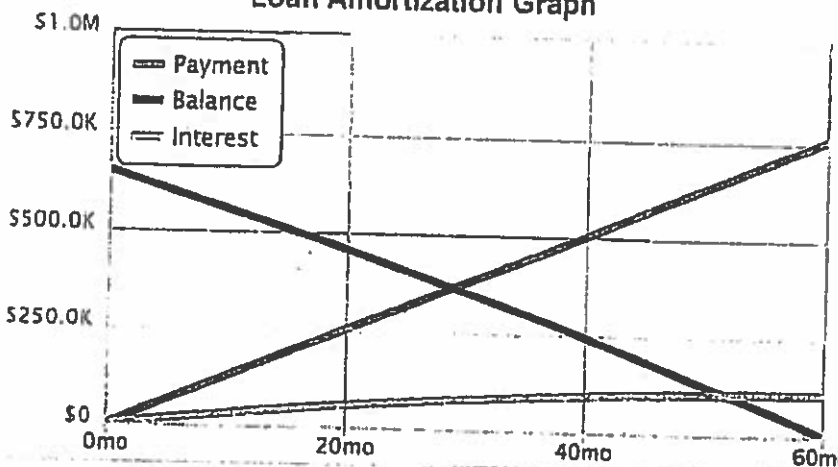
Holmes 15 3-23-23 ET

Amortization Calculator

Loan Amount **650000**
Loan Term **5** years
Interest Rate (APR) **6** %

Calculate**Monthly Pay: \$12,566.32**

Total of 60 Loan Payments **\$753,979.26**
Total Interest **\$103,979.26**

Loan Amortization Graph**Payment Breakdown**

Principal
Interest

Monthly Amortization Schedule

Annual Schedule

Monthly Schedule

	Beginning Balance	Interest	Principal	Ending Balance
1	\$650,000.00	\$3,250.00	\$9,316.32	\$640,683.68
2	\$640,683.68	\$3,203.42	\$9,362.90	\$631,320.78
3	\$631,320.78	\$3,156.60	\$9,409.72	\$621,911.06
4	\$621,911.06	\$3,109.56	\$9,456.76	\$612,454.29
5	\$612,454.29	\$3,062.27	\$9,504.05	\$602,950.24
6	\$602,950.24	\$3,014.75	\$9,551.57	\$593,398.67
7	\$593,398.67	\$2,966.99	\$9,599.33	\$583,799.35
8	\$583,799.35	\$2,919.00	\$9,647.32	\$574,152.02
9	\$574,152.02	\$2,870.76	\$9,695.56	\$564,456.46
10	\$564,456.46	\$2,822.28	\$9,744.04	\$554,712.42
11	\$554,712.42	\$2,773.56	\$9,792.78	\$544,919.66
12	\$544,919.66	\$2,724.80	\$9,841.72	\$535,077.94
		year 1 end		
13	\$535,077.94	\$2,675.39	\$9,890.93	\$525,187.01
14	\$525,187.01	\$2,625.94	\$9,940.38	\$515,246.62
15	\$515,246.62	\$2,576.23	\$9,990.09	\$505,256.54

Mar-17
Apr-17
May-17
June-17
July 17
Aug 17
Sept 17
Oct 17
Nov 17
Dec 17
Jan 18
Feb 18
Mar 18
Apr 18
May 18

16	\$505,256.54	\$2,526.28	\$10,040.04	\$485,216.50	June 18	PL 5/31
17	\$495,216.50	\$2,476.08	\$10,090.24	\$485,126.26	July 18	PL 6/29
18	\$485,126.26	\$2,425.83	\$10,140.89	\$474,985.57	Aug 18	PL 8/2
19	\$474,985.57	\$2,374.93	\$10,191.39	\$464,794.18	Sept 18	PL 8/29
20	\$464,794.18	\$2,323.97	\$10,242.35	\$454,551.83	Oct 18	PL 10/3
21	\$454,551.83	\$2,272.76	\$10,293.56	\$444,258.26	Nov 18	PL 11/1
22	\$444,258.26	\$2,221.29	\$10,345.03	\$433,913.23	Dec 18	PL 12/4
23	\$433,913.23	\$2,169.57	\$10,396.75	\$423,516.48	Jan 19	PL 1/1
24	\$423,516.48	\$2,117.58	\$10,448.74	\$413,067.74	Feb 19	PL 2/1
		year 2 end				
25	\$413,067.74	\$2,065.34	\$10,500.88	\$402,566.76	Mar 19	PL 3/5
26	\$402,566.76	\$2,012.83	\$10,553.49	\$392,013.27	Apr 19	PL 4/1
27	\$392,013.27	\$1,960.07	\$10,606.25	\$381,407.02	May 19	PL 5/3
28	\$381,407.02	\$1,907.04	\$10,659.28	\$370,747.73	June 19	PL 6/10
29	\$370,747.73	\$1,853.74	\$10,712.58	\$360,035.15	July 19	PL 7-2-19
30	\$360,035.15	\$1,800.18	\$10,766.14	\$349,269.00	Aug 19	
31	\$349,269.00	\$1,746.35	\$10,819.87	\$338,449.03	Sept 19	
32	\$338,449.03	\$1,692.25	\$10,874.07	\$327,574.95	Oct 19	
33	\$327,574.95	\$1,637.87	\$10,928.45	\$316,846.51	Nov 19	
34	\$316,846.51	\$1,583.23	\$10,983.09	\$305,663.42	Dec 19	
35	\$305,663.42	\$1,528.32	\$11,038.00	\$294,625.41	Jan 20	
36	\$294,625.41	\$1,473.13	\$11,093.19	\$283,532.22	Feb 20	
		year 3 end				
37	\$283,532.22	\$1,417.66	\$11,148.66	\$272,383.56	Mar 20	
38	\$272,383.56	\$1,361.92	\$11,204.40	\$261,179.16	Apr 20	
39	\$261,179.16	\$1,305.90	\$11,260.42	\$249,918.73	May 20	
40	\$249,918.73	\$1,249.59	\$11,316.73	\$238,602.00	June 20	
41	\$238,602.00	\$1,193.01	\$11,373.31	\$227,228.69	July 20	
42	\$227,228.69	\$1,136.14	\$11,430.18	\$215,798.52	Aug 20	
43	\$215,798.52	\$1,078.99	\$11,487.33	\$204,311.19	Sept 20	
44	\$204,311.19	\$1,021.56	\$11,544.76	\$192,786.42	Oct 20	
45	\$192,786.42	\$963.83	\$11,602.49	\$181,163.93	Nov 20	
46	\$181,163.93	\$905.82	\$11,660.50	\$169,503.43	Dec 20	
47	\$169,503.43	\$847.52	\$11,718.80	\$157,784.83	Jan 21	
48	\$157,784.83	\$788.92	\$11,777.40	\$146,007.23	Feb 21	
		year 4 end				
49	\$146,007.23	\$730.04	\$11,836.28	\$134,170.95	Mar 21	
50	\$134,170.95	\$670.85	\$11,895.47	\$122,275.48	Apr 21	
51	\$122,275.48	\$611.38	\$11,954.84	\$110,320.54	May 21	
52	\$110,320.54	\$551.80	\$12,014.72	\$98,305.82	June 21	
53	\$98,305.82	\$491.53	\$12,074.79	\$86,231.03	July 21	
54	\$86,231.03	\$431.16	\$12,135.18	\$74,095.86	Aug 21	

55	\$74,095.86	\$370.48	\$12,195.84	\$61,900.02	Sept 21
56	\$61,900.02	\$309.50	\$12,256.82	\$49,643.20	OCT 21
57	\$49,643.20	\$248.22	\$12,318.10	\$37,325.09	NOV 21
58	\$37,325.09	\$186.63	\$12,379.69	\$24,945.40	DEC 21
59	\$24,945.40	\$124.73	\$12,441.59	\$12,503.80	JAN 22
60	\$12,503.80	\$62.52	\$12,503.80	\$0.00	FEB 22

year 5 end

by Calculator.net

Still owes 30 payments of 12566.33
 totaling 376,989.90

EXHIBIT 3



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PAGE 1 OF 1

AMOUNT PAID BY COMMENT
12,566.32 CHECK NOTE PAYMENT

71546

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32

DATE-TIME: 17MAR2017 10:13
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202C	12,566.32	71546	NISSAN-SUMTER
		2	220	-12,566.32	55056	NOTE-PYMT

CUSTOMER COPY



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PAGE 1 OF 1

AMOUNT PAID BY COMMENT
12,566.32 CHECK CK100267 -APRIL SALE PYMT

71567

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32

DATE-TIME: 18APR2017 16:17
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71567	NISS-SUMTER
		2	202	-12,566.32	APR-SALE-PYMT-NOS	APR-SALE-PYMT-NOS

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PAGE 1 OF 1

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AMOUNT PAID BY COMMENT
12,566.33 CHECK NOTE PYMT

71577

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.33
DATE-TIME: 08MAY2017 14:16
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202C	12,566.33	71577	NISSAN-SUMTER
		2	262	-12,566.33	NISS-NOTE-PYMT	NISS-NOTE-PYMT

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PAGE 1 OF 1

AMOUNT PAID BY COMMENT
12,566.33 CHECK NOTE PAYMENT

71589

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.33

DATE-TIME: 16JUN2017 07:12
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.33	71589	NISSAN-SUMTER
		2	295A	-12,566.33	NOTE-PYMT-NISS-SU	NOTE-PYMT-NISS-SU

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PAGE 1 OF 1

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AMOUNT PAID BY COMMENT
12,566.33 CHECK LOAN PAYMENT

71593

NISSAN OF SUMTER
1260 BROAD ST
SUMTER
55056

SC 29150

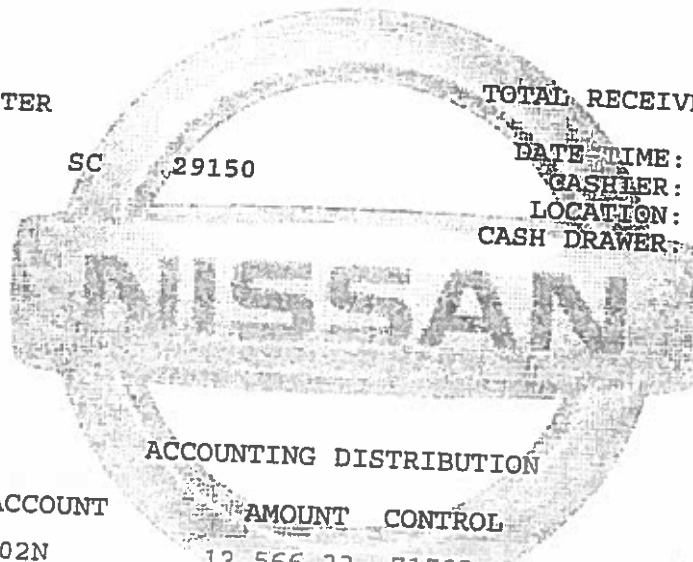
TOTAL RECEIVED: \$12,566.33

DATE TIME: 06JUL2017 14:45

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL
2	5	2	202N	12,566.33	71593
		2	295A	-12,566.33	LOAN-PYMT-NOS

CONTROL2

NISS-SUMTER
LOAN-PYMT-NOS

CASH
RECEIPT

ELECTRONICALLY FILED - 2023 May 12 4:28 PM - GEORGETOWN - COMMON PLEAS - CASE#2020CP2200373

ADDITIONAL INFORMATION - IF APPLICABLE

EL
TRONICALLY F

CHECK	VENDOR	VENDOR NAME			CHECK DATE
100715	JONE002	JONES NISSAN			7/03/2017
INVOICE	INVOICE DATE	INVOICE AMOUNT	DISCOUNT	AMOUNT PAID	MEMO INFORMATION
	7/03/2017	9362.90	.00	9362.90	JONES LOAN PAYMENT
	7/03/2017	1067.81	.00	1067.81	JONES LOAN PAYMENT
	7/03/2017	2135.62	.00	2135.62	JONES LOAN PAYMENT
INVOICE TOTAL		12566.33	DISCOUNT TOTAL	.00	PAID TOTAL
12566.33			CUSTOMER NUMBER		
REMITTANCE ADVICE					

023 May 12 4:28 PM - GEORGETOWN - COMMON PLEAS - CASE#202

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NISSAN OF SUMTER LLC
1200 Broad St
Sumter, SC 29100

023 May 12 4:28 PM - GEORGETOWN - COMMON PLEAS - CASE#202
P2200373

Rec #
71593



1260 BROAD ST · P.O. BOX 1375 · SUMTER, SC 29151
803-469-3424 (Local) · 800-868-0338 (Toll Free)
FAX: 803-469-3428 · www.jonesnissan.com

PAGE 1 OF 1

AMOUNT PAID BY COMMENT
12,566.33 CHECK LOAN PAYMENT

71603

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.33
DATE-TIME: 10AUG2017 07:24
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.33	71603	NISSAN-SUMTER
		2	295A	-12,566.33	NISS-LOAN-PYMT	NISS-LOAN-PYMT

ELECTRONICALLY FILED
3 May 12 4:28 PM - GEORGETOWN - COMMON PLEAS - CASE#20200-2200373

ADDITIONAL INFORMATION (IF APPLICABLE)

CHECK	VENDOR	VENDOR NAME	CHECK DATE		
100898	JONE002	JONES NISSAN	8/07/2017		
INVOICE	INVOICE DATE	INVOICE AMOUNT	DISCOUNT	AMOUNT PAID	MEMO INFORMATION
	8/07/2017	1067.81	.00	1067.81	JONES LOAN PAYMENT
	8/07/2017	2135.62	.00	2135.62	JONES LOAN PAYMENT
	8/07/2017	9362.90	.00	9362.90	JONES LOAN PAYMENT
REMITTANCE ADVICE		INVOICE TOTAL	DISCOUNT TOTAL	PAID TOTAL	CUSTOMER NUMBER
		12566.33	.00	12566.33	

Scanned 

Rec #
71603

NISSAN OF BLADENVILLE
1200 Broad St
Bladensburg, DC 20710



1260 BROAD ST • P.O. BOX 1375 • SUMTER, SC 29151
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PAGE 1 OF 1

AMOUNT PAID BY COMMENT
12,566.33 CHECK SEPT NOTE PYMT 71610

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

55056

SC 29150

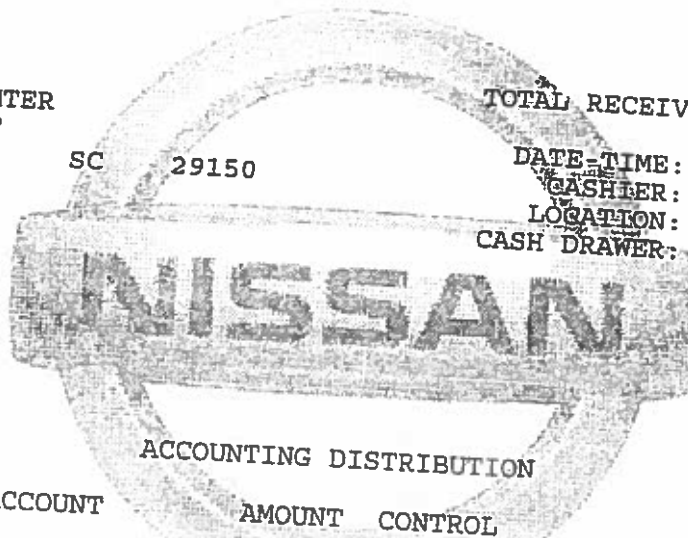
TOTAL RECEIVED: \$12,566.33

DATE-TIME: 01SEP2017 10:45

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT
2	5	2	202N
		2	295A

AMOUNT	CONTROL
12,566.33	71610
-12,566.33	NISS-NOTE-PYMT

CONTROL2

NISS-SUMTER

NISS-NOTE-PYMT

CASH
RECEIPT

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ELECTRONICALLY FILED
23 May 12 4:28 PM - GEORGETOWN - COMMON PLEAS - CASE#2020-02200373

ADDITIONAL INFORMATION - IF APPLICABLE

CHECK	VENDOR	VENDOR NAME		CHECK DATE	
101056	JONE002	JONES NISSAN		8/29/2017	
INVOICE	INVOICE DATE	INVOICE AMOUNT	DISCOUNT	AMOUNT PAID	REMARKS/DESCRIPTION
	8/29/2017	12566.33	.00	12566.33	JONES SEPT 17 LOAN PAYMENT
INVOICE TOTAL		12566.33	DISCOUNT TOTAL	.00	PAID TOTAL
12566.33				12566.33	CUSTOMER NUMBER

REMITTANCE ADVICE

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NISSAN OF SOUTHERN LLC
1200 Broad St
Sunder, NC 28150

15491 0.00000

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Rec #
71610



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AMOUNT	PAID BY	COMMENT	
12,566.33	CHECK	OCT NOTE PYMT	71618

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.33
DATE-TIME: 02OCT2017 07:24
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.33	71618	NISS-SUMTER
		2	295A	-12,566.33	OCT-NOTE-PYMT	OCT-NOTE-PYMT

CUSTOMER COPY

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CHECK	VENDOR	VENDOR NAME	CHECK DATE		
101226	JONE002	JONES NISSAN	9/28/2017		
INVOICE	INVOICE DATE	INVOICE TOTAL	DISCOUNT	PAID TOTAL	MEMO INFORMATION
928R	9/28/2017	12566.33	.00	12566.33	RENT PAYMENT
REMITTANCE ADVICE		INVOICE TOTAL	DISCOUNT TOTAL	PAID TOTAL	CUSTOMER NUMBER
		12566.33	.00	12566.33	

 **SCANNED**

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19801 8 APBW

NISSAN OF SUMMITER LLC
1260 Broad St
Sumter, SC 29150

Rec #
71618



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AMOUNT	PAID BY	COMMENT	
12,556.32	CHECK	NOTE PYMT - CHECK FROM ISLAND REAL ESTATE HOLDINGS LLC	71623

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

55056

SC 29150

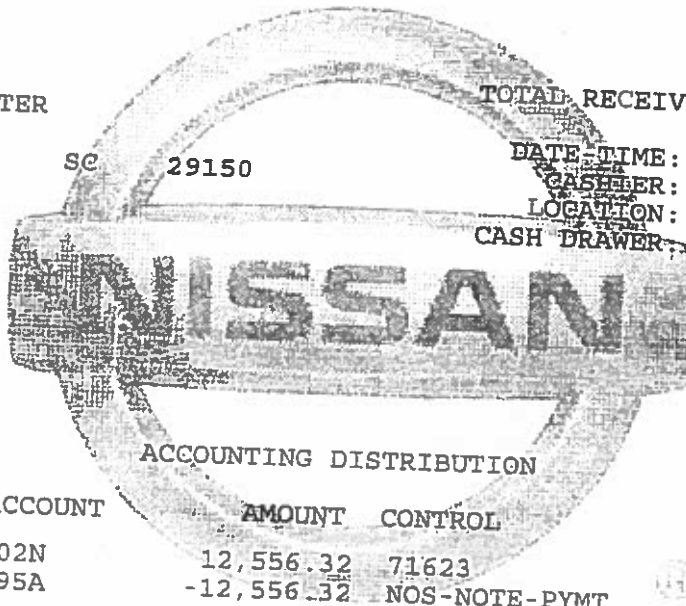
TOTAL RECEIVED: \$12,556.32

DATE-TIME: 01NOV2017 07:33

CASHEER: NEECIE

LOCATION:

CASH DRAWER



CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL
2	5	2	202N	12,556.32	71623
		2	295A	-12,556.32	NOS-NOTE-PYMT

CONTROL2

NISS-SUMTER
NOS-NOTE-PYMT

CASH
RECEIPT

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AMOUNT 10.00 PAID BY CASH COMMENT
BALANCE ON NOV NOTE PYMT

71625

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

SC 29150

55056

TOTAL RECEIVED:

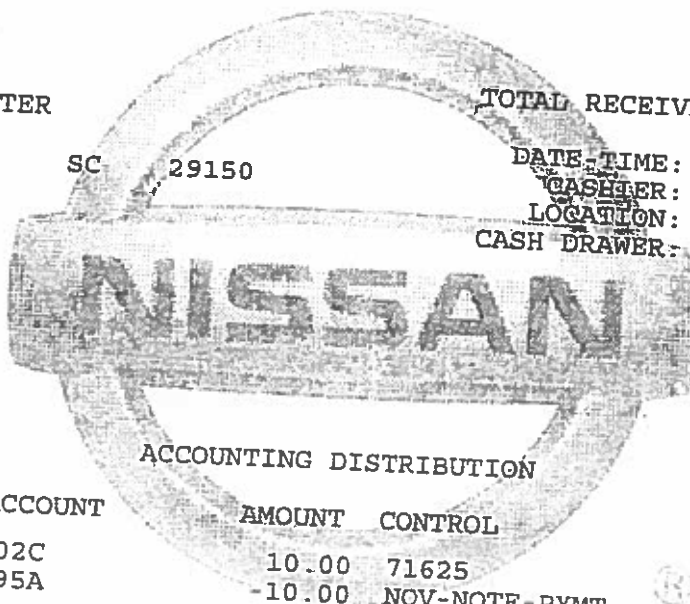
\$10.00

DATE-TIME: 02NOV2017 08:15

CASHER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT
2	5	2	202C
		2	295A

AMOUNT CONTROL

10.00 71625

-10.00 NOV-NOTE-PYMT

CONTROL2

NISS-SUMTER

NOV-NOTE-PYMT

CASH RECEIPT

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REC # 71623

ISLAND REAL ESTATE HOLDINGS LLC
8883 OCEAN HIGHWAY
PAWLEYS ISLAND, SC 29585

3073

67-160/532

PAY TO THE
ORDER OF

Jones Nissan Inc.

DATE 10-31-17

Twelve Thousand Five Hundred Fifty-Six and 32/100 \$ 12,556.32
DOLLARS



BRANCH BANKING AND TRUST COMPANY
1-800-BANK-BEST

FOR _____

22HL

⑈00003073⑈ ⑆053201607⑆0005223776797⑈



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PAGE 1 OF 1

AMOUNT PAID BY COMMENT
12,556.32 CHECK NOTE PAYMENT

71632

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

55056

SC 29150

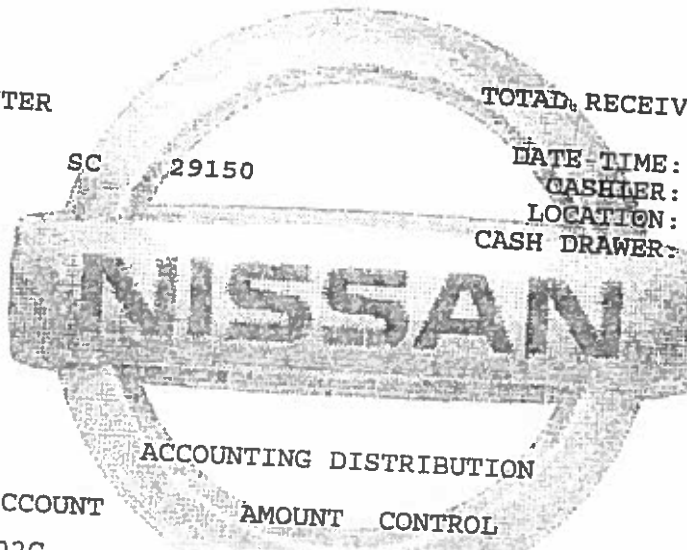
TOTAL RECEIVED: \$12,556.32

DATE-TIME: 01DEC2017 09:24

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT
2	5	2	202C
		2	295A

AMOUNT	CONTROL
12,556.32	71632
-12,556.32	NISS-NOTE-PYMT

CONTROL2

NISS-SUMTER
NISS-NOTE-PYMT

CASH
RECEIPT

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AMOUNT PAID BY COMMENT 71633
10.00 CASH BALANCE OWED ON NOTE PYMT

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

SC 29150

55056

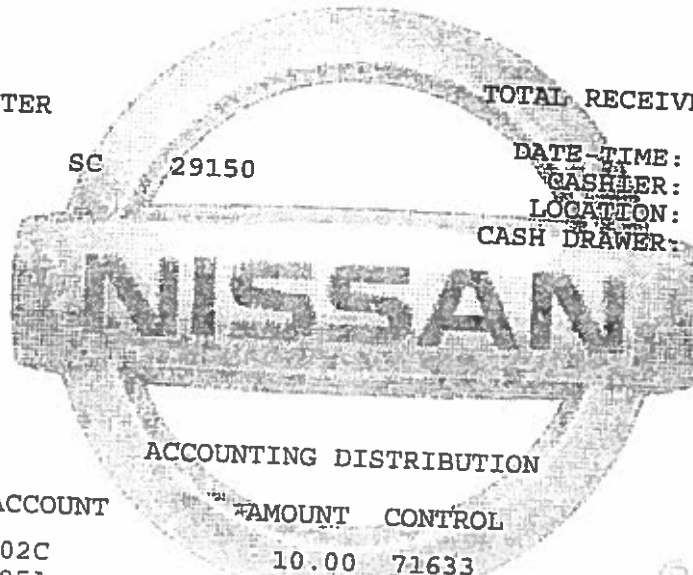
TOTAL RECEIVED: \$10.00

DATE-TIME: 06DEC2017 07:55

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT
2	5	2	202C
		2	295A

AMOUNT CONTROL

10.00 71633

-10.00 NISS-NOTE-PYMT

CONTROL2

NISS-SUMTER

NISS-NOTE-PYMT

CASH
RECEIPT

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ISLAND REAL ESTATE HOLDINGS LLC
8983 OCEAN HIGHWAY
PAWLEYS ISLAND, SC 29585

3080

67-160/532

PAY TO THE
ORDER OF

Jones Nissan Inc.

DATE 11/29/2017

Twelve thousand five hundred fifty six 33/100 \$ 12556.32
DOLLARS



BRANCH BANKING AND TRUST COMPANY
1-800-BANK BB&T BB&T.com

FOR

Rent

2716 Jane Bertch

⑈00003080⑈ ⑆053201607⑆0005223776797⑈

Rec'd
12/11/17

Rec #
71632

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GEORGETOWN - COMMON PLEAS - CASE#2020CP2200373



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AMOUNT PAID BY COMMENT 71642
12,566.32 CHECK CK FROM ISLAND REAL ESTATE HOLDINGS LLC

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

55056

SC 29150

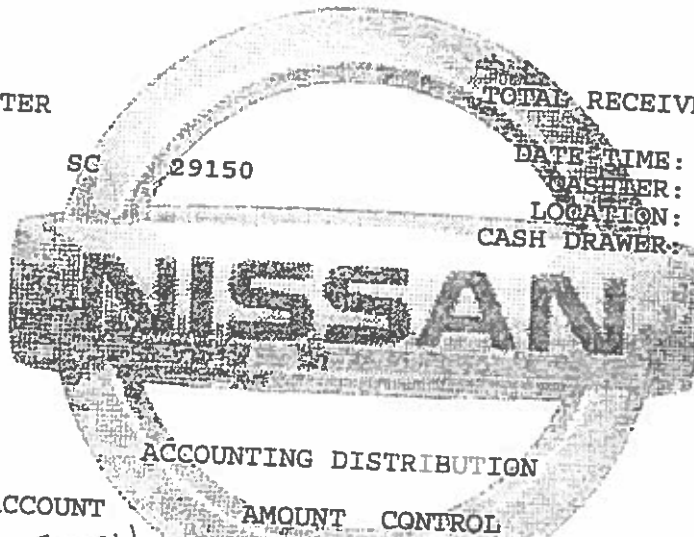
TOTAL RECEIVED: \$12,566.32

DATE TIME: 10JAN2018 14:49

CASHIER: NEECIE

LOCATION:

CASH DRAWER



CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL
2	5	2	202C 202N	12,566.32	71642
		2	295A	-12,566.32	NOTE-PYMT-NISS

CONTROL2

NISS-SUMTER
NOTE-PYMT-NISS

CASH
RECEIPT

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AMOUNT PAID BY COMMENT 71647
12,566.32 CHECK PD BY ISLAND REAL ESTATE HOLDINGS 1/31

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 01FEB2018 11:44
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71647	NISS-SUMTER
		2	295A	-9,841.72	NISS-NOTE-PYMT	NISS-NOTE-PYMT
		2	801	-2,724.60	NISS-NOTE-PYMT	NISS-NOTE-PYMT

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R.276



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AMOUNT PAID BY COMMENT 71652
12,566.32 CHECK CHECK RECD 2/28/18 FROM ISLAND REAL
ESTATE HOLDINGS

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 01MAR2018 14:28
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71652	NISS-SUMTER
		2	295A	-9,890.93	PRINCIPAL-NISSAN	PRINCIPAL-NISSAN
		2	801	-2,675.39	INT-NOTE-NISS	INT-NOTE-NISS

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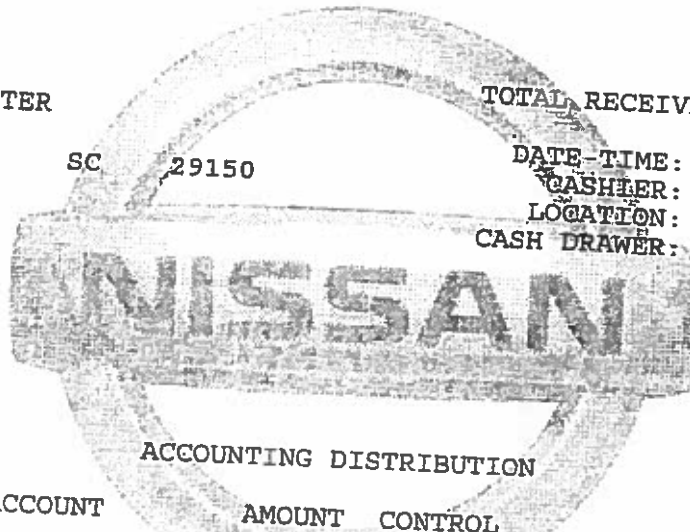
PAGE 1 OF 1

AMOUNT PAID BY COMMENT
12,566.32 CHECK CK# 3106 ISLAND REAL ESTATE HOLDINGS LLC 71656

NISSAN OF SUMTER
1260 BROAD ST
SUMTER
55056

SC 29150

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 02APR2018 14:13
CASHIER: NEECIE
LOCATION:
CASH DRAWER:



CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL
2	5	2	202N	12,566.32	71656
		2	295A	-9,940.38	NISS-NOTE-PYMT
		2	801	-2,625.94	NISS-NOTE-PYMT

CONTROL2
NISSAN-SUMTER
NISS-NOTE-PYMT
NISS-NOTE-PYMT

CASH
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AMOUNT
12,566.32

PAID BY
CHECK

COMMENT
CK# 3112
MAY NOTE PYMT

71662

ISLAND REAL ESTATE HOLDINGS
NISSAN OF SUMTER

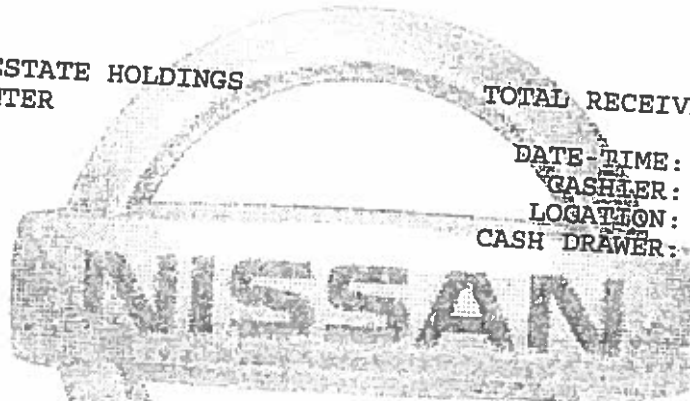
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DATE-TIME: 07MAY2018 13:15

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL
2	5	2	202C	12,566.32	71662
		2	295A	-9,990.09	MAY-NOTE-PYMT
		2	801	-2,576.23	MAY-NOTE-PYMT

CONTROL2

NISS-SUMTER
MAY-NOTE-PYMT
MAY-NOTE-PYMT

CASH
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AMOUNT PAID BY COMMENT 71663
12,566.32 CHECK CK 3119 ISLAND REAL ESTATE HOLDINGS

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 01JUN2018 08:33
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71663	NISS-SUMTER
		2	295A	-10,040.04	NISS-NOTE-PYMT	NISS-NOTE-PYMT
		2	801	-2,526.28	NISS-NOTE-PYMT	NISS-NOTE-PYMT

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AMOUNT PAID BY COMMENT 71667
12,566.32 CHECK CK 114 THAG INC RECD 6-29]
NOTE PYMT

NISSAN OF SUMTER
1260 BROAD ST
SUMTER
55056

SC 29150

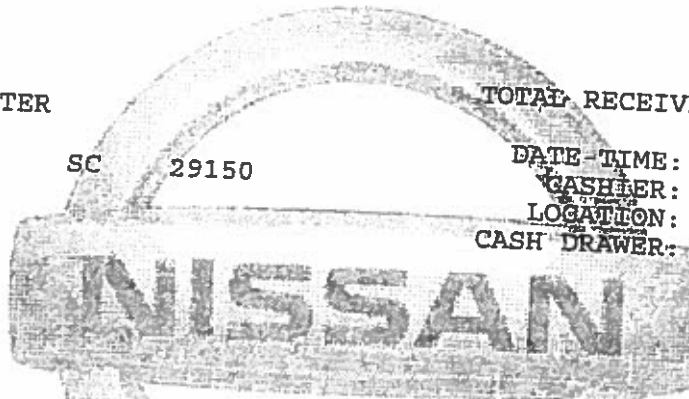
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DATE-TIME: 01JUL2018 13:42

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL
2	5	2	202N	12,566.32	71667
		2	801	-2,476.08	NISS-NOTE-PYMT
		2	295A	-10,090.24	NISS-NOTE-PYMT

CONTROL2

THAG-NISS-SUMTER
NISS-NOTE-PYMT
NISS-NOTE-PYMT

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AMOUNT PAID BY COMMENT
12,566.32 CHECK CK#101 THAG LLC
NOTE PYMT

71671

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

55056

SC 29150

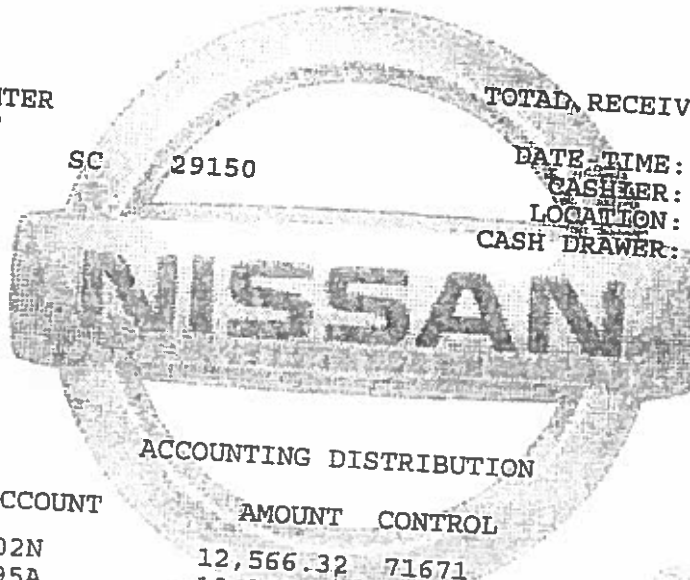
TOTAL RECEIVED: \$12,566.32

DATE-TIME: 03AUG2018 07:29

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT
2	5	2	202N
		2	295A
		2	801

AMOUNT	CONTROL
12,566.32	71671
-10,140.69	NISS-NOTE-PYMT
-2,425.63	NISS-NOTE-PYMT

CONTROL2

NISSAN-SUMTER
NISS-NOTE-PYMT
NISS-NOTE-PYMT

CASH RECEIPT



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AMOUNT PAID BY COMMENT
12,566.32 CHECK NOTE PYMT

71673

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

SC 29150

55056

TOTAL RECEIVED: \$12,566.32

DATE-TIME: 28AUG2018 11:40

CASHIER: NEECIE

LOCATION:

CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71673	
		2	295A	-10,191.39	SEPT-NOTE-PYMT	THAG-NISS-SUMTER
		2	801	-2,374.93	SEPT-NOTE-PYMT	SEPT-NOTE-PYMT
						SEPT-NOTE-PYMT

CUSTOMER COPY



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AMOUNT 12,566.32 PAID BY CHECK COMMENT 71675
CK#114- THAG LLC
OCT NOTE PYMT

NISSAN OF SUMTER
1260 BROAD ST
SUMTER
55056

SC 29150

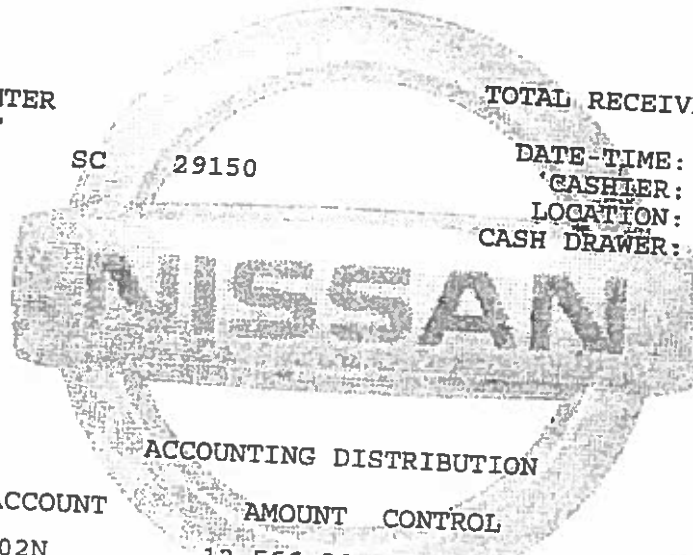
TOTAL RECEIVED: \$12,566.32

DATE-TIME: 03OCT2018 13:19

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71675	NISS-SUMTER
		2	295A	-10,242.35	NISS-OCT-NOTE-PYM	NISS-OCT-NOTE-PYT
		2	801	-2,323.97	NISS-OCT-NOTE-PYT	NISS-OCT-NOTE-PYT

CASH
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AMOUNT PAID BY COMMENT
12,566.32 CHECK CK# 117 THAG LLC
NOTE PYMT

71677

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 01NOV2018 13:30
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71677	NIIS-SUMTER
		2	295A	-10,293.56	NISS-NOTE-PYMT	NISS-NOTE-PYMT
		2	801	-2,272.76	NISS-NOTE-INT	NISS-NOTE-INT



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AMOUNT PAID BY COMMENT 71680
12,566.32 CHECK CK# 122 THAG LLC

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 04DEC2018 14:34
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71680	NISS-SUMTER
		2	295A	-10,345.03	NISS-NOTE-PYMT	NISS-NOTE-PYMT
		2	801	-2,221.29	NISS-INT-NOTE-PAY	NISS-INT-NOTE-PAY

CUSTOMER COPY



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AMOUNT
12,566.32

PAID BY
CHECK

COMMENT
CK# 127 THAG LLC
NOTE PYMT

71682

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

55056

SC 29150

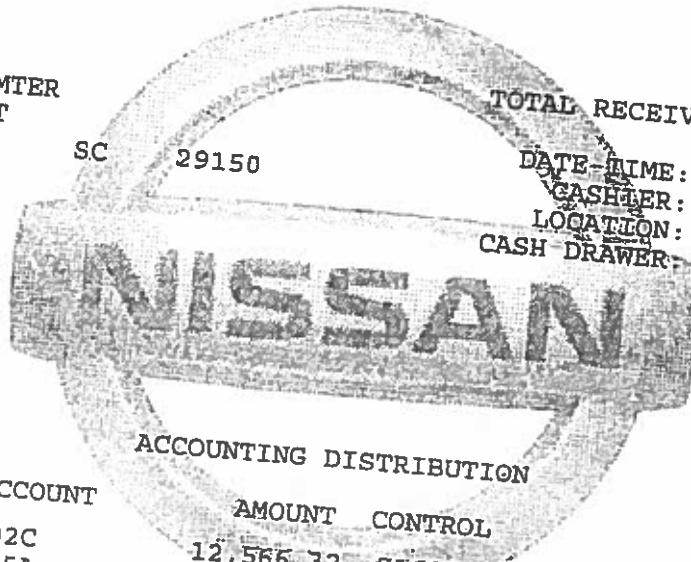
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DATE-TIME: 07JAN2019 08:07

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



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CONTROL2

NISS-SUMTER
NISS-NOTE-PYMT
NISS-NOTE-INT

**CASH
RECEIPT**
CUSTOMER COPY

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PAGE 1 OF 1

AMOUNT PAID BY COMMENT 71684
12,566.32 CHECK CK# 143 THAG LLC
NOTE-PYMT

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
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LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

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PAGE 1 OF 1

AMOUNT PAID BY COMMENT
12,566.32 CHECK CK# 161 THAG LLC
NOTE PYMT

71686

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
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LOCATION:
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PAGE 1 OF 1

AMOUNT	PAID BY	COMMENT	
12,566.32	CHECK	NOTE PYMT	71690

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 11APR2019 10:32
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LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

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PAGE 1 OF 1

AMOUNT PAID BY COMMENT
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NOTE PYMT JULY 19

71696

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

SC 29150

55056

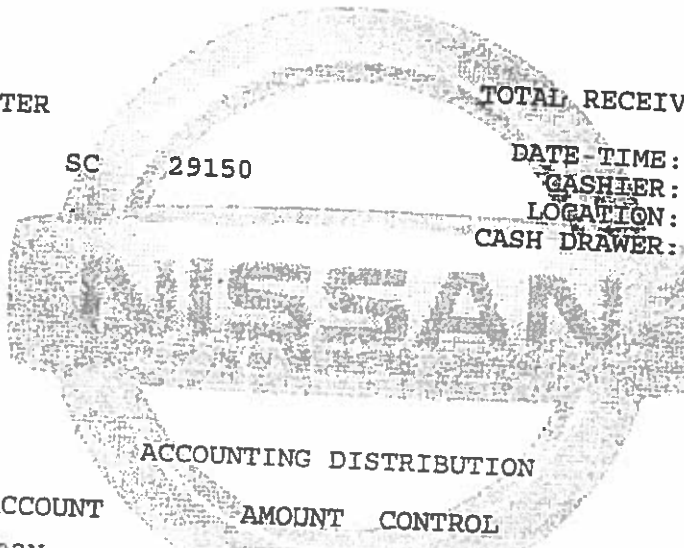
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LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

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CONTROL2
NISS-SUMTER
NISS-NOTE-PYMT
NISS-INT-NOTE-PMT

CASH
RECEIPT

ELECTRONICALLY FILED - 2023 May 12 4:28 PM - GEORGETOWN - COMMON PLEAS - CASE#2020CP2200373

R.291

Mecie

10712.58 295A
1853.74 801

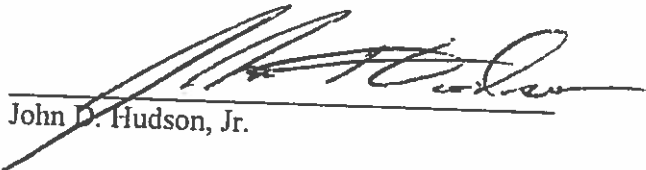
EXHIBIT 4

recovery of all costs and expenses incurred by McLeod Law Group, LLC in pursuit of this matter. This fee agreement is a version of McLeod Law Group, LLC's standard contingency fee agreement used with clients; the other version provides for a forty percent (40%) fee to the firm from any recovery proceeds obtained.

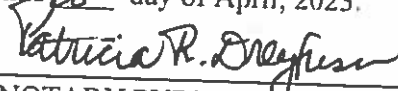
4. Defendants' outstanding debt owed to Plaintiff on the Promissory Note is \$389,555.98, and thirty-three and one third percent (33.33%) of this sum is \$129,839.01. As of the date of this affidavit, MLG has incurred \$3,487.30 in costs and expenses related to its collection efforts in this case. A detailed summary of these expenses will be provided to the Court upon request. Plaintiff seeks an award of these fees and expenses as part of its damages in this case.

5. I certify under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.


John D. Hudson, Jr.

SWORN TO AND SUBSCRIBED before me
this 28th day of April, 2023.


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 6-18-2023

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC; Terry L.
Holmes; and Merrill Lynch, Pierce, Fenner &
Smith, Incorporated,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

Plaintiff Jones Nissan, Inc., by and through its undersigned counsel, submits this Memorandum in Support of Its Motion for Summary Judgment against Defendants THAG, LLC, Nissan of Sumter, LLC and Terry L. Holmes (collectively "Defendants"). This case is set for a bench trial on May 30, 2023. However, no genuine issue of material fact exists for trial. Rather, this Court should grant summary judgment on Plaintiff's claims for breach of contract, breach of the implied covenant of good faith and fair dealing, conversion, and piercing the corporate veil. Plaintiff's damages—and the attorneys' fees and costs to which it is entitled under the contracts at issue—are ascertainable without the need for a trial or evidentiary hearing. Therefore, the Court should grant summary judgment and enter judgment against Defendants for the damages, costs, and attorneys' fees outlined below. Finally, the Court should also grant summary judgment on Defendants' meritless counterclaims to the extent the counterclaims were not already stricken by the Court's May 11, 2023, Form 4 order.¹

¹ Plaintiff filed a motion to alter or amend the Court's May 11 order on May 11, 2023, to clarify whether any of Defendants' asserted counterclaims remain viable, and that motion is pending as of this writing.

INTRODUCTION

This case arises out of the collective failure of Defendants to satisfy a \$389,555.98 debt obligation owed to Plaintiff on the purchase of a Nissan automobile dealership in Sumter, South Carolina, in 2017.

Plaintiff Jones Nissan, Inc. owned and operated the Jones Nissan automobile dealership ("the dealership") in Sumter from 1990 until early 2017. (Am. Compl. ¶ 8; Defendants' Answer to Am. Compl. ¶ 7). In July 2016, Plaintiff entered into an "Asset Purchase Agreement" ("the contract") with THAG pursuant to which THAG agreed to purchase the dealership for \$2,250,000.00 cash along with other considerations. (Asset Purchase Agr., **Exhibit A**); *see also* (Defendants' Answer to Am. Compl. ¶ 7) (admitting Plaintiff and THAG entered into the Asset Purchase Agreement). The contract was amended multiple times by the parties prior to the transaction closing in early 2017. (First Am. to Asset Purchase Agr., **Exhibit B**; Second Am. to Asset Purchase Agr., **Exhibit C**; Third Am. to Asset Purchase Agr., **Exhibit D**); *see also* (Defendants' Answer to Am. Compl. ¶ 7) (admitting each of the amendments). At all relevant times, Terry Holmes was the sole member and had sole control over THAG. (Dep. of Terry Holmes at 36:15–37:17, **Exhibit E**).

Pursuant to the third amendment, Plaintiff—at THAG's request—agreed to finance \$650,000.00 of the \$2,250,000.00 purchase price. (Third Am. to Asset Purchase Agr., **Exhibit D**); *see also* (Dep. of Terry Holmes at 12:22–13:1, **Exhibit E**). The terms and conditions of the financed portion of the sale price were memorialized through a combination of documents, namely a Promissory Note, a "Pledged Collateral Account Control Agreement," and a "Pledge Agreement," all of which were signed by Terry Holmes purportedly on behalf of THAG. (Pledged Collateral Account Control Agr., **Exhibit F**; Promissory Note, **Exhibit G**; Pledge Agr., **Exhibit**

H). The financing agreement required that THAG (or its assigns) at all times maintain a sufficient balance in Merrill Lynch Account No. XXX-XX250 ("the account") to satisfy the outstanding balance of the financed portion of the purchase price of the dealership as contemplated in the third amendment to the Asset Purchase Agreement. (Pledged Collateral Account Control Agr., **Exhibit F**; Pledge Agr., **Exhibit H**). The agreement also gave Plaintiff a security interest in the account and allowed Plaintiff to issue a "Notice of Exclusive Control" to take control of the account if THAG defaulted on its debt obligation. (Pledged Collateral Account Control Agr. ¶ 6, **Exhibit F**; Pledge Agr. ¶¶ 1, 6, **Exhibit H**). Defendants—or some combination of them—initially funded the account with \$650,000.00 as required. (Verification of Deposit, **Exhibit I**); *see also* (Merrill Lynch's Answer to Am. Compl. ¶ 12).

THAG, via Terry Holmes, assigned the contract to Nissan of Sumter on or about February 28, 2017. (Assignment, **Exhibit J**; Dep. of Terry Holmes at 104:14-17, **Exhibit E**). Nissan of Sumter thus assumed THAG's obligations under the contract. *Id.*

Defendants, or some combination of them, made monthly payments of \$12,566.32 or \$12,566.33 on the \$650,000.00 debt obligation from March 2017 through July 2019. (Aff. of Neece Oliver ¶ 5, **Exhibit K**); *see also* (Dep. of Terry Holmes at 120:10-17, 123:13–130:10, **Exhibit E**). Despite still owing 31 of the 60 required payments, Defendants never made another required payment after July 2019. (Aff. of Neece Oliver ¶ 6, **Exhibit K**; Dep. of Terry Holmes at 130:5-10, **Exhibit E**). On August 20, 2019, Plaintiff notified THAG and Terry Holmes of their default on the Promissory Note, and in exercise of its rights under the Note, demanded that the then-outstanding debt of \$360,035.15 be satisfied in full.² (Notice of Default, **Exhibit L**).

² The amount of \$360,035.15 is incorrect, as it represents the outstanding principal only. The correct amount is \$389,555.98. (Aff. of Neece Oliver ¶ 6, **Exhibit K**; Aff. of James Jones ¶ 7, **Exhibit M**).

Defendants failed to satisfy the outstanding debt. (Aff. of Neechie Oliver ¶¶ 5–6, **Exhibit K**; Aff. of James Jones ¶¶ 5–7, **Exhibit M**).

Because Defendants defaulted and failed to satisfy the outstanding debt, Plaintiff attempted to exercise its contractual rights to collect the outstanding debt from the designated, collateralized funds on deposit in the pledged Merrill Lynch account. (Notice of Exclusive Control, **Exhibit N**). When Plaintiff issued a Notice of Exclusive Control to exercise control over the account, it discovered the designated, collateralized funds had been withdrawn, transferred, or otherwise disposed of by Defendants and were no longer in the account nor available to Plaintiff to satisfy the debt. (Aff. of James Jones ¶ 3, **Exhibit M**; Dep. of Terry Holmes at 109:21-25, **Exhibit E**). Plaintiff eventually learned that Defendants sold the Nissan automobile dealership in 2019. (Dep. of Terry Holmes at 205:9-19, **Exhibit E**). Defendants have never paid the remaining \$389,555.98 they agreed to pay Plaintiff. (Aff. of Neechie Oliver ¶ 6, **Exhibit K**; Aff. of James Jones ¶¶ 6–7, **Exhibit M**).

LEGAL STANDARD

A trial court must grant summary judgment if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCR. In reviewing a summary judgment motion, the court must view “the evidence and all inferences which can reasonably be drawn therefrom . . . in the light most favorable to the nonmoving party.” *Quail Hill, LLC v. Richland Cty.*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). However, “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

ARGUMENT

Plaintiff is entitled to recover the remaining \$389,555.98 of Defendants' debt obligation, plus costs and attorneys' fees. No genuine issue of material fact exists as to Plaintiff's claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and conversion. It is undisputed that THAG—and Nissan of Sumter as its assignee—had a contractual duty to pay Plaintiff \$650,000.00, plus interest, but failed to pay \$389,555.98 of their debt. There is also no genuine dispute that THAG pledged the Merrill Lynch account as collateral, that THAG agreed to at all times maintain sufficient funds in the account to cover its outstanding debt, that Plaintiff had a right to exercise exclusive control over the account and use the funds in the account to satisfy the outstanding debt if Defendants defaulted, and that THAG drained the account before the debt was satisfied. THAG therefore is liable on Plaintiff's conversion claim as a matter of law.

Further, Terry Holmes is personally liable for the actions of THAG and Nissan of Sumter. Although he purported to act through the two LLCs, he used the LLCs as a corporate shell for his own wrongdoing. The Court should therefore pierce the corporate veil and enter judgment on Plaintiff's claims against Terry Holmes individually.

Finally, Plaintiff has asserted two meritless counterclaims that are unsupported by any evidence. To the extent the counterclaims have not already been stricken by the Court's May 11 order, the Court should grant summary judgment in favor of Plaintiff on each counterclaim.

- A. Defendants breached the contracts and implied covenants of good faith and fair dealing as a matter of law because they agreed to pay \$650,000.00 plus interest to Plaintiff but failed to pay \$389,555.98 of their debt obligation.**

Defendants breached multiple contracts with Plaintiff. The contracts required Defendants to pay Plaintiff \$650,000.00, plus interest, in 60 monthly installments. Defendants failed to make all the required payments and therefore breached the contracts as a matter of law.

A plaintiff asserting a breach of contract claim must prove “the existence of a contract, its breach, and damages caused by such breach.” *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 652, 780 S.E.2d 263, 272–73 (Ct. App. 2015). The breaching party is “liable for whatever damages follow as a natural consequence and a proximate result of such breach.” *Id.* The interpretation and enforcement of an unambiguous contract is a question of law for the court and can be properly disposed of at summary judgment. *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012). The court must apply the plain language of the agreement and enforce its terms according to their plain meaning. *Bardsley v. Gov’t Emps. Ins. Co.*, 405 S.C. 68, 76, 747 S.E.2d 436, 440 (2013).

The contract documents at issue contain no ambiguities. Plaintiff agreed to finance \$650,000.00 of the purchase price for the dealership in exchange for THAG’s agreement to repay the \$650,000.00, plus interest, over the course of 60 months. (Third Am. to Asset Purchase Agr., **Exhibit D**). THAG entered into the Pledged Collateral Control Agreement with Plaintiff and Merrill Lynch, in which it agreed that the Merrill Lynch account would be maintained for the benefit of Plaintiff and that Plaintiff could exercise exclusive control over the account with proper notice. (Pledged Collateral Control Agr. ¶¶ 1, 6, **Exhibit F**). THAG, via Terry Holmes, executed the Promissory Note memorializing their commitment to pay the \$650,000.00 plus interest and entered into the Pledge Agreement providing Plaintiff a security interest in the account and the right to collect the debt from the account if Defendants defaulted on the debt. (Promissory Note, **Exhibit G**; Pledge Agr., **Exhibit H**). When they executed the Promissory Note, THAG and Terry Holmes expressly waived any rights to “demand, presentment, notice of non-payment, dishonor, protest, and notice of protest.” (Promissory Note, **Exhibit G**).

There is no dispute that THAG entered into the Asset Purchase Agreement or the three amendments. In fact, Defendants admitted that THAG entered into these contracts in their answer to the amended complaint. (Defendants' Answer to Am. Compl. ¶ 7). There is also no dispute that, pursuant to the third amendment, THAG was required to pay Plaintiff \$650,000.00 amortized over 60 months at 6% interest. Terry Holmes admitted this fact in a letter to Plaintiff in August 2019. (Aug. 2019 Letter and Cashier's Check, **Exhibit O**) (attempting to "send a portion of my payments as agreed upon" and stating, "I intend to bring my payments back to the agreed upon amount"); *see also* (Dep. of Terry Holmes at 111:6–114:9, **Exhibit E**) (admitting he sent the August 2019 letter). Further, there is no dispute that THAG made only 29 of the required 60 monthly payments or that THAG failed maintain sufficient funds in the pledged account to cover the outstanding debt obligation. (Dep. of Terry Holmes at 109:21–25, **Exhibit E**; Aff. of Neechie Oliver ¶ 6, **Exhibit K**; Aff. of James Jones ¶¶ 3, 5–7; **Exhibit M**).

Terry Holmes admitted at his deposition that he did not read the contract documents before signing them. (Dep. of Terry Holmes at 167:15–168:12, **Exhibit E**) (admitting he signed the Pledge Agreement without reading it and stating, "I just don't review these documents. I don't ever review them"). His failure to read the contract documents is no defense to Plaintiff's claims. *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 81, 749 S.E.2d 139, 146 (Ct. App. 2013) ("[A] party who signed a contract is deemed to have read and understood 'the effect' of the contract.").

Thus, no genuine issue of material fact exists as to Defendants' breach of the unambiguous agreements. Defendants also breached the implied covenant of good faith and fair dealing by failing to satisfy their contractual obligations and by siphoning funds they had agreed to pay to Plaintiff. *See Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 653, 780 S.E.2d 263, 273 (Ct. App. 2015) ("[T]here exists in every contract an implied covenant of good

faith and fair dealing.”). Plaintiff is therefore entitled to summary judgment on its claims for breach of contract and breach of the implied covenant of good faith and fair dealing.

II. Plaintiff is entitled to summary judgment on its conversion claim because Defendants drained the Merrill Lynch account despite Plaintiff’s security interest and entitlement to exercise exclusive control over the account if Defendants defaulted on their debt obligation.

Conversion is “the unauthorized assumption and exercise of the rights of ownership over goods or personal chattels belonging to another, to the alteration of their condition or to the exclusion of the rights of the owner.” *Mullis v. Trident Emergency Physicians*, 351 S.C. 503, 506–07, 570 S.E.2d 549, 550 (Ct. App. 2002). Money may be the subject of conversion if “it is capable of being identified and there may be conversion of determinate sums even though the specific coins and bills are not identified.” *Id.* at 507, 570 S.E.2d at 551 (quoting *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990)).

Plaintiff is entitled to summary judgment on its conversion claim. Defendants funded the Merrill Lynch account with \$650,000.00, agreed to maintain a sufficient balance in the account at all times to cover the outstanding debt obligation, and agreed that Plaintiff was entitled to issue a notice and take exclusive control over the account if Defendants defaulted. Nonetheless, Defendants drained the account when they still owed Plaintiff the determinative sum of \$389,555.98. Defendants therefore unlawfully converted the funds in the account, and Plaintiff is entitled to judgment as a matter of law on its conversion claim. *See Mullis*, 351 S.C. at 507, 570 S.E.2d at 551 (affirming a judgment on a conversion claim because the plaintiff identified a determinative sum improperly withheld by the defendant).

- III. Plaintiff is entitled to pierce the corporate veil of THAG and Nissan of Sumter because Terry Holmes used both LLCs as corporate shells to protect his own wrongdoing, and recognition of the corporate entities would result in fundamental unfairness for Plaintiff.**

The Court should pierce the corporate veil of THAG and Nissan of Sumter and find Terry Holmes personally liable for the actions of each LLC. Terry Holmes used the LLCs as corporate shells to protect his own wrongdoing. Allowing him to escape liability for his actions would be fundamentally unfair to Plaintiff. The Court should therefore pierce the corporate veil and enter judgment on Plaintiff's claims against Terry Holmes.

Although a corporation or similar entity is generally recognized as an entity separate and distinct from its stockholders or members, the corporate form will be disregarded if it "is used to protect fraud, justify wrong, or defeat public policy." *Mid-S. Mgt. Co. Inc. v. Sherwood Dev. Corp.*, 374 S.C. 588, 597, 649 S.E.2d 135, 140 (Ct. App. 2007) (quoting *Sturkie v. Sifly*, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct. App. 1984)). South Carolina courts apply a two-pronged test in determining whether to pierce a corporate veil. The first prong of the test "requires an eight-factor analysis and looks to observance of the corporate formalities by the dominant shareholders." *Mid-S. Mgt. Co.*, 374 S.C. at 597, 649 S.E.2d at 140. The second prong requires a plaintiff to show that "fundamental unfairness" would result from recognition of the corporate entity. *Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 102, 668 S.E.2d 798, 800-01 (2008).

In determining whether corporate formalities were observed under the first prong, courts consider eight factors:

- (1) whether the corporation was grossly undercapitalized;
- (2) failure to observe corporate formalities;
- (3) non-payment of dividends;
- (4) insolvency of the debtor corporation at the time;

- (5) siphoning of funds of the corporation by the dominant stockholder;
- (6) non-functioning of other officers or directors;
- (7) absence of corporate records; and
- (8) the fact that the corporation was merely a façade for the operations of the dominant stockholder.

Mid-S. Mgt. Co., 374 S.C. at 598, 649 S.E.2d at 140–41. “The conclusion to disregard the corporate entity must involve a number of the eight factors, but need not involve them all.” *Id.* at 598, 649 S.E.2d at 141.

THAG and Nissan of Sumter did not recognize corporate formalities. Terry Holmes testified at his deposition:

- He has always been the sole member of THAG and has always had sole decision-making authority for the company. (Dep. of Terry Holmes at 36:15–37:7, **Exhibit E**).
- At the time THAG entered into the Asset Purchase Agreement with Plaintiff, Terry Holmes was the sole member and the president, and THAG had no vice president, secretary, or treasurer. (Dep. of Terry Holmes at 74:24–75:9, **Exhibit E**).
- His companies were undercapitalized and “under major financial duress” at the time he entered into the financing agreement with Plaintiff. (Dep. of Terry Holmes at 88:6–16, 89:5–19, 100:18–101:3, **Exhibit E**).
- He used funds in the designated account for the benefit of his other businesses despite having pledged the funds to Plaintiff. (Dep. of Terry Holmes at 85:9–89:19, 100:11–102:19, 144:6–154:18, **Exhibit E**).
- Neither THAG nor Nissan of Sumter ever paid any dividends. (Dep. of Terry Holmes at 217:21–22, 218:16–22, **Exhibit E**).
- Neither THAG nor Nissan of Sumter ever held periodic meetings. (Dep. of Terry Holmes at 217:23–25, 218:16–22, **Exhibit E**).
- THAG and Nissan of Sumter are no longer going concerns and do not generate any revenue. (Dep. of Terry Holmes at 202:6–10, 210:5–14, **Exhibit E**).
- THAG and Nissan of Sumter observed only “very minimum” corporate formalities—namely, paying annual registrations to “keep the companies open for . . . litigations.” (Dep. of Terry Holmes at 218:5–22, **Exhibit E**).

Thus, at least seven of the eight factors exist, and the Court should find as a matter of law that the first prong of the veil-piercing test is satisfied.

The second prong—the “fairness test”—requires a plaintiff to “establish that (1) the defendant was aware of the plaintiff’s claim against the corporation, and (2) thereafter, the defendant acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff’s claim in the property.” *Mid-S. Mgt. Co.*, 374 S.C. at 599, 649 S.E.2d at 141. The essence of the second prong “is simply that an individual businessman cannot be allowed to hide from the normal consequences of carefree entrepreneuring by doing so through a corporate shell.” *Drury Dev. Corp.*, 380 S.C. at 102, 668 S.E.2d at 800–01.

There is no dispute that, at all times since the Third Amendment to the Asset Purchase Agreement, Terry Holmes was aware that Defendants owed Plaintiff the remaining balance on the financed portion of the purchase price for the dealership. (Dep. of Terry Holmes at 45:13-18, 180:2-8, **Exhibit E**) (admitting he made the decision to allow THAG to be a party to the Asset Purchase Agreement and the deal would not have been completed if Plaintiff had not been willing to finance \$650,000.00 of the purchase price for the dealership). Despite Terry Holmes’ knowledge of Plaintiff’s entitlement to the financed portion of the purchase price, he allowed THAG and Nissan of Sumter to become insolvent and siphoned funds from the designated, collateralized Merrill Lynch account for other, self-serving purposes. He pledged the designated account as collateral for a new loan management account affiliated with other businesses he owned, despite the provision in the Pledged Collateral Account Control Agreement prohibiting him from pledging the account as collateral to anyone other than Plaintiff. (Dep. of Terry Holmes at 144:6–154:18, **Exhibit E**; Pledged Collateral Account Control Agr. ¶ 2, **Exhibit F**). He also

used funds from the designated, pledged account to pay Nissan Motor Corporation for the benefit of his other dealerships. (Dep. of Terry Holmes at 85:9–89:19, 100:11–102:19, **Exhibit E**).

Finally, Terry Holmes wrote the August 2019 letter to Plaintiff in the first person. (Aug. 2019 Letter and Cashier's Check, **Exhibit O**). In the letter, he acknowledged his responsibility for the payment obligation to Plaintiff and treated his companies' insolvency as his own financial situation: "I am forced to send a portion of *my payments* as agreed upon. As i [sic] get *my affairs* in order, I intend to bring *my payments* back to the agreed upon amount. I appreciate your understanding in this matter, as I rectify *my financial situation*." (*Id.*) (emphases added). Terry Holmes used the LLCs as corporate shells for his personal actions, and the fairness test therefore requires that the corporate form of THAG and Nissan of Sumter be disregarded. The Court should grant summary judgment on the claims discussed above and find Terry Holmes personally liable for those claims.

IV. Plaintiff is entitled to a judgment of \$389,555.98, plus attorneys' fees and costs.

A. Plaintiff is entitled to \$389,555.98 in damages.

For purposes of summary judgment, Plaintiff is entitled damages in the amount of outstanding debt at the time of the breach. As set forth in the affidavit of Neece Oliver, Jones Nissan's Controller, Defendants have made 29 of the agreed upon 60 payments on the Promissory Note. (Aff. of Neece Oliver ¶ 6, **Exhibit K**). The first payment was made in March 2017, and the 29th payment was made in July 2019. (*Id.* ¶ 5). Each monthly payment made was in the amount of either \$12,566.32 or \$12,566.33 as shown in the table included in Ms. Oliver's affidavit. (*Id.*). Defendants have failed to make the 31 remaining payments due under the Promissory Note, and the balance now due totals \$389,555.98. (*Id.* ¶ 6). This sum is comprised of the outstanding

principal balance of \$360,035.15 and past due interest of \$29,520.83. (*Id.*). Accordingly, Plaintiff respectfully requests that a judgment be entered in its favor for \$389,555.98.³

B. Plaintiff is entitled to recover its attorneys' fees and costs pursuant to the terms of the contract documents.

"In South Carolina, the authority to award attorney fees can come only from a statute or be provided for in the language of a contract." *Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 557 S.E.2d 709 (Ct. App. 2001). Plaintiff is entitled to an award of attorneys' fees and costs associated with its efforts to collect the outstanding debt at issue pursuant to both the Promissory Note and the Pledge Agreement. The plain language of the Promissory Note provides "[t]he Obligor hereunder agrees to pay all costs of collection, *including a reasonable attorney's fee*, in case payment shall not be made at maturity." (Promissory Note, **Exhibit G**) (emphasis added). Similarly, the plain language of the Pledge Agreement, in paragraph 8.(e), provides:

The Pledgor shall pay all costs and expenses incurred by the Lender in enforcing this Security Agreement, realizing upon any Collateral and collecting any Indebtedness (whether incurred in connection with collection, trial or appeal) *including a reasonable attorney's fee* whether suit is brought or not and to the extent of Pledgor's liability of repayment of any indebtedness, shall be liable for any deficiency in the event that disposition of the Collateral does not satisfy the Indebtedness in full.

(Pledge Agreement, **Exhibit H**) (emphasis added). Based on the plain language of these agreements, this Court has authority to award attorneys' fees, and Plaintiff is entitled to recover its attorneys' fees and costs.

Plaintiff has agreed to pay Plaintiff's counsel a contingency fee of thirty-three and a third percent (33.33%) of any recovery obtained in this matter, and to reimburse Plaintiff's counsel for

³ The affidavit of James Jones, a co-owner of the company, confirms the damages suffered by Plaintiff. (Aff. of James Jones, **Exhibit M**).

all costs and expenses associated with the collection effort. An affidavit of Plaintiff's counsel, John D. Hudson, Jr., testifying to the attorney's fees and costs associated with the collection efforts in this matter as of the date of this filing is attached as **Exhibit P** and incorporated herein.

- V. **To the extent Defendants' counterclaims are not already stricken, Plaintiff is entitled to summary judgment on the counterclaims because Defendants have produced no evidence supporting their meritless claims.**

Defendants assert counterclaims against Plaintiff for breach of contract and breach of the implied covenant of good faith and fair dealing. (Defendants' Answer to Am. Compl. ¶¶ 53–62). To the extent the counterclaims were not stricken by the Court's May 11, 2023, Form 4 order, Plaintiff is entitled to summary judgment on both counterclaims.

Defendants have produced no evidence supporting any of their allegations that Plaintiff breached either the express terms of the Asset Purchase Agreement or the implied covenant of good faith and fair dealing. In fact, Defendants never made mention of any alleged breach(es) by Plaintiff until well after this litigation commenced. (Dep. of Terry Holmes at 115:5-25; **Exhibit E**). Moreover, Defendants' contention that THAG performed its obligations under the Asset Purchase Agreement is contradicted by numerous admissions outlined above. Consequently, Plaintiff is entitled to summary judgment on Defendants' counterclaims. *See Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 453, 814 S.E.2d 643, 654 (Ct. App. 2018) ("In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial. Once a party moving for summary judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings.").

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that (1) summary judgment be entered against Defendants on Plaintiff's breach of contract, breach of the implied covenant of good faith and fair dealing, conversion, and veil-piercing causes of action as alleged in the Amended Complaint; (2) Plaintiff be awarded actual damages in the amount of \$389,555.98; (3) Plaintiff be awarded attorneys' fees in the amount of \$129,839.01 and costs in the amount of \$3,487.30 pursuant to the Promissory Note and Pledge Agreement; and (4) Defendants' counterclaim be dismissed with prejudice.

Respectfully Submitted,

MCLEOD LAW GROUP, LLC
928 Washington Street
Post Office Box 2014
Columbia, SC 29202
Tel. 803-451-6057
Fax 844-270-0726

s/John D. Hudson, Jr.
W. Mullins McLeod, Jr. (14148)
mullins@mcleod-lawgroup.com
John D. Hudson, Jr. (68646)
john@mcleod-lawgroup.com

Attorneys for the Plaintiff

May 22, 2023

EXHIBIT A

EXHIBIT A

ASSET PURCHASE AGREEMENT

Between

JONES NISSAN, INC.
(the "Company").

And

James E. Jones and John T. Jones, Jr.,
(Collectively the "Shareholder", together with the "Company" as "Seller")

and

THAG, LLC or Assigns
(the "Purchaser")

July 25, 2016

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into this 25th day of July, 2016, and effective as of the Effective Date by and among JONES NISSAN, INC, a South Carolina Corporation (the "Seller" or the "Company"), James E. Jones and John T. Jones, Jr. (collectively the "Shareholder"), and THAG, LLC, or assigns, a South Carolina limited liability company (the "Purchaser").

WHEREAS, Seller desires to sell and Purchaser desires to buy certain assets of Seller hereinafter described; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and among the parties as follows:

1. **ASSETS TO BE SOLD:** Subject to the terms and conditions of this Agreement, on the Closing Date, Seller shall sell, convey, transfer, assign and deliver to Purchaser and Purchaser shall purchase and accept from Seller the following described assets (the "Assets"), free and clear of any and all liens:

(a) New Vehicles. (i) Company shall sell and Purchaser shall buy such of Company's new and unused, untitled 2016 or newer model Nissan vehicles as are in possession of Company on the Closing Date, at the factory invoice prices for same, less all previously paid or payable factory to dealer incentives, model discounts, factory bonuses or dealer rebates, interest, finance charges, advertising allowances or rebatable charges, dealer holdbacks and floor plan credits with respect to such vehicles. Adjustments shall be made to said prices to reflect any additions or removals from said vehicles of equipment and/or accessories which are not included within the factory invoice price. Purchaser shall have no obligation to purchase any vehicle upon which additional installed accessories or equipment has invalidated the new vehicle warranty. Exhibit "A" attached hereto is a list of all new and unused 2016 model Nissan vehicles in Seller's possession on the date designated thereon. Seller agrees that hereafter no additions shall be made to such vehicle inventories except in the ordinary course of business and, further, to keep its usual and adequate records of any such additions which shall be made available to the Purchaser for review and verification.

(b) It is further agreed that in the event any new vehicle referred to in this section shall have been damaged prior to the Closing Date, Company shall have repaired such vehicle to the satisfaction of Purchaser, or in the event any such vehicle has not been repaired, Company and Purchaser shall agree on the cost to cover such repairs, which cost shall be deducted from the prices referred to herein. In the event Company and Purchaser cannot agree on the cost of repairs, Purchaser shall have no obligation to purchase any such vehicle or vehicles. Notwithstanding the foregoing, Purchaser shall not be obligated to purchase any damaged vehicle (whether or not same has been repaired), having repair costs in excess of Five Hundred and No/100 Dollars (\$500.00) or which is subject to disclosure pursuant to O.C.G.A. §40-1-5.

(c) Demonstrator Vehicles. Any previously untitled 2016 or newer model year vehicles with odometer reading in excess of 500 miles and less than 6,000 miles shall be considered

a "Demonstrator Vehicle." The purchase price paid for Demonstrator Vehicles with odometer readings between 500 and 6,000 miles shall be the same as the price calculated for New Vehicles in Section 1(a) above, reduced by twenty-five cents (\$0.25) per mile. The purchase price to be paid for Demonstrator Vehicles with odometer readings excess of 6,000 shall be determined in accordance with Section 1(d), as if same were a Used Vehicle. Exhibit "B" attached hereto contains a list of all Demonstrator Vehicles in Seller's possession on the date designated thereon.

(d) Used Vehicles. Purchaser is not purchasing any used vehicle inventory.

(e) Vehicle Parts, Accessories and Other Inventories.

(i) Purchaser shall purchase from Seller at Closing, those vehicle parts and accessories which are current, unused, undamaged, non-obsolete, returnable, new factory Nissan parts and accessories. All factory parts to be non-obsolete must be listed in the most recent factory price book, and inventoried and valued at the net cost set forth in the price books. Purchaser shall not be obligated to purchase any used, damaged, remanufactured, unboxed or obsolete parts or accessories, however, Purchaser may purchase said parts and accessories at a discounted value to be mutually agreed upon between Purchaser and Seller.

(ii) Purchaser shall purchase from Seller at Closing, those non-OEM vehicle parts and accessories which are current, unused, undamaged, non-obsolete, returnable, new parts and accessories. Such parts shall be inventoried and valued at the Company's net cost for same. Purchaser shall not be obligated to purchase any used, damaged, remanufactured, unboxed or obsolete parts or accessories, however, Purchaser may purchase said parts and accessories at a discounted value to be mutually agreed upon between Purchaser and Seller.

(iii) Purchaser shall purchase from Seller at Closing, such other inventories and consumables used in Company's business, such as gas, oil, grease, anti-freeze, fluids, solvents, undercoating materials, paint, sealants, body shop materials, office and shop supplies which are, undamaged, unopened, useable and returnable. Such miscellaneous inventories be inventoried and valued at the Company's net cost for same.

(iv) Purchaser shall not be obligated to purchase any obsolete, non-returnable, used, damaged or remanufactured inventory.

(v) Seller agrees to maintain the vehicle parts and accessories inventory at normal operating levels through Closing. The parties agree that they will equally split the cost of an independent inventory of the vehicle parts and accessories inventory prior to Closing, with the selection of the company that will perform said inventory to be mutually agreed upon by Purchaser and Seller. In the event that Seller makes any sales of parts after the date of the physical count, but prior to the date of Closing, the purchase price of parts and accessories shall be reduced by the price (as determined above) of each part sold.

(vi) Purchaser shall purchase from Seller at Closing, all service work in process with the vehicles in Seller's possession at Closing including outside or sublet work ("WIP"). The value of WIP shall be determined based on the actual cost of labor and parts installed

for such work in process, as shown on repair orders and established from Seller's records. Purchaser shall thereafter be entitled to invoice and collect from the customer the full amount of all charges for such parts and labor.

(f) Other Assets. Seller shall transfer to Purchaser all of Seller's right, title and interest in the following:

(i) Furniture, fixtures, equipment, machinery and shop equipment and tools; manufacturer parts return benefits and privileges; to the extent permitted, telephone numbers, facsimile numbers, white and yellow pages advertising, website content and URLs, internet domains, www.jonesnissan.com, websites, and customer lists, business records, intellectual property, intangible assets and rights, and goodwill.

(ii) Nissan franchise rights of the Company and the associated intangible assets of the franchise (collectively the "Blue Sky").

(iii) All rights, including common law rights and goodwill, of the Seller in any registered or unregistered trade names (excluding the name "Jones" as it appears in any such trade names), trademarks or service marks, and all derivatives thereof and the goodwill associated therewith, to the extent transferrable and without warranty.

(iv) Purchaser, Seller and Shareholder recognize the value of the goodwill associated with Company and its name and Shareholder's association with the Company. Purchaser, Seller and Shareholder further acknowledge the importance of setting reasonable limitations on future competition with Purchaser. As such, Company and Shareholder agree to limit its competition in the future by acknowledging that neither it nor any company or entity owned by Seller shall directly or indirectly carry on or be engaged in the business selling or servicing new Nissan motor vehicles in accordance within the parameters described in Section 12(b)(vii) below, but not otherwise.

(v) All parts return privileges which may have accrued to Seller with respect to the parts and accessories purchased hereunder. Seller and the Shareholders shall take all steps required by Nissan (or such other entity) in order for Purchaser to be entitled to use such parts return privileges.

(vi) All of Company's sales records and data, customer lists, vehicle dealership records, service records, mailing lists, files, invoices and correspondence, advertising material, all accounting records, stationery, office and business forms, personnel records, shop reference manuals, parts reference catalogs, video tapes, and any files required to be retained after the Closing by any applicable law or government regulation (collectively, the "Records and Lists"). Said Records and Lists shall be for the exclusive use of Purchaser, subject to Seller's rights described below. Neither Seller nor Shareholder shall make further use of said Records and Lists after the Closing except as required in any legal proceeding or for compliance with any state or federal regulation or for tax purposes and Purchaser shall permit Seller access to such records for inspection and copying upon reasonable prior notice.

(vii) To the extent not otherwise described herein, assets reflected in the parts inventory, the dealer payment statement, and the parts payment statement, together with any parts return benefits, customer lists, goodwill, inventories of parts, tires, oil, grease and other consumables, paint and undercoat materials, supplies, special tools, machinery, shop equipment, shop manuals, office equipment, furniture and signs.

2. EXCLUDED ASSETS AND ASSUMED LIABILITIES.

(a) Excluded Assets. Unless otherwise included within the description of Assets, the following shall be excluded from the Assets being sold and transferred hereunder (the "Excluded Assets").

(i) Seller's cash, bank deposits, cash equivalents, cash or cash equivalents on deposit with Nissan North America, Inc. ("Nissan") or any affiliate of Nissan, reserve accounts and marketable securities owned by Company at the time of Closing, excluding such items specified in Section 1;

(ii) Accounts receivable, refundable income taxes, prepaid interest, utility or other deposits, loans and exchanges, and loans receivable;

(iii) insurance policies owned by the company.

(iv) Any of the Assets which have been damaged prior to Closing.

(v) All other assets not specifically included in Section 1 above.

(b) Assumed Liabilities. Assumption of Liabilities. At the Closing, Purchaser shall assume (and shall discharge, pay and perform in accordance with their terms) only the following liabilities and obligations of Seller (each an "Assumed Liability", and collectively, the "Assumed Liabilities"), and no other liabilities or obligations of the Seller whatsoever:

(i) all of the Seller's liabilities to customers arising with respect to any customer deposits described in Section 11(a)(iv);

(ii) all of the Seller's obligations to complete WIP described in Section 1(e)(vi); and

(iii) All of Seller's obligations accruing after the Closing under the contracts described on Schedule 2(b)(iii) including, but not limited to, Seller's obligations under the Nissan dealer rental car program for not more than five (5) vehicles (the "Assumed Contracts").

3. PURCHASE PRICE.

(a) The purchase price for the Assets (the "Purchase Price") shall be allocated as set forth herein and Purchaser and Seller shall execute and file with the IRS in a timely manner Form 8594 with respect to such allocation, as said form shall be completed by Purchaser or

Purchaser's representatives. The Purchase Price shall be paid in cash or via wire transfer to an account designated by Seller, on the Closing Date. The Purchase Price for the Assets shall be as follows:

(i) Those amounts for New Vehicles, Demonstrator Vehicles, and Vehicle Parts, Accessories, Other Inventories and WIP, calculated in accordance with Sections 1(a) through 1(e), respectively; plus

(ii) Two Million Two Hundred Fifty Thousand and No/100 Dollars (\$2,250,000.00) for the Blue Sky.

(b) Upon execution hereof, Purchaser has deposited the sum of Seven Thousand Five Hundred Dollars (the "Deposit") to be delivered and held in escrow by Purchaser's Attorney, Weathers Law Firm, LLC. ("Escrow Agent"). The Deposit shall be applied to the Purchase Price at Closing unless Purchaser is in default of this Agreement, in which event the Deposit shall be forfeited to Seller as liquidated damages, and such liquidated damages shall be the sole and exclusive remedy of Seller by reason of a default by Purchaser under this Agreement; Seller waives and releases any right to sue Purchaser, for specific performance of this Agreement or to prove that Seller's actual damages exceed the amount of such liquidated damages. Should the transactions outlined herein fail to close as a result of the default of Seller, in addition to Deposit being returned to Purchaser, Purchaser shall have all remedies at law and equity, including but not limited to damages and specific performance.

Upon expiration of the Due Diligence Period as hereinafter set forth, Purchaser shall deposit the sum of Twenty-Five Thousand Dollars (the "Additional Deposit") to be delivered and held in escrow by the Escrow Agent. The Additional Deposit shall be held in the same manner as the Deposit.

(i) Escrow Agent shall serve as Escrow Agent pursuant to the terms and conditions of this Agreement. In performing any of its duties hereunder, the Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses, except for willful default or breach of trust, and it shall accordingly not incur any such liability with respect (A) to any action taken or omitted in good faith upon advice of its counsel, or (B) to any action taken or omitted in reliance upon any instrument, including any written notice or instruction provided for in this Agreement not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, which the Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons, and to conform with the provisions of this Agreement. The Escrow Agent is hereby specifically authorized to refuse to act except upon the written consent of Sellers and Purchaser.

(ii) Sellers and Purchaser hereby agree to indemnify and hold harmless the Escrow Agent against any and all losses, claims, damages, liabilities and expenses, including reasonable costs of investigation and counsel fees and disbursements, which may be imposed upon the Escrow Agent or incurred by the Escrow Agent in connection with its acceptance or the performance of its duties hereunder, including any litigation arising from this Agreement or involving the subject matter hereof.

(iii) In the event of a dispute between Sellers and Purchaser sufficient in the discretion of the Escrow Agent to justify its doing so, the Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction, all money or property in its hands under this Agreement, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties and liabilities under this Agreement. Any such legal action may be brought in any court of competent jurisdiction located in Georgetown County, South Carolina or in such other court as the Escrow Agent shall determine to have jurisdiction thereof. Sellers and Purchaser shall bear all costs and expenses of any such legal proceedings.

(iv) Sellers acknowledge, understand and agree that (A) Escrow Agent is Purchaser's counsel and as such Escrow Agent has not and will not exercise any independent professional judgment on Sellers behalf, and (B) notwithstanding its role as Escrow Agent hereunder, Escrow Agent may, in the event of a dispute between Sellers and Purchaser act as Purchaser's counsel and represent Purchaser in any dispute or litigation, whether or not Escrow Agent resigns and appoints a successor or substitute escrow agent, which Sellers and Purchaser specifically agree Escrow Agent may do.

(v) The Sellers and Purchaser acknowledge and agree that each of them has requested that the Escrow Agent act as escrow agent hereunder and to receive from Purchaser the Deposit and Additional Deposit which the Escrow Agent will deposit with First Citizens Bank (the "Bank") in the Escrow Agent's IOLTA account (the "Account") to be held and disbursed in accordance with this Agreement. Purchaser and Sellers acknowledge and agree that the Escrow Agent is unwilling to receive the Deposit and Additional Deposit and act in such capacity unless the parties agree to the provisions of this Section 3(b). Notwithstanding anything to the contrary herein to the contrary, Purchaser and Sellers confirm their understanding and agreement that that the Deposit and Additional Deposit will be deposited in the Account with the Bank, that the Deposit and Additional Deposit will be commingled with moneys of others in the Account, that the moneys held in the Account will often exceed available FDIC insurance, and that the Purchaser and Sellers have no right to any FDIC insurance in preference of others having rights in moneys within the Account. Purchaser and Sellers fully understand and accept the risk of full or partial loss of the Deposit and Additional Deposit or temporary unavailability of the Deposit and Additional Deposit (collectively, a "Loss") resulting from any Bank closing, Bank failure, or Bank insolvency, receivership, bankruptcy, dissolution or similar event or proceeding, and agree that the Escrow Agent shall have no responsibility or liability to the either of them for any Loss. Purchaser and Sellers agree that the Purchaser shall bear the full risk of any Loss. Purchaser and Sellers agree to indemnify and hold the Escrow Agent, as holder of the Deposit and Additional Deposit, harmless from and against any loss, damages, cost or expense, including legal fees, relating to any claim or demand that may be made against the Escrow Agent by reason of any Loss, including any claim based upon an allegation of negligence.

4. DUE DILIGENCE MATERIALS. Within five (5) days of the Effective Date, and thereafter promptly upon request,

(a) Seller shall deliver or cause to be delivered to Purchaser, if not previously delivered, or make available to Purchaser electronically, the following documents and information with respect to the Assets:

(i) Copies of the Assumed Contracts; and

(ii) Such documents or other materials in Seller's possession or control, regarding the Assets or the Company which Purchaser may reasonably request.

5. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller jointly and severally, hereby represents and warrants to Purchaser as follows:

(a) Seller is a corporation duly organized and existing and in good standing under the laws of the State of South Carolina, and is duly authorized to carry on its business and to own the Assets. The only shareholders of Seller are the Shareholders.

(b) Seller has good and marketable title to all of the Assets to be transferred and assigned to Purchaser pursuant to this Agreement subject to no mortgage, conditional sales agreement, charges, liens, or encumbrances of any kind, other than those being paid and satisfied as of the Closing Date with the proceeds of sale hereunder.

(c) Seller has filed all Federal, state and local governmental tax returns required by it to be filed in accordance with the provisions of law pertaining thereto and has paid all taxes and assessments (including, without limitation of the foregoing, income, excise, unemployment, social security, occupation, franchise, property, and import taxes, duties or charges and all penalties and interest in respect thereto) required by Seller to have been paid to date, other than those being paid and satisfied as of the Closing Date with the proceeds of sale hereunder. All of Seller's tax returns, statements, books and records and other information, including all reports to Nissan are true and correct in all respects.

(d) There are no legal, quasi-judicial or administrative actions, suits or proceedings of any kind or nature now pending or, to the knowledge of Seller, threatened before any court or administrative body in any manner involving Seller or any of its properties or ownership interests, or which may adversely affect the power or authority of Seller to carry out the transactions to be performed by Seller hereunder, except as listed on Schedule 5(d).

(e) Seller is not a party to any written or oral (i) contract not made in the ordinary course of business, (ii) employment contract which is not terminable without cost or other liability to Seller, or any successor, upon notice of thirty days or less, (iii) contract with any labor union, (iv) bonus, pension, profit-sharing, retirement, share purchase, hospitalization insurance or similar plan providing employee benefits that is not terminable without cost or other liability to Seller, (v) advertising contract or contract for public relations services, (vi) continuing contract for the purchase of materials, supplies or equipment, or (vii) contract continuing for a period of more than thirty days or which is not terminable without cost or other liability to Seller or its successors, all except as listed on Schedule 5(e).

(g) Seller has in all respects performed all material obligations required to be performed by it to date and is not in default in any respect under any of the contracts, agreements, leases or other documents to which it is a party.

(h) The consummation of the transactions contemplated by this Agreement and compliance with the provisions hereof will not conflict with or result in a breach of the terms, conditions or provisions of, or constitute a breach or default under, any provision of law, any order of any court or other agency of government, the articles of organization or operating agreement of Seller, or any note, debenture, mortgage, loan agreement or other instrument to which Seller is a party, or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any kind whatsoever or any property or assets to be transferred to Purchaser pursuant to this Agreement.

(i) Seller has obtained the necessary consent of its Shareholders approving this Agreement and the transactions contemplated herein.

(j) To the best of Seller's knowledge, all furniture, machinery, equipment and shop equipment and tools included within the Assets are in working order and good repair currently, reasonable wear and tear excepted, and shall be in working order and good repair, on the Closing Date, reasonable wear and tear excepted.

(k) Neither this Agreement nor any certificate, exhibit, or other instrument furnished by Seller to Purchaser under this Agreement or in connection with this transaction, to the best of the knowledge and belief of Seller, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements not misleading. There is no fact which materially, adversely affect the business, operations, or conditions (financial or otherwise) of Seller which has not been set forth in this Agreement or any exhibit to this Agreement.

6. COVENANTS OF SELLER AND SHAREHOLDERS. Seller and Shareholders, jointly and severally, represent and covenant to Purchaser that during completion of the sale of the Assets contemplated hereby and as of the Closing that:

(a) Each and every covenant, representation and warranty set forth in Section 5 shall be true and correct.

(b) Seller will maintain itself at all times up to and including the Closing Date as a domestic corporation in good standing under the laws of the State of South Carolina.

(c) Seller will afford Purchaser, its representatives, agents and employees, at all reasonable times, access with respect to all of Seller's books, files, records, and insurance policies for the purpose of audit, inspection and examination thereof, and will do everything reasonably necessary to enable Purchaser to make a complete examination of the assets of Seller and the condition thereof. Purchaser and its representatives, agents and employees shall have the right to have the Assets inspected, at Purchaser's sole cost and expense, for purposes of determining the physical condition and legal characteristics of Assets.

(d) Within three (3) business days after the Effective Date, Seller shall deliver to Purchaser copies of Seller's monthly financial statements for each of the past ten (10) calendar months of operations, together with the most recent year-end financial statements.

(e) Seller will keep all of its insurable properties insured in accordance with the present practice through the date of Closing.

7. REPRESENTATIONS AND WARRANTIES OF PURCHASER. Purchaser represents and warrants to Seller and Shareholders, on the date hereof and as of the Closing Date, as follows:

(a) Organization and Standing. Purchaser is or will be an entity duly organized, validly existing and in good standing under the laws of South Carolina. Purchaser has all necessary entity powers to (i) enter into this Agreement and all other agreements, certificates, and other documents to be executed and delivered by Purchaser under this Agreement, and (ii) perform its obligations under such agreements, certificates, and other documents.

(b) Authorization: Binding Effect: No Conflict. At or before the Closing, the execution and delivery of this Agreement and all other agreements, certificates, and other documents contemplated hereby will have been duly authorized and executed by Purchaser. This Agreement constitutes, and all other agreements, certificates, and other documents to be executed and delivered will constitute, the legal, valid, and binding obligations of Purchaser, enforceable against Purchaser in accordance with their terms. The consummation by Purchaser of the transactions contemplated hereby will not (i) require any consent, authorization, or approval of any person, entity, or government authority, or (ii) violate or constitute a default under the organizational documents of Purchaser, or any note, indenture, mortgage, deed of trust, or other contract, agreement, or commitment of Purchaser which would result in Purchaser being unable to perform its obligations hereunder.

8. REPRESENTATIONS, WARRANTIES AND COVENANTS TRUE AS OF CLOSING DATE. All of the representations, warranties and covenants herein contained in Sections 5 and 6 hereof shall be true and correct and shall not have been breached on and as of the Closing Date as though made on and as of said date and all such representations and warranties shall survive the Closing Date for a period of twenty four (24) months.

9. TAXES. Seller and Purchaser agree that all state, city and county personal property taxes, if any, which are directly applicable to the Assets to be transferred hereunder shall be prorated to the Closing Date. Purchaser shall pay only the pro rata share of such taxes applicable to the period subsequent to the Closing Date.

10. CERTAIN EMPLOYEE MATTERS. This Agreement is an agreement for the purchase of assets only. Seller acknowledges that Purchaser may, but is not obligated to, hire Seller's employees, on such terms and conditions as Purchaser deems appropriate. Purchaser does not assume, continue or maintain any death, disability, health insurance, severance or other employee benefit welfare plan or arrangement maintained by Seller. Seller shall be solely responsible for any and all obligations arising out of, or in connection with, any such plan or arrangement. Seller shall

be solely responsible for any obligation to notify all of its employees of their rights under, and provide continuation of medical benefits required by Section 601, *et seq.* of the Employee Retirement Income Security Act of 1974 ("ERISA") or Section 4980B of the Internal Revenue Code of 1986, as amended.

11. CLOSING DATE; CLOSING. The closing (the "Closing" or "Closing Date" as the context requires) of the purchase and sale provided for herein shall take place within thirty (30) business days after the approval of Purchaser as a Nissan dealer but in no event shall the Closing occur later than November 1, 2016, unless agreed in writing by the parties. The Closing shall take place on such Closing Date beginning at 10 o'clock a.m. at the offices of the Purchaser's attorney, Weathers Law Firm, LLC. At the Closing, Seller shall execute and deliver to Purchaser such bills of sale and other instruments as may be necessary to transfer to Purchaser the Assets. Closing may be accomplished through the execution and delivery of counterpart documents and shall not require the presence of all parties on the Closing Date to be effective. For purposes of conditions of and preceding the Closing, the Closing Date shall be the date on which the Purchase Price paid and the Bill of Sale is executed and delivered.

12. CONDITIONS PRECEDENT TO PAYMENT OF PURCHASE PRICE AND TRANSFER OF ASSETS. Payment of the Purchase Price and the transfer of Assets stated in this Agreement shall be conditioned upon accomplishment of the following conditions precedent, it being understood that Seller and Purchaser, as appropriate, shall do everything within their power to cause such conditions to be accomplished.

(a) On the Closing Date:

(i) Seller's Resignation. Seller shall terminate its franchise agreement with Nissan in connection with the Closing.

(ii) Seller's Records. Seller shall have transferred to Purchaser all of its owner follow-up lists, service files, used "hard" copies of shop repair orders on hand at the Closing Date.

(iii) Telephone Numbers. Seller shall have transferred to Purchaser, insofar as it can, Seller's right in telephone numbers used by Seller in its business as an automobile dealer.

(iv) Customer Deposits. Seller, without additional charge therefore, shall have turned over or assigned by appropriate documents to Purchaser all unfilled retail orders and deposits made thereon and names and addresses of the service and other customers and prospective purchasers.

(v) List of Employees. Seller shall have furnished to Purchaser a list of all employees, their rates of pay including, separately, base pay, and any incentive or commission plans, if any, as of the date Seller ceased operating its dealership.

(vi) Condition of Assets. Purchaser shall have reasonably satisfied itself that all Assets transferred hereunder are in a good condition as agreed to herein, reasonable wear and tear excepted.

(vii) Bill of Sale. Seller shall have delivered to Purchaser a Bill of Sale for all assets to be transferred by Seller hereunder, other documents of transfer of title, and other documents necessary or desirable in the opinion of Purchaser's counsel in connection with the transfer, which documents shall warrant title to Purchaser and shall in all respects be in such form as may be reasonably required by Purchaser or its counsel.

(b) On or before the Closing Date:

(i) Sales Agreement. Purchaser shall have received a Nissan franchise agreement from Nissan, or approval of same, in form and substance satisfactory to Purchaser.

(ii) Company Approval of Sale and Ownership Property. Seller shall have furnished to Purchaser evidence to the reasonable satisfaction of Purchaser or its counsel of:

A. Proper company action on the part of Seller authorizing or ratifying the execution of this Agreement and the consummation of the transactions contemplated hereby; and

B. Ownership by Seller of the Assets to be transferred by Seller, free of any mortgage, conditional sales agreement, charge, lien, encumbrance or security interest of any type.

(iii) Tax Clearance. Seller shall have furnished a Certificate of Tax Compliance from the South Carolina Department of Revenue.

(iv) Representations and Warranties. A responsible officer, Shareholder or manager of each of Seller and Purchaser shall have executed and delivered to the other party a certificate confirming the truth and correctness of all representations and warranties set forth in Sections 5 and 6 hereof, as appropriate, from the date hereto to, and as of, the Closing Date.

(v) Consents. Seller shall have obtained any required governmental or other third-party consents and approvals.

(vi) Intentionally Omitted.

(vii) Non-Competition Agreement. Seller and Shareholders shall deliver to Purchaser a Non-Competition Agreement in the form attached as Exhibit "C" covenanting and agreeing, *inter alia*, that none of them, shall directly or indirectly, through the period ending five (5) years after the Closing Date of this transaction, with a fifty (50) mile radius of the Dealership Premises, compete with the business of Purchaser by engaging in any new Nissan brand motor vehicle sales or service dealership, but not otherwise.

13. **MUTUAL CONDITIONS PRECEDENT TO PERFORMANCE.** The obligations of each party hereunder are subject to the satisfaction on or before the Closing of each of the following conditions:

(i) **Representations, Warranties and Covenants.** All representations and warranties by each party contained in this Agreement must be true on the Closing Date as though made on the Closing Date. Each party must have performed all of its obligations and agreement and complied with all of its covenants of this Agreement. (Notwithstanding the foregoing, no party may claim its own breach as a failure of a condition precedent).

(ii) **Approval of Documentation.** The form and substance of all certificates, instruments, and other documents delivered or deliverable under this Agreement must be satisfactory in all reasonable respects to counsel for each party.

14. **SELLER'S AND SHAREHOLDERS' INDEMNITY.**

(a) Seller and Shareholders each agree to defend, indemnify, and hold Purchaser harmless against any and all damages incurred or sustained by the Purchaser (collectively, the "Losses" and individually a "Loss") as a result of:

(i) any breach of any representation or warranty of Seller or Shareholders contained in this Agreement;

(ii) any breach of any covenant or agreement of Seller or Shareholders contained in this Agreement;

(iii) any failure of Seller to convey to Purchaser good and marketable title to the Assets, free and clear of all liens other than taxes which are not yet due and payable;

(iv) any failure of Seller to pay taxes accruing prior to closing;

(v) any obligation or liability of Seller which is not expressly assumed by Purchaser hereunder, including any claims asserted by local, state or federal authorities for unpaid taxes or arising from any imposition of taxes or the assessment of any deficiency for taxes or penalties or interest incidental thereto;

(vi) the operation of Seller's business or the ownership, operation or use of the Assets prior to the Closing Date, other than liabilities expressly assumed by Purchaser hereunder;

15. **PURCHASER'S INDEMNITY.**

(a) Purchaser hereby agrees to defend, indemnify, and hold Seller harmless against any and all damages incurred or sustained by the Seller as a result of:

- this Agreement; (i) any breach of any representation or warranty of Purchaser contained in
- Agreement; or (ii) any breach of any covenant or agreement of Purchaser contained in this
- (iii) any liabilities arising out of or relating to the operation of ownership of the Assets after the Closing Date.

16. LIABILITIES. Purchaser does not assume any liabilities of Seller except as may otherwise be expressly specified herein. There are no third party beneficiaries to this Agreement.

17. TERMINATION.

(a) Purchaser shall have until thirty (30) days after the Effective Date (the "Due Diligence Period"), in which to examine and investigate the Assets and all other aspects of the contemplated transaction. Purchaser shall have until forty-five (45) days after the Effective Date (the "Financing Period"), in which to have obtained on terms and conditions substantially similar to other franchised motor vehicle dealerships with which Purchaser is or has been affiliated, the financing necessary to consummate the transaction described herein, to fund the working capital requirements of Purchaser's automobile dealership after the Closing Date, and such floor plan financing as is necessary for such dealership. In the event that Purchaser shall determine, in Purchaser's sole and absolute judgment and discretion, that either (i) the Assets, Dealership Premises, or any other aspect of the contemplated transaction is in any manner unsuitable or unsatisfactory to Purchaser or (ii) suitable financing is not available, then Purchaser shall have the right, at Purchaser's option, to terminate this Agreement by giving written notice thereof to Seller on or before the applicable date (i.e. the Due Diligence Period with respect to item (i) and the Financing Period with respect to item (ii)), in which event the Deposit and Additional Deposit shall be refunded to Purchaser immediately upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void. Seller acknowledges that Purchaser will expend time, money and other resources in connection with the examination and investigation of the Assets and other aspects of the contemplated transaction, and that, notwithstanding the fact that Purchaser may terminate this Agreement pursuant to this section, such time, money and other resources expended constitutes good, valuable, sufficient and adequate consideration for Seller's execution of and entry into this Agreement. In the event that Purchaser does not terminate this Agreement on or before expiration of the Due Diligence Period or Financing Period, as applicable, the Deposit and Additional Deposit shall be non-refundable, except as otherwise may be provided hereunder.

(b) Following the lapse of the Due Diligence Period and Financing Period, if Purchaser has not terminated the Agreement as provided in Subsection (a) above, this Agreement may be terminated and the transaction may be abandoned at any time prior to the Closing:

- (i) By the Purchaser, if the conditions set forth in Sections 12 and 13 that are within Seller's or Shareholders' control have not been satisfied and performed in any material

respect, and any such noncompliance or nonperformance shall not have been cured or eliminated (or by its nature cannot be cured or eliminated) on or before the Closing Date; or

(ii) By the Seller and Shareholders, if the conditions set forth in Sections 12 and 13 that are within Purchaser's control have not been satisfied and performed in any material respect, and any such noncompliance or nonperformance shall not have been cured or eliminated (or by its nature cannot be cured or eliminated) on or before the Closing Date; or

(iii) By mutual agreement of the Seller and the Purchaser; or

(iv) By either party, if there shall be a final non-appealable order of a court of competent jurisdiction in effect preventing the Closing.

18. EXPENSES AND OBLIGATIONS IF TRANSACTION NOT CONSUMMATED.

If this Agreement is terminated and the transaction contemplated hereby shall not be consummated as provided in Sections 17(a), (b)(iii) and (b)(iv), each party shall pay its own expenses incident to the preparation for carrying this Agreement into effect and consummating the transactions hereby contemplated.

If this Agreement is terminated and the transaction contemplated hereby shall not be consummated as provided in Section 17(b)(i) due to a breach by Seller, the Escrow Agent shall return the Deposit and Additional Deposit to the Purchaser, and the Purchaser shall be entitled to seek any remedy provided at law or in equity with respect to such breach or default, including, but not limited to an action for damages for such breach and/or, at the Purchaser's election, an action for specific performance.

If this Agreement is terminated and the transaction contemplated hereby shall not be consummated as provided in Section 17(b)(ii) due to a breach by Purchaser, the Purchaser shall forfeit all right, title and interest in and to the Deposit and Additional Deposit, and the Escrow Agent shall deliver the Deposit and Additional Deposit to the Seller, as liquidated damages, and such liquidated damages shall be the sole and exclusive remedy of Seller by reason of a default by Purchaser under this Agreement; Seller waives and releases any right to sue Purchaser for specific performance of this Agreement or to prove that Seller's actual damages exceed the amount of such liquidated damages.

In the event of a termination and abandonment of this Agreement, the Purchaser shall promptly redeliver to the Seller all documents, work papers and other material of the Seller relating to the transaction, whether so obtained before or after the execution of this Agreement. In such event, the Purchaser agrees not to use to the detriment of the Seller, nor to disclose to third parties, any of such information with respect to the Seller's business; provided, however, that the foregoing restriction shall not apply to any document, work paper, material, or information which is a matter of public knowledge or is otherwise in the public domain.

19. NOTICES. Any notice, communication, request, reply or advice (hereinafter severally and collectively, for convenience, called "Notice") in this Agreement provided or permitted to be

given, made or accepted by either party to the other must be in writing and may, unless otherwise in this Agreement expressly provided, be given or be served by commercial overnight courier (such as Federal Express), by depositing the same in the United States mail, postage paid, and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same in person to an officer of such party, when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be effective, unless otherwise stated in this Agreement, from and after the date it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For purposes of Notice, the addresses of the parties shall be as follows:

If to Seller or Shareholders:

Jones Nissan, Inc.
Attn: James F. Jones
1260 Broad Street
Sumter, SC 29150

With Copy to:

Jack W. Erter, Jr., Esquire
Lee. Erter, Wilson, Holler & Smith, LLC
Post Office Box 580
Sumter, SC 29150
(803) 938-9825 – facsimile

If to Purchaser:

THAG, LLC
Attn: Terry L. Holmes
8983 Ocean Highway
Pawley's Island, South Carolina 29585

With Copy to:

Gregory R. Weathers, Esquire
Weathers Law Firm, LLC
Post Office Box 4209
Pawleys Island, SC 29585
(843) 237-9056 – facsimile

If to Escrow Agent: C

Weathers Law Firm, LLC
Post Office Box 4209

Pawleys Island, SC 29585
(843) 237-9056 – facsimile

20. SECTION AND OTHER HEADINGS. Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

21. ASSIGNMENT. This Agreement may be assigned by Purchaser, in whole or in part, to any entity under the control of Purchaser or its principals, and such assignment shall relieve Purchaser of liability for the performance of Purchaser's duties and obligations under this Agreement. For purposes of this Agreement, the term "Purchaser" shall include any assignee of the interest of Purchaser under this Agreement. No other assignments by Purchaser shall be permitted except with the prior written consent of Seller, which consent shall not be unreasonably withheld, delayed or conditioned.

22. PARTIES. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, Purchaser and Sellers and their respective heirs, legal representatives, successors and permitted assigns.

23. COMMISSIONS. Purchaser, Seller and Shareholder represent and warrant to each other that no brokers' fees or real estate commissions will be due as a result of the sale or lease of the Property from their respective actions.

Seller and Shareholder agree to indemnify, defend and save harmless Purchaser from and against any cost and expense (including reasonable attorneys' fees) incurred by Purchaser as a result of the untruth of the foregoing representation by Seller or Shareholder, or any claims by a broker for payment of a commission by Purchaser based upon the actions of Seller or Shareholder.

Purchaser agrees to indemnify, defend and save harmless the Seller and Shareholder from and against any cost and expense (including reasonable attorneys' fees) incurred by Seller or Shareholder as a result of the untruth of the foregoing representation by Purchaser, or any claims by a broker for payment of a commission by Seller or Shareholder based upon the actions of Purchaser.

24. FURTHER ASSURANCES. On the Closing Date, and from time to time thereafter, Purchaser and Seller shall do all such additional and further acts, and shall execute and deliver all such additional and further affidavits, instruments, certificates and documents, as Seller, Seller's counsel, Purchaser or Purchaser's counsel may reasonably require fully to vest in and assure to Purchaser full right, title and interest in and to the Assets to the full extent contemplated by this Agreement and otherwise to effectuate the purchase and sale of the Assets as contemplated by and provided for in this Agreement.

25. SURVIVAL. Sellers' and Purchaser's representations and warranties as set forth in this Agreement, shall survive the consummation of the purchase and sale of the Assets on the Closing Date.

26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one of the same instrument.

27. TIME OF THE ESSENCE. Time is of the essence of this Agreement and each and every provision hereof.

28. EFFECTIVE DATE. The "Effective Date" of this Agreement shall be the last date of execution by the parties hereto. In the event that any applicable date hereunder falls on a Saturday, Sunday or holiday recognized by the State of South Carolina such date shall be extended to the next following business day.

29. ELECTRONIC SIGNATURES. A facsimile transmission of this Agreement shall be as valid as if the original, and the undersigned hereby stipulates that each signature hereon shall be deemed to be an "electronic signature" within the meaning of the South Carolina Electronic Commerce Act.

30. EXCLUSIVE. In consideration of the Deposit and Additional Deposit and Purchaser's investigation of the Assets, and as an inducement to the Purchaser expending time, money and other resources in connection with investigating the purchase of the Assets, Seller will not, during the Due Diligence Period and Financing Period, (a) solicit, initiate, encourage or entertain submission of proposals or offers from any person or entity relating to the sale of the Assets or any material portion thereof outside the ordinary course of the Company's business, or (b) consummate any transaction involving a sale of the Assets or any material portion thereof outside the ordinary course of the Company's business, or (c) disclose to any third party the provisions of this Agreement. If Purchaser does not terminate this Agreement on or before the lapse of the Due Diligence Period or Financing Period, the exclusivity provided in this Section shall extend until the earlier of Closing or the termination of this Agreement as provided in Section 17.

31. BULK SALES NOTIFICATION WAIVED. The parties hereto agree to waive compliance with any notification requirements of any applicable laws relating to bulk sales or transfers. Sellers agree to indemnify, defend and hold Purchaser harmless from any against any and all claims made against the Assets based on failure to comply with any applicable bulk sales laws.

32. CHOICE OF LAWS. Except as to any bulk sales act, the parties agree to comply with all federal, state and local laws applicable to this transaction. The law of the State of South Carolina shall govern the rights of the parties with respect to this Agreement and all parties hereto agree the County of Georgetown shall be proper venue for any dispute arising hereunder.

(signatures on the following page)

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed as of the day and year first above written.

SELLER:

Date executed:

July _____, 2016

Jones Nissan, Inc.

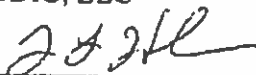

By: JAMES E. JONES
Its: Sec. Treas.

PURCHASER:

Date executed:

July 28, 2016

THAG, LLC


By: TERRY L. HOLMES
Its: MANAGING MEMBER

SHAREHOLDER

~~Aug 8~~
~~July~~ _____, 2016

~~Aug 8~~
~~July~~ _____, 2016


James E. Jones

John T. Jones, Jr.

The undersigned confirms the receipt of the \$7,500.00 Deposit delivered into escrow and its agreement to serve as Escrow Agent pursuant to the terms and obligations of hereof.

Date executed:

July _____, 2016

Weathers Law Firm, LLC

By: _____
Its: _____

The undersigned confirms the receipt of the \$25,000.00 Additional Deposit delivered into escrow and its agreement to serve as Escrow Agent pursuant to the terms and obligations of hereof.

Date executed:

_____, 2016

Weathers Law Firm, LLC

By: _____
Its: _____

LISTS OF SCHEDULES

Exhibit "A"
(New Vehicle Inventory)

Exhibit "B"
(Demonstrator Vehicle Inventory)

EXHIBIT "C"
(Non-Competition Agreement)

EXHIBIT B

EXHIBIT B

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT is made and entered into this 25th day of August, 2016, by and between THAG, LLC (hereinafter "Purchaser") and JONES NISSAN, INC (hereinafter "Seller").

Whereas, Seller entered into an Asset Purchase Agreement with Purchaser dated July 25, 2016; and

Whereas, Purchaser and Seller wish to modify the terms of the Asset Purchase Agreement; and

Now Therefore, for good and valuable consideration, including the mutual obligations of the parties, the receipt and sufficiency of which is hereby acknowledged, this Amendment modifies the terms and conditions of the aforesaid Asset Purchase Agreement as follows:

Paragraph 17 of the Asset Purchase Agreement shall be stricken and replaced in its entirety with the following:

17. TERMINATION.

(a) Purchaser shall have until sixty (60) days after the Effective Date (the "Due Diligence Period"), in which to examine and investigate the Assets and all other aspects of the contemplated transaction. Purchaser shall have until sixty (60) days after the Effective Date (the "Financing Period"), in which to have obtained on terms and conditions substantially similar to other franchised motor vehicle dealerships with which Purchaser is or has been affiliated, the financing necessary to consummate the transaction described herein, to fund the working capital requirements of Purchaser's automobile dealership after the Closing Date, and such floor plan financing as is necessary for such dealership. In the event that Purchaser shall determine, in Purchaser's sole and absolute judgment and discretion, that either (i) the Assets, Dealership Premises, or any other aspect of the contemplated transaction is in any manner unsuitable or unsatisfactory to Purchaser or (ii) suitable financing is not available, then Purchaser shall have the right, at Purchaser's option, to terminate this Agreement by giving written notice thereof to Seller on or before the applicable date (i.e. the Due Diligence Period with respect to item (i) and the Financing Period with respect to item (ii)), in which event the Deposit and Additional Deposit shall be refunded to Purchaser immediately upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void. Seller acknowledges that Purchaser will expend time, money and other resources in connection with the examination and investigation of the Assets and other aspects of the contemplated transaction, and that, notwithstanding the fact that Purchaser may terminate this Agreement pursuant to this section, such time, money and other resources expended constitutes good, valuable, sufficient and adequate consideration for Seller's execution of and entry into this Agreement. In the event that Purchaser does not terminate this

EXHIBIT

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First Amendment to Asset Purchase Agreement for Jones Nissan

Agreement on or before expiration of the Due Diligence Period or Financing Period, as applicable, the Deposit and Additional Deposit shall be non-refundable, except as otherwise may be provided hereunder.

(b) Following the lapse of the Due Diligence Period and Financing Period, if Purchaser has not terminated the Agreement as provided in Subsection (a) above, this Agreement may be terminated and the transaction may be abandoned at any time prior to the Closing:

(i) By the Purchaser, if the conditions set forth in Sections 12 and 13 that are within Seller's or Shareholders' control have not been satisfied and performed in any material respect, and any such noncompliance or nonperformance shall not have been cured or eliminated (or by its nature cannot be cured or eliminated) on or before the Closing Date; or

(ii) By the Seller and Shareholders, if the conditions set forth in Sections 12 and 13 that are within Purchaser's control have not been satisfied and performed in any material respect, and any such noncompliance or nonperformance shall not have been cured or eliminated (or by its nature cannot be cured or eliminated) on or before the Closing Date; or

(iii) By mutual agreement of the Seller and the Purchaser; or

(iv) By either party, if there shall be a final non-appealable order of a court of competent jurisdiction in effect preventing the Closing.

This Amendment is herewith made a part of the aforementioned Asset Purchase Agreement and modifies any contrary terms contained therein. All items appearing in the original Asset Purchase Agreement not modified herein shall remain in full force and effect.

REMAINDER OF PAGE INTENTIONALLY BLANK

SIGNATURES ON FOLLOWING PAGE

First Amendment to Asset Purchase Agreement for Jones Nissan

IN WITNESS WHEREOF, the undersigned parties have duly executed this First Amendment to Asset Purchase Agreement as of this 25th day of August, 2016 each acknowledging receipt of an executed copy hereof.

SELLER:

Date executed:

Jones Nissan, Inc.

August 23, 2016

By: JAMES F. JONES
Its: Sec-Treasurer

PURCHASER:

Date executed:

THAG, LLC

August 23, 2016

By: 222222
Its: MEMBER

EXHIBIT C

EXHIBIT C

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT is made and entered into this 2nd day of November, 2016, by and between THAG, LLC (hereinafter "Purchaser") and JONES NISSAN, INC (hereinafter "Seller").

Whereas, Seller entered into an Asset Purchase Agreement with Purchaser dated July 25, 2016; and

Whereas, Purchaser and Seller wish to modify the terms of the Asset Purchase Agreement; and

Now Therefore, for good and valuable consideration, including the mutual obligations of the parties, the receipt and sufficiency of which is hereby acknowledged, this Amendment modifies the terms and conditions of the aforesaid Asset Purchase Agreement as follows:

Paragraph 11 of the Asset Purchase Agreement shall be stricken and replaced in its entirety with the following:

11. CLOSING DATE; CLOSING. The closing (the "Closing" or "Closing Date" as the context requires) of the purchase and sale provided for herein shall take place within thirty (30) business days after the approval of Purchaser as a Nissan dealer but in no event shall the Closing occur later than December 31, 2016, unless agreed in writing by the parties. The Closing shall take place on such Closing Date beginning at 10 o'clock a.m. at the offices of the Purchaser's attorney, Weathers Law Firm, LLC. At the Closing, Seller shall execute and deliver to Purchaser such bills of sale and other instruments as may be necessary to transfer to Purchaser the Assets. Closing may be accomplished through the execution and delivery of counterpart documents and shall not require the presence of all parties on the Closing Date to be effective. For purposes of conditions of and preceding the Closing, the Closing Date shall be the date on which the Purchase Price paid and the Bill of Sale is executed and delivered.

Paragraph 12(b) of the Asset Purchase Agreement shall be amended by adding the following:

12(b)(viii) COMMERCIAL LEASE AGREEMENT. The obligations of the parties to consummate the transaction contemplated by this Agreement at the Closing is subject to the simultaneous closing of that certain Commercial Lease Agreement between Mar-Gin Properties, a partnership ("Landlord") and Sumter Real Estate Holdings, LLC ("Tenant") attached herewith as Exhibit "A."

EXHIBIT D

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

THIRD AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS THIRD AMENDMENT TO ASSET PURCHASE AGREEMENT is made and entered into this ____ day of January, 2017, by and between THAG, LLC (hereinafter "Purchaser") and JONES NISSAN, INC (hereinafter "Seller").

Whereas, Seller entered into an Asset Purchase Agreement with Purchaser dated July 25, 2016; and

Whereas, Purchaser and Seller wish to modify the terms of the Asset Purchase Agreement; and

Now Therefore, for good and valuable consideration, including the mutual obligations of the parties, the receipt and sufficiency of which is hereby acknowledged, this Amendment modifies the terms and conditions of the aforesaid Asset Purchase Agreement as follows:

Paragraph 3 of the Asset Purchase Agreement shall be amended by adding the following:

3(a)(iii) SELLER FINANCING. At closing, Seller shall extend financing to Purchaser in the principal amount of Six Hundred Fifty Thousand Dollars (\$650,000.00) to be amortized over a period of Sixty (60) months at Six (6) Percent Interest per annum.

The aforementioned financing shall be secured by pledge of Merrill Lynch Account Number 5LP-02250 pursuant to the terms of that Pledge Collateral Account Agreement dated January 12, 2017.

Paragraph 3(b) of the Asset Purchase Agreement shall be stricken and replaced in its entirety with the following:

(b) Purchaser previously deposited the sum of Thirty-Two Thousand Five Hundred Dollars (\$32,500.00) (the "Initial Deposit") into the escrow account of Purchaser's Attorney, Weathers Law Firm, LLC. ("Escrow Agent"). On January 9, 2017 Purchaser deposited an additional Sixty-Seven Thousand Five Hundred Dollars (\$67,500.00) (the "Additional Deposit," the Initial Deposit and Additional Deposit collectively referred to as the "Deposit") to be held in accordance with the terms hereof.

The Deposit shall be applied to the Purchase Price at Closing unless Purchaser is in default of this Agreement, in which event the Deposit shall be forfeited to Seller as liquidated damages, and such liquidated damages shall be the sole and exclusive remedy of Seller by reason of a default by Purchaser under this Agreement; Seller waives and releases any right to sue Purchaser, for specific performance of this Agreement or to

Third Amendment to Asset Purchase Agreement for Jones Nissan

prove that Seller's actual damages exceed the amount of such liquidated damages. Should the transactions outlined herein fail to close as a result of the default of Seller, in addition to Deposit being returned to Purchaser, Purchaser shall have all remedies at law and equity, including but not limited to damages and specific performance.

Paragraph 11 of the Asset Purchase Agreement shall be stricken and replaced in its entirety with the following:

11. CLOSING DATE; CLOSING. The closing (the "Closing" or "Closing Date" as the context requires) of the purchase and sale provided for herein shall take place within thirty (30) days after the approval of Purchaser as a Nissan dealer and after receipt of a final commitment letter from ALLY, but in no event shall the Closing occur later than February 28, 2017, unless agreed in writing by the parties. The Closing shall take place on such Closing Date beginning at 10 o'clock a.m. at the offices of the Purchaser's attorney, Weathers Law Firm, LLC. At the Closing, Seller shall execute and deliver to Purchaser such bills of sale and other instruments as may be necessary to transfer to Purchaser the Assets. Closing may be accomplished through the execution and delivery of counterpart documents and shall not require the presence of all parties on the Closing Date to be effective. For purposes of conditions of and preceding the Closing, the Closing Date shall be the date on which the Purchase Price paid and the Bill of Sale is executed and delivered.

This Amendment is herewith made a part of the aforementioned Asset Purchase Agreement and modifies any contrary terms contained therein. All items appearing in the original Asset Purchase Agreement not modified herein shall remain in full force and effect.

SIGNATURES ON FOLLOWING PAGE

Third Amendment to Asset Purchase Agreement for Jones Nissan

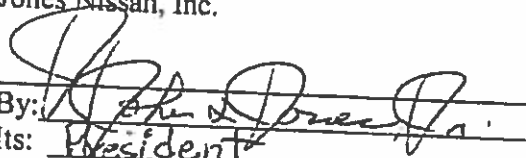
IN WITNESS WHEREOF, the undersigned parties have duly executed this First Amendment to Asset Purchase Agreement as of this ____ day of January, 2017 each acknowledging receipt of an executed copy hereof.

SELLER:

Date executed:

January 20, 2017

Jones Nissan, Inc.

By: 

Its: President

PURCHASER:

Date executed:

January _____, 2017

THAG, LLC

By: _____

Its: _____

Third Amendment to Asset Purchase Agreement for Jones Nissan

IN WITNESS WHEREOF, the undersigned parties have duly executed this First Amendment to Asset Purchase Agreement as of this 30th day of December, 2016 each acknowledging receipt of an executed copy hereof.

SELLER:

Date executed:

Jones Nissan, Inc.

December _____, 2016

By: _____
Its: _____

PURCHASER:

Date executed:

THAG, LLC

December 29, 2016

By: TERRY L. HOLMES
Its: President

EXHIBIT E

Terry Holmes

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF
COMMON PLEAS OF THE
FIFTEENTH JUDICIAL CIRCUIT

JONES NISSAN, INC., CIVIL ACTION NO.
 Plaintiff, 2020-CP-22-00373

vs.

THAG, LLC, NISSAN OF SUMTER,
LLC, TERRY L. HOLMES, and
MERRILL LYNCH, PIERCE,
FENNER & SMITH, INC.,
 Defendants.

DEPOSITION OF TERRY L. HOLMES

DATE TAKEN: March 23, 2023

TIME BEGAN: 12:22 p.m.

TIME ENDED: 7:55 p.m.

LOCATION: (via videoconference)

REPORTED BY: Eileen Thompson, CCR
 EveryWord, Inc.
 P.O. Box 1459
 Columbia, South Carolina 29202
 803-212-0012

ELECTRONICALLY FILED - 2023 May 22 1:21 PM - GEORGETOWN - COMMON PLEAS - CASE#2020CP2200373

Terry Holmes

Page 9

1 A. Okay.

2 Q. -- so it's another discovery tool. It's

3 similar in some respects to the Interrogatories and

4 production requests in that it involves the

5 gathering of evidence. But, obviously, this is a

6 different format and forum, because it allows me to

7 ask you questions verbally rather than in writing.

8 A. Okay.

9 Q. That's probably the best I can do with

10 that.

11 A. Okay.

12 Q. Let me just ask you some pointed questions

13 to begin with, so I can figure out how involved we

14 need to be today and how long it's going to take us,

15 all right?

16 A. Okay.

17 Q. Do you admit that THAG, LLC, breached the

18 asset purchase agreement it entered into with Jones

19 Nissan in 2016?

20 A. I don't understand that question.

21 Q. Let me ask it again. Do you admit that

22 THAG, LLC breached the asset purchase agreement it

23 entered into with Jones Nissan in 2016?

24 A. I don't agree to that.

25 Q. Why not?

Page 10

1 A. I don't know. I don't have all the facts.

2 I mean, once again, it's about 2016, so I don't --

3 you know, a lot of stuff happened during that

4 particular time. You know, I would have to look at

5 that. But no.

6 Q. Do you believe that THAG, LLC fully

7 performed under the asset purchase agreement it

8 entered into with Jones Nissan in 2016?

9 A. We're talking about strictly the asset

10 purchase agreement, not a side note that we deal

11 with?

12 Q. Correct.

13 A. Okay. The APA agreement, from my

14 understanding, it was entered into to do the

15 buy-sell with the Jones Nissan dealership and as far

16 as I knew, it went through as it was intended.

17 Q. So is it your testimony that THAG fully

18 performed under the asset purchase agreement that it

19 entered into with Jones Nissan in 2016?

20 A. Yes, the asset purchase agreement, I

21 believe we -- it was performed by, you know, the

22 property dealers of Nissan of Sumter agreement,

23 which allowed us to buy the store.

24 Q. A minute ago you referenced a side note,

25 if I recall your testimony correctly.

Page 11

1 A. Correct.

2 Q. What side note are you referring to?

3 A. I'm talking about the note that Jones and

4 THAG entered into, Nissan of Sumter, to cover a --

5 let's see how to put this -- to cover a deficiency

6 off of the asset purchase agreement.

7 Q. And when you say "note," you're referring

8 to a promissory note that was entered into between

9 Jones Nissan and THAG, LLC, correct?

10 A. I believe so. I'm not sure of the

11 appropriate entity, but yes, there is an agreement.

12 I'm not sure if it was Nissan of Sumter, LLC, or

13 THAG, LLC. That's what I'm referencing.

14 Q. What was the purpose of that promissory

15 note?

16 A. Well, the intent was to be able to -- to

17 be able to buy the Jones Nissan of Sumter store,

18 because of the asking price by them wasn't -- there

19 was a shortfall in what the amount that was going to

20 be financed from Nissan Motor and the performers,

21 that their asking price was over the asking price of

22 what could be actually bought.

23 Q. Explain that to me. You said that their

24 asking price was over the asking price of what could

25 be bought. What do you mean by that?

Page 12

1 A. What I mean by that, that the financial

2 terms of the bank, of our lending institution and

3 Nissan Motor Company, in order for the deal to

4 properly -- to properly be successful, there was a

5 certain amount of money that should be paid on the

6 deal asking price. However, due to the fact of

7 trying to -- in good spirit, trying to help the sale

8 -- to help the transaction of this deal, we extended

9 separate terms that were outside of the normal

10 manufacturer's agreement and due diligence.

11 Q. When you say "we," who do you mean?

12 A. Well, the company, Nissan of Sumter.

13 Q. Is it true --

14 A. And that amount was excessive goodwill.

15 Q. What was the amount of the promissory

16 note?

17 A. If I can recall, it was somewhere in the

18 neighborhood of six hundred.

19 Q. \$650,000, correct?

20 A. Six hundred, somewhere in that ballpark.

21 Six hundred -- yeah, it could be.

22 Q. And the reason the parties entered into

23 the promissory note was so the purchaser could

24 finance a portion of the sale price for the

25 business, correct?

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Page 45 1 Q. And it looks like this document was 2 entered into on the 25th of August, 2016 between 3 THAG, LLC, and Jones Nissan, Inc. That's in the 4 first paragraph. Do you see that? 5 A. Yes. 6 Q. Before we talk about this particular 7 amendment, help me understand why THAG, LLC, was a 8 party to the asset purchase agreement as opposed to 9 any other LLC. 10 A. I don't know. I don't know. Maybe the 11 other LLCs hadn't gotten put together yet. That's 12 the only thing I can assume. 13 Q. Who would have made the decision to allow 14 THAG to be a party to the asset purchase agreement? 15 A. More than likely, me. 16 Q. Because you were the sole member of THAG, 17 LLC, at that point in time, right? 18 A. Yes. 19 Q. And if you look at this particular 20 amendment, which is marked as Exhibit 2, it looks 21 like it just deals with an amendment to the 22 termination provision of the asset purchase 23 agreement. You're welcome to read through it, if 24 you want, but I don't really have any questions to 25 ask you about that.	Page 47 1 A. Uh-huh. 2 Q. And according to the final page of this 3 exhibit, it looks like you would have signed it on 4 behalf of THAG, LLC, on November the 2nd of 2016, 5 right? 6 A. Yes, as far as I know. I mean, I don't 7 know what all is in the documents, but yeah, this 8 looks correct. 9 Q. Well, we touched on this earlier. Let me 10 ask again, just so I am clear. During this general 11 time frame, which would be November of 2016 and then 12 going back to August of 2016, had you authorized any 13 other individual to sign your name to legal 14 documents on behalf of THAG? 15 A. I don't know if I -- I mean, it could have 16 happened. I'm not saying that it didn't. But 17 generally, I sign those documents, if I'm available. 18 Sometimes I may have been out. I may have been -- I 19 don't know. Maybe I could have been out of the 20 country or something. 21 Q. You don't dispute that this is your 22 signature on Exhibit 3, do you? 23 A. It looks like it. 24 Q. And it is yours, isn't it? 25 A. It looks like it.
Page 46 1 A. Okay. If you don't mind, can I ask you a 2 question? 3 Q. Sure. 4 A. Were you their attorney on this document 5 back then? 6 Q. No, I was not. No, sir. 7 A. Okay. 8 Q. Just for the sake of completion, if you 9 look at the final page of Exhibit 2, it looks like 10 it was signed by James Jones on August the 23rd of 11 2016. Do you agree with that? 12 A. Yes. 13 Q. And it looks like it was signed by you, on 14 behalf of THAG, on August the 23rd of 2016. Do you 15 agree with that? 16 A. Yes. 17 Q. I'm showing you now Exhibit 3. This is a 18 second amendment to the asset purchase agreement. 19 There in the first paragraph, it indicates this was 20 signed on or about November the 2nd of 2016 between 21 THAG, LLC, and Jones Nissan, right? 22 A. Yes. 23 Q. This particular amendment deals with 24 modifications to the closing date as shown in 25 paragraph 11 down towards the bottom?	Page 48 1 Q. Do you agree that it is yours? 2 A. I don't necessarily agree, because as I'm 3 looking at these three documents, some of them are 4 not my signature, I don't think. 5 Q. And if you didn't sign your name on 6 Exhibit 3 here, who did? 7 A. It would have gotten stamped. 8 Q. Who would have stamped it? 9 A. It could have been Mark Sanchez, it looks 10 like, or Lana Barthelmes. 11 Q. Who else? 12 A. That would have been probably it. 13 Q. Do you have a stamp that is formatted in 14 this fashion, where your name is printed on the top 15 line, signed in the middle line, and then it says 16 member, slash, owner on the bottom line? 17 A. No. 18 Q. So that's your signature, isn't it? We 19 can agree on that? 20 A. Once again, I'm not trying to be 21 argumentative. I'm not sure. It looks like it. 22 Q. I'm showing you now Exhibit 4 to your 23 deposition. This is the third amendment to the 24 asset purchase agreement. And in the first 25 paragraph here, it indicates that it was to be

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1 A. Yes, she is.

2 Q. Is she licensed in South Carolina?

3 A. She is.

4 Q. Does she currently practice anywhere?

5 A. Yes.

6 Q. Where?

7 A. Warner Robins, Georgia.

8 Q. How long did she do work for THAG?

9 A. I think maybe 2017.

10 Q. When did she start?

11 A. I mean, I'm saying I think that's about

12 when she started. I don't recall the exact dates.

13 Q. When did she stop working for THAG?

14 A. Somewhere in 2019, when we couldn't afford

15 -- when we sold -- well, short sold the stores, and

16 then we went from 200 people down to 30 people.

17 Q. Was she paid for her work?

18 A. Yes.

19 Q. How was she paid?

20 A. Salary.

21 Q. How much was she paid?

22 A. I'd say she was making maybe five grand a

23 month.

24 Q. Was there a written employment agreement

25 for your sister?

Page 74

1 A. We didn't have one.

2 Q. Who handled the accounting or bookkeeping

3 for THAG?

4 A. That was done out of our Pawleys Island

5 store. That would have been by Ms. Lana Barthelmes.

6 She was the head controller by then.

7 Q. And she was employed by THAG?

8 A. Yes.

9 Q. Did she have a written employment

10 agreement?

11 A. No, not really.

12 Q. What do you mean "not really"?

13 A. No, she may have had -- you know, they

14 might have had a conversation -- changes or

15 whatever. They may have had a payroll sheet. I

16 could check to see if they did have some things like

17 that, if that's important to this point.

18 Q. I'm curious to know if she had a formal

19 employment agreement.

20 A. Okay. All right. We'll find that out.

21 Q. Sitting here today, you do not know the

22 answer to that?

23 A. No, sir.

24 Q. In 2016 at the time the asset purchase

25 agreement was entered into between THAG and Jones

Page 75

1 Nissan, who was the president of THAG?

2 A. That would be me or a managing member,

3 whatever they called it.

4 Q. Who was the vice president of THAG?

5 A. There was no vice president.

6 Q. Who was the secretary of THAG?

7 A. We didn't have a secretary.

8 Q. Who was the treasurer of THAG?

9 A. Didn't have one.

10 Q. I'm showing you now, Mr. Holmes, Exhibit 7

11 to your deposition.

12 A. Okay.

13 Q. This is the promissory note we've talked a

14 good bit about already. Do you recognize this

15 document?

16 A. So far.

17 Q. It's a one-page document. Did you agree

18 that this is, in fact, the promissory note that was

19 entered into between THAG and Jones Nissan on

20 February the 28th of 2017 to account for the portion

21 of the purchase price that was to be financed by

22 Jones Nissan?

23 A. This looks more relevant, absolutely.

24 Q. You agree that's your signature at the

25 bottom of the document?

Page 76

1 A. It looks like it. It appears to be.

2 Q. All right.

3 A. This is the only document I can recall

4 right here. This other one, I have no idea where

5 that came from. So you can't even call that one an

6 asset purchase agreement because I don't -- it

7 doesn't fit that.

8 Q. The face amount of the promissory note

9 that we've marked as Exhibit 7 is \$650,000, correct?

10 A. That is correct.

11 Q. The note is pretty short so we will just

12 read it. It says, "For value received, the

13 undersigned" -- who is the obligor -- "promises to

14 pay to the order of Jones Nissan, Inc.," -- who will

15 be the holder-- "payable at Sumter, South Carolina

16 the sum of \$650,000, with interest at the rate of 6

17 percent per annum, past due interest to bear

18 interest at the same rate principal and interest

19 being payable as follows: In 59 consecutive equal

20 annual installments of \$12,566.32 and a sixtieth

21 consecutive installment of the balance then due, all

22 in accordance with the amortization schedule

23 attached hereto and made a part hereof." You agree

24 that this is the promissory note that THAG entered

25 into with Jones Nissan, correct?

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1 transferred if it was pledged.

2 Q. I'm not following you. Explain to me what

3 you mean.

4 A. You're saying these funds were transferred

5 out of that account, which was controlled, but,

6 obviously, it looks like they were.

7 Q. How did that happen?

8 A. I'm not sure.

9 Q. Was it your intent not to have the account

10 actually pledged as part of the deal?

11 A. No, it wasn't my intent.

12 Q. Once you deposited the \$650,000 into

13 Merrill Lynch account 250, did you understand that

14 the account was pledged at that point in time?

15 A. I think that was my rough understanding.

16 I didn't think about it that much, but yeah.

17 Q. Did you ever come to learn that the

18 account had not been effectively pledged?

19 A. At some point, yeah.

20 Q. When was that?

21 A. When Nissan actually took the money out of

22 the account.

23 Q. So how did you learn that the account had

24 not been pledged?

25 A. Well, we were trying to come up with all

Page 86

1 kinds of funds to get them -- to satisfy their

2 audit, and we just said, "We need this amount" and

3 they said, "Okay, we'll send it to you."

4 Q. Who said, "We'll send it to you"?

5 A. Who was it? Merrill Lynch.

6 Q. And so that's when you realized that the

7 account had not been properly pledged?

8 A. I don't know about that. It just said it

9 wasn't pledged.

10 Q. Did you ever notify Jones that there

11 seemed to be a question as to whether or not the

12 account had been properly pledged?

13 A. No.

14 Q. Why not?

15 A. Because it was -- I mean, I never entered

16 it not to pay them. I mean, I never had -- I never

17 had a thought process of not getting them satisfied.

18 Q. But once you learned that the account was

19 not pledged, did you ever reach out to either of the

20 Jones brothers to say, "Hey, listen, this account

21 that we intended as part of our agreement to be

22 pledged is not, so I'm going to withdraw some

23 portion of the \$650,000 out of it, I just want to

24 make sure you're okay with that." Did you ever have

25 that discussion?

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1 A. No, I never had that discussion with them.

2 Q. Why not?

3 A. I don't know. You know, just like I never

4 had the discussion about the \$650,000 being pledged

5 with the asset purchase agreement with Nissan Motor

6 Company.

7 Q. Well, the \$650,000 that was pledged as

8 collateral for the Jones Nissan deal doesn't have

9 anything to do with Nissan Motor Company, does it?

10 A. I mean, I'm not sure.

11 Q. What I hear you saying --

12 A. In going back and thinking about it.

13 Again, at the moment, no, I didn't think it did.

14 Q. Did Nissan Motor Company pressure you to

15 transfer money to it that was intended for Jones

16 Nissan?

17 A. I don't think they saw the accounts. They

18 said they want everything available to satisfy their

19 thing or the notes were going to be in default.

20 Q. Well, during the course of those

21 discussions, did you tell anybody from Nissan Motor

22 Corporation that the \$650,000 in Merrill Lynch

23 account 250 was intended to be pledged to Jones

24 Nissan?

25 A. No, I didn't tell anybody.

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1 Q. And you agree that you should have told

2 Nissan Motor Corporation that?

3 A. I don't know. I mean, I haven't thought

4 about it. I don't know at the time.

5 Q. But you would agree with me --

6 A. You got to understand, at the time, these

7 stores were in financial duress, if you know what

8 that is. All of them were under major financial

9 duress. And we were trying to -- and the only way

10 to pay anybody back is we kept trying to get -- keep

11 these companies running. And that's what the whole

12 intent was to keep these companies running so that

13 we could actually pay our shareholders and

14 stockholders, because at the point when they came

15 in, there was no questions about anything, they

16 wanted the money or the keys to the dealership

17 Q. You agree with me that you transferred to

18 Nissan Motor Corporation money that belonged to

19 Jones Nissan?

20 A. No.

21 Q. Why do you not agree with that?

22 A. I just didn't see it that way.

23 Q. Why not?

24 A. I'm not sure. I mean, at that time, I

25 just didn't see -- I wasn't privy to -- we were

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1 under a lot of financial strain, so I wasn't
2 thinking as clearly as I would be today. And if I
3 had the chance to do things all over, I probably
4 would have done them much differently.

5 Q. The reason you don't see it that way is
6 because Nissan Motor Corporation was a larger
7 creditor to you at the time than Jones Nissan,
8 right?

9 A. Nissan Motor Company -- at that time, I
10 wasn't having -- I was having -- the issues we were
11 having were financial issues and not enough money in
12 the deal, being undercapitalized.

13 Q. But you needed to do what you could to
14 keep Nissan Motor Corporation content because they
15 had also awarded you that store in Lugoff, right?

16 A. Yes, they did award me the store in
17 Lugoff. Also, I had another Nissan store that was
18 in Orangeburg too, as well, that we were all trying
19 to keep those going.

20 Q. But if there was to be a creditor that you
21 couldn't make good on your obligations with, your
22 thought was it's better for that creditor to be
23 Jones Nissan than Nissan Motor Corporation, true?

24 A. No, I didn't make any delineation of not
25 paying any creditor, never.

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1 collateralized account agreement with Merrill Lynch? Page 91

2 A. I don't know. I believe the opposing
3 counsel's attorney was.

4 Q. Well, they both were, right?

5 A. I don't know.

6 Q. Were you present at the closing?

7 A. If I can -- I think I was. I'm not sure.

8 Q. Where did the closing take place?

9 A. Typically, the closing took place in
10 Pawleys Island.

11 Q. And that's where this one took place,
12 isn't it?

13 A. I'm not sure. Typically.

14 Q. And you were there for it, right?

15 A. Usually I am, if it happens that way, but
16 we've had some closings that you didn't have to go
17 to.

18 Q. Right. But Mr. Weathers was also present
19 at this one, right?

20 A. Once again, I don't recall that particular
21 one. I'm sorry. Maybe I should, but I don't.

22 Q. If you look at paragraph eight of this
23 pledge agreement, subpart A says, "Each of the
24 following events or conditions shall constitute an
25 event of default hereunder." And subparagraph I

Page 90

1 Q. Well, how is that possible since you took
2 the \$650,000 that you knew had been set aside for
3 Jones Nissan and transferred it to Nissan Motor
4 Corporation?

5 A. I'm not sure. I mean, that question that
6 you asked, I don't know if that's relevant to the --
7 however the funds were transferred, I don't know,
8 but we were paying Jones their money out of Nissan
9 of Sumter on a monthly basis based out of
10 profitability. It was never intended on not paying
11 them, to give them \$650,000. That's not the
12 premises of how I was thinking. All loans that we
13 go into are to be paid back by the operations and
14 the daily operations of the business, not by
15 something that's secured out there.

16 Q. Well, that's not the agreement you entered
17 into with Jones Nissan, is it?

18 A. Well, if that's not, then I was -- we were
19 totally confused about it.

20 Q. Did you have a lawyer advising you during
21 the negotiations with Jones Nissan?

22 A. I mean, the Weathers Law Firm actually put
23 the deal -- actually did the asset purchase
24 agreement, but not the one that I saw earlier.

25 Q. Was the Weathers Law Firm involved in the

Page 92

1 says, "The pledgor's failure to pay any indebtedness
2 when due." Do you agree with me that you had
3 breached this particular condition of the pledge
4 agreement?

5 A. You know, I'm not sure. And at this point
6 in time, it seems like to me I should have been --
7 we should have been doing this when we first -- when
8 we first entered into all these agreements.
9 However, I didn't have this same tenacity that we're
10 having today, I didn't have that --

11 Q. Do you agree with me --

12 A. -- or I probably wouldn't have signed any
13 of these documents.

14 Q. Do you agree with me that you've breached
15 this particular condition of the pledge agreement?

16 A. I'm not aware of it. I haven't seen that.

17 Q. That's not my question. Do you admit that
18 you have breached this particular condition of the
19 pledge agreement?

20 A. I'm not sure what I believe.

21 Q. Why are you not sure?

22 A. I guess they say ignorance is no excuse of
23 the law, and I guess this is where I'm getting at
24 right now.

25 Q. Well, you can see that you have not paid

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1 dealership?

2 A. We estimated it to be somewhere around --

3 I mean, not estimated, but I think, if I can recall,

4 it was like \$30,000 -- it was \$25,000 to \$30,000 a

5 month.

6 Q. And that's in writing, correct?

7 A. Yes, sir.

8 Q. That's in a lease agreement?

9 A. Yes, sir, unless you know something that I

10 don't, in asking that.

11 Q. No, I'm asking. I want to see it. I want

12 to see that document that you're apparently relying

13 on. Can you provide it to me?

14 A. Yes, sir, I will.

15 Q. But you with agree with me that that

16 document, whatever it says, is something that's

17 separate and apart from the promissory note,

18 correct?

19 A. Yes.

20 Q. That's a separate agreement altogether,

21 right?

22 A. Correct.

23 Q. So whatever money may be owed under the

24 lease agreement is confined to that particular

25 document, right?

Page 98

1 A. Yes. I don't think they

2 cross-collateralized.

3 Q. Right. And whatever money is owed under

4 the promissory note is confined to that particular

5 document, right?

6 A. Yes.

7 Q. But it's your testimony here today that

8 because you have paid Jones Nissan rent under this

9 lease agreement that you consider it to be

10 exorbitant, you thought this ought to also be in

11 satisfaction of the money you owed under the

12 promissory note; is that your testimony?

13 A. Yes, part of it, but I also think -- not

14 only that, I also think the fact that the

15 declination decline of mine and THAG and Nissan's

16 financial arrangement, we -- THAG and Nissan of

17 Sumter were the only ones that suffered in this

18 agreement, in this arrangement. Millions of dollars

19 that were lost.

20 And today, for an example, I get a call

21 today from the manufacturer on these two dealerships

22 that we inherited is that, "Hey, what's your plans

23 going forward? You can't hit market values in this

24 area. What do we think about getting out?" This is

25 what I'm left holding the bag with.

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1 Now, I'm not blaming anybody, but I'm a

2 little bit perturbed that this will continue to keep

3 going on like this over this, and when somebody --

4 when millions of dollars have been profited on my

5 behalf and THAG's behalf and it wasn't me. Millions

6 of dollars has been profited from this right here in

7 some first generation car dealer -- not second or

8 third -- that was trying to do the right thing and

9 got -- and at the end of the day, it didn't work

10 out. I'm not blaming anybody for my shortcomings,

11 I'm not. And I don't mean to get emotional and all

12 this stuff, but, however, this is just the hand that

13 we're dealt with.

14 Q. Well, tell me this. Just as a matter of

15 principle, do you believe in honoring the deals that

16 you make or not?

17 A. I certainly do the very best I can to.

18 Q. But you're not willing to testify under

19 oath today that you owe my clients an outstanding

20 sum of about \$360,000 on a promissory note that you

21 signed, is that right?

22 A. That might be very much the case for this

23 obligation, but I think your clients owe me more

24 than that.

25 Q. Well, okay. Where is the documentation to

Page 100

1 that effect to support your belief?

2 A. I don't have -- I mean, I didn't have good

3 enough attorneys to help me write the agreement on

4 my behalf.

5 Q. I mean, it sounds to me like you just want

6 to negotiate -- or renegotiate the deal on the back

7 end. That's what you want to happen here, isn't it?

8 A. Well, I mean, no. I'm just trying to get

9 everything satisfied, you know, that should be. I

10 don't have anything else to give to this.

11 Q. It sounds like Nissan Motor Corporation

12 does, since you gave them the \$650,000 that you

13 intended to pledge to Jones Nissan. You agree with

14 that, don't you?

15 A. I don't know now. I don't know what it

16 is, but I just know that I was the one left without

17 any dealership.

18 Q. But would you agree with me that Nissan

19 Motor Corporation rather pressured you to take the

20 \$650,000 that had been set aside as collateral for

21 the Jones Nissan deal and had you transfer it to

22 them so you could work on satisfying their debt?

23 That's what they did, isn't it?

24 A. Well, I agree that Nissan came in and

25 says, "Hey, you have this audit, you are

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1 undercapitalized and at this point, we want you to
2 put the money in to capitalize the store. We don't
3 care how you do it, but you better do it."

4 Q. And they pressured you to do that, didn't
5 they?

6 A. You know, I don't know. Maybe it would be
7 a good thing to get Nissan Motor Company in here
8 with us and let's depose them to see what they
9 think.

10 Q. I tend to agree with you. That's why I'm
11 just asking you these questions. But it sounds like
12 they pressured you to take the \$650,000?

13 A. There was a lot of pressure those days.
14 They were in the store doing their financial audit.

15 Q. Are there documents from the financial
16 audit that they did of the Nissan of Sumter location
17 that you purchased?

18 A. Yes.

19 Q. Do you have these documents?

20 A. Yes, I'm sure we do. I have to try to
21 figure out where that is.

22 Q. Give them to me, please, and give them to
23 Mr. Ramsey so he can get them to me.

24 A. All right. I'll do that.

25 Q. But just so we've got a clear record, you

Page 102
1 agree with me that Nissan Motor Corporation
2 pressured you to give to them the \$650,000 that had
3 been collateralized for Jones Nissan, right?

4 A. You know, I don't know if they knew that
5 particular -- well, what I'm saying is they saw --
6 they knew we had banking at Merrill Lynch, and it
7 was part of the overall thing, and it was hard to
8 tell that there was a pledge agreement in the
9 overall account.

10 Q. How do you know that?

11 A. Well, it didn't say it. It just says,
12 "Hey, you have this much money," and it included
13 everything.

14 Q. But you knew by virtue of having signed
15 the pledge agreement, the collateralized account
16 agreement, that that \$650,000 was intended to be
17 pledged for Jones' benefit, right?

18 A. Intended to be held, I did, but it was our
19 intent also to make sure it got back.

20 Q. If you look at subparagraph E of this
21 "Default" section in Exhibit B, it says, "The
22 pledgor shall pay all costs and expenses incurred by
23 the lender in enforcing this security agreement,
24 realizing upon any collateral and collecting any
25 indebtedness, including a reasonable attorney's fee

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1 whether suit is brought or not and to the extent of
2 pledgor's liability for repayment of any
3 indebtedness, shall be liable for any deficiency in
4 the event that disposition of the collateral does
5 not satisfy the indebtedness in full."

6 So you agree with me, would you not, that
7 THAG, LLC, is responsible for all costs incurred by
8 Jones Nissan in trying to be made whole on the
9 balance due under the promissory note, correct?

10 A. No, I don't agree with that at all, but I
11 I do agree that the language says that in this
12 document.

13 Q. You just disagree with the language, is
14 that what you're saying?

15 A. I don't know if that's what I'm saying.
16 I'm just saying I understand what this document --
17 how it reads.

18 Q. Well, do you agree that it's controlling
19 in this scenario or not?

20 A. I don't think, you know -- to be honest, I
21 don't think that the document is relevant for me to
22 -- I don't believe that it's relevant to -- the
23 circumstances where we got -- I think all the
24 intentions were good and meant well and it's just
25 that we got caught and, you know, I'm still holding

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1 the bag on a lot of different legal issues too, as
2 well.

3 Q. But you signed this document? Is that
4 your signature on page 4?

5 A. It looks like it.

6 Q. And if we go back up to subparagraph F,
7 this is paragraph 9, so it's paragraph 9,
8 subparagraph F it says, "The terms 'lender' and
9 'pledgor' as used in this agreement includes the
10 heirs, personal representatives, and successors or
11 assigns of those parties," right?

12 A. Yeah, it looks like that says that, heirs.
13 I don't know what it means, but yeah.

14 Q. Do you agree with me that Nissan of
15 Sumter, LLC, became an assign of THAG, LLC, during
16 the course of this business deal with Jones Nissan?

17 A. By all indications, it looks that way.

18 Q. Now, if we look at Exhibit 11 -- excuse
19 me, Exhibit 9 to your deposition, this is Assignment
20 of Asset Purchase Agreement. And the first
21 paragraph says, "This assignment of asset purchase
22 agreement is made by and between THAG, LLC,
23 hereinafter 'assignor' and Nissan of Sumter,
24 hereinafter 'assignee' and shall be effective as of
25 February 28, 2017."

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1 A. Yes.

2 Q. Do you agree that as of August the 20th of

3 2019, that is the amount of money that THAG owed to

4 Jones Nissan under the promissory note?

5 A. You know, I didn't have any record of

6 verifying that. I didn't know what we had paid. I

7 would imagine something like that.

8 Q. You would agree with me that Jones --

9 excuse me. Would you agree with me that THAG has

10 not made any payment on the \$360,035.15 debt

11 subsequent to this August 20, 2019 letter, correct?

12 A. After August 19th, yes, I agree, I have

13 not made any more payments.

14 Q. Exhibit 11 is correspondence to Merrill

15 Lynch from Mr. Erter dated August 22 of 2019, and

16 this is providing notice to Merrill Lynch of Jones

17 Nissan's exclusive control of account 250 per the

18 terms of the pledge agreement that we previously

19 looked at, okay?

20 A. Okay.

21 Q. Do you agree with me that as of August the

22 22nd of 2019, there was not an amount of money in

23 Merrill Lynch at 250 sufficient to cover the

24 outstanding balance that was owed on the note?

25 A. Yes, it looks like that.

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1 Q. What had been done with the money that was

2 supposed to be in Merrill Lynch account 250?

3 A. I don't know, but the -- I know we had to

4 give Nissan NMAC, we had to pay for that audit. I

5 know funds came out of there or whatever, just to

6 get them satisfied so we could keep on going some

7 time in 2018, I think.

8 Q. Did Nissan ever explain to you what would

9 happen if you did not get the Nissan of Sumter store

10 sufficiently collateralized?

11 A. No, they didn't go to that depth, I think,

12 to say that. But you violate all their codes in a

13 franchise agreement when you do own property and it

14 makes things very difficult, then i.e., everything

15 you have on the table stops and eventually defaults

16 in floor plan, and restrictions of credit lines, all

17 the above.

18 Q. Do they stop sending you inventory?

19 A. They will.

20 Q. Did they threaten that in this 2018 time

21 frame that you just mentioned?

22 A. Well, you know, that's what happens if you

23 can't -- you know, that's the thing. They become --

24 they become unsecured.

25 MR. HUDSON: All right. Let's take a

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1 quick break. I need to use the restroom, then

2 we'll come back.

3 THE WITNESS: Okay.

4 (Whereupon, a recess was taken.)

5 EXAMINATION RESUMED BY MR. HUDSON:

6 Q. Exhibit 12 should be on your screen right

7 now.

8 A. Yes, sir.

9 Q. This appears to be a letter to Jones

10 Nissan authored by you. Down at the bottom is a

11 copy of a cashier's check. I will just read the

12 letter. It says, "Good morning, Mr. Jones. I am

13 forwarding a check in the amount of \$2,500. Due to

14 the excessive debt and demands, I was forced to sell

15 most of the dealerships and assets. I am forced to

16 only send a portion of my payments as agreed upon.

17 As I get my affairs in order, I intend to bring my

18 payments back to the agreed-upon amount. I

19 appreciate your understanding in this matter as I

20 rectify my financial situation." Did you prepare

21 this letter?

22 A. I did.

23 Q. Why?

24 A. I just wanted to let them know what the

25 circumstances I was in and what my intent was.

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1 Q. What circumstances were you in at the

2 time?

3 A. They were highly impaired, greatly

4 impaired and diminished by -- I don't know -- 80, 90

5 percent.

6 Q. All right. Let's just take it sentence by

7 sentence. In this letter, the letter appears to be

8 undated, but the cashier's check at the bottom has a

9 date of August 14, 2019, right?

10 A. Yes.

11 Q. All right. So you say, "Good morning, Mr.

12 Jones." Which Jones brother were you addressing

13 this letter to?

14 A. John, I believe, because he was the one

15 that I had mostly contact with -- well, the younger

16 brother.

17 Q. I think John is younger, I believe. I may

18 be mistaken on that. In any event, the second

19 sentence says, "Due to the excessive debt and

20 demand." What do debt and demand -- what do you

21 mean by that?

22 A. The leverage of the -- I was highly

23 leveraged and I was overleveraged, which violated

24 most of the bank covenants. And as they found, the

25 leverage conditions wasn't there and, I mean, the

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Page 113 1 liquidity wasn't there, then they no longer wanted 2 to be a part of any of our operations. So 3 immediately demands for floor plan pools, 4 immediately mortgages were called and forbearance 5 agreements were issued at that time, and they gave 6 me either I immediately need to find a buyer or 7 something to rectify because they no longer wanted 8 to do business with me, and that was Allied Bank 9 where it started at the beginning. 10 Q. You then say, "I was forced to sell most 11 of the dealerships and assets." What dealerships 12 and assets are you referring to? 13 A. All the THAG entities, which was all of 14 them, which were Chrysler Jeep Dodge, Myrtle Beach 15 Mitsubishi, Nissan of Orangeburg, is the first 16 three. Subsequently, Nissan of Sumter, once we 17 filed -- when I put that together. 18 Q. Next sentence says, "I am forced to only 19 send a portion of my payments as agreed upon." 20 There you're referring to the payments as specified 21 by the promissory note, right? 22 A. Yes, the one that was \$12,000 a month, 23 whatever that was. 24 Q. That's right. So in this letter in the 25 August of 2019 time frame, you were acknowledging	Page 115 1 totally uncapitalized. But my thought was if I was 2 there, which I had never been, hopefully I could get 3 those things -- put my hands on them and get those 4 things turned around. 5 Q. You don't say anything in this letter 6 about thinking you had already paid Jones Nissan 7 enough money under the agreement or just thinking it 8 was a bad deal. Why is that? 9 A. At that particular point, I hadn't had 10 enough time to reflect. I was in survival mode and 11 surviving all of this. I mean, it was just a 12 detrimental effect of what I -- in the same year, 13 whenever as I was digging out of this, I lost my 14 21-year-old son during this process and was also 15 going through a divorce. 16 Q. You don't say anything about possibly 17 renegotiating or modifying the deal either. Why is 18 that? 19 A. Like I said, I hadn't had any chance to 20 really reflect on it. I just know that, hey, we had 21 stopped making those payments and we need to try to 22 continue them as best as we possibly can until we 23 figure out what to do. But my intent was to try to 24 come together with the financial situation. But as 25 time went on, my financial situation got worse.
Page 114 1 the payments that THAG was supposed to make under 2 the promissory note, right? 3 A. Yes. 4 Q. The next sentence says, "As I get my 5 affairs in order, I intend to bring my payments back 6 up to the agreed-upon amount." And there, you're 7 just referencing the payments that are specified in 8 the promissory note, right? 9 A. Correct. 10 Q. "I appreciate your understanding in this 11 matter as I rectify my financial situation." What 12 steps did you take to rectify your financial 13 situation? 14 A. Well, what I tried to do was -- and the 15 intent was to put my focus into the two dealerships 16 that were left over. And then hopefully, to try to 17 get a profit out of it, because they were 18 unprofitable stores, and that's why I ended up with 19 them, nobody wanted them. But my intent was to try 20 to turn those around, and focus on those, and try to 21 get those profitable so that I could actually make 22 the payments to them. 23 Q. Did you have any dealerships that were 24 profitable at this point in time? 25 A. No. As a matter of fact, they were	Page 116 1 Q. Has it improved at all since then? 2 A. No. You know, then we went through COVID, 3 in which I had dealerships to walk out and also 4 other litigation matters that popped up continuously 5 and just hadn't gotten better. And I'm still in a 6 legal battle with my spouse now in trying to get 7 that resolved. 8 Q. The \$2500 payment that you attempted to 9 make in August of 2019 involves a cashier's check. 10 Why was that? 11 A. Well, I didn't have any other way of 12 paying the money from another entity. I don't know 13 why. I just went and got a cashier's check. 14 Q. Is that because all your other accounts 15 were running low on money? 16 A. Yes. Well, I mean, THAG didn't have any 17 money, or Nissan of Sumter; they didn't exist 18 anymore. 19 Q. If you look at the remittance on this 20 cashier's check that's at the bottom of Exhibit 12 it 21 says, "Terry Holmes." Why is your name there? 22 A. I think that's just what the bank had put 23 there, because I went and got the cashier's check. 24 Q. And that's essentially because you were 25 THAG at that point in time, right?

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1 A. No, it was just that's where the check
2 came from.

3 Q. Why didn't it say THAG in the remitter
4 line?

5 A. That just says, "Nissan of Sumter."

6 Q. That was my next question. Why didn't it
7 say either one?

8 A. Because it was no thing. It was just the
9 bank, they just went -- I don't think they even
10 asked me, they just put my name on it.

11 Q. Are you the person who asked that this
12 check be prepared?

13 A. Yes.

14 Q. Which First Citizens branch did you go to
15 to get this check?

16 A. It probably was in Florence.

17 Q. Who is Alyssa Cautten?

18 A. I have no idea. Wait a minute. You know,
19 that may have been -- that may have been Cheraw.
20 Cheraw has a branch too. Alyssa sounds familiar.

21 Q. I'm showing you Exhibit 13 now. This is a
22 cashier's check that's dated September the 27th of
23 2019. Do you see that?

24 A. Yes, sir.

25 Q. This is also in the amount of \$2500 made

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1 payable to Jones Nissan, right?

2 A. Correct.

3 Q. And here the remitter line says, "Nissan
4 of Sumter"?

5 A. Correct. Okay.

6 Q. What was this check intended for?

7 A. The same principal.

8 Q. It was a payment on an outstanding
9 promissory note?

10 A. Yes, sir.

11 Q. And there's a handwritten note above the
12 check this says, "Please deliver to Nissan at Jones
13 Chevrolet." Whose handwriting is that?

14 A. I don't know. I don't know. Nissan of
15 Orangeburg letterhead. I don't know, because it was
16 -- it looks like Nissan of Orangeburg letterhead.

17 I'm not sure how that came about.

18 Q. What was the status of Nissan of
19 Orangeburg as of September 2019?

20 A. Nissan of Orangeburg was closed but was
21 sold before Sumter. Sumter was the last one. I
22 think Orangeburg was done in June.

23 Q. Of 2019?

24 A. Yes, sir.

25 Q. So you think this just might have been

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1 some leftover letterhead you had readily available
2 at the time?

3 A. You know, in the office that -- my office
4 manager would have been Stacy. She worked out of
5 Nissan, but she still remained there to do it. So
6 -- in Sumter. Okay. So what probably happened is
7 she -- "Please deliver to Nissan Jones." I got it to
8 Stacy, because she was still over Sumter as office
9 manager, and she just told them to deliver it to
10 Nissan at Jones Chevrolet, I imagine.

11 Q. Next is Exhibit 14 to your deposition.

12 A. Yes, sir.

13 Q. And I want you to take a look at this
14 first one, Mr. Holmes, and I'll just kind of give
15 you my thought process on it. But these are
16 documents that have been provided to me by my
17 client, okay. And they appear to be payment
18 receipts for all of the payments that were made
19 under the promissory note beginning in March of 2017
20 and going through June of 2017, I believe. What we
21 will find with this series of documents is they are
22 on Jones Nissan letterhead, they specify the amount
23 that was paid. So, for instance, here it's
24 \$12,566.32.

25 A. Okay.

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1 Q. And it says, "Paid by check." The comment
2 is "note payment," presumably referring to a payment
3 under the promissory note, okay?

4 A. Okay.

5 Q. And then you've just got other details as
6 you work down the document. And I've got these cash
7 receipts. If you look here at the bottom, it says
8 "Cash receipt, customer copy."

9 A. Uh-huh.

10 Q. So these documents just substantiate those
11 payments that were made. Do you acknowledge that
12 either THAG, LLC, or Nissan of Sumter, LLC, or one
13 of your other LLCs made payments under the
14 promissory note in the amount of \$12,566.32 from
15 March of 2017 through June of 2019?

16 A. Yes, I'm aware that I think they were all
17 supposed to be coming from Nissan of Sumter.

18 Q. Right. Do you recall receiving a cash
19 receipt for each payment that was made under the
20 promissory note during the 2017 through 2019 time
21 frame?

22 A. Do I remember receiving anything?

23 Q. Yes, sir.

24 A. Let's go back to the -- let's go back to
25 the top of this document. Okay. This is Jones

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1 receiving this money. So are you saying they gave
2 cash? Is that what you're saying?
3 Q. Well, you see the Jones Nissan letterhead
4 on the top --
5 A. Correct.
6 Q. -- where my cursor is moving around.
7 A. Absolutely.
8 Q. Then down at the bottom, it says, "Cash
9 receipt, customer copy"?
10 A. Uh-huh.
11 Q. So I'm curious to know if when a monthly
12 payment was made by one of your LLCs to Jones Nissan
13 on the promissory note, was any type of receipt
14 provided to you or your LLCs to confirm that the
15 payment had been made?
16 A. No. If you go back up at the top of this
17 document, if you will, it says, "\$12,566 paid by
18 check," and I think our check would have been the
19 only -- I don't know if they gave us receipts or
20 not, I have no idea. But our check registers would
21 have shown where it was paid in a check form.
22 Q. Who typically delivered the note payments
23 to Jones Nissan?
24 A. That would have been our office controller
25 at Nissan of Sumter in Orangeburg. She ran both of

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1 the stores. It would have been her.
2 Q. What's her name?
3 A. Stacey Wagers.
4 Q. How do you spell her last name?
5 A. It's Stacey Smoak, S-m-o-a-k.
6 Q. And what was her position with the
7 company?
8 A. Office manager, controller for the Nissan
9 of Orangeburg and Sumter.
10 Q. Does she have a formal employment
11 agreement with either of those entities?
12 A. No, she had a play plan, I guess.
13 Q. How was she paid?
14 A. On payroll, salary.
15 Q. What was her salary in 2017?
16 A. I can't recall. Somewhere around \$6,000
17 to \$7,000 a month, I would imagine.
18 Q. \$6,700 a month or \$6,000 or \$7,000?
19 A. No, \$6,000 or \$7,000, somewhere in that
20 range.
21 Q. Got you. Six or seven?
22 A. Yes, sir.
23 Q. What's her current status? Where is she?
24 A. The last time I talked to her, she was
25 with the Chrysler Jeep Dodge store in Orangeburg.

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1 The new owner is Platinum, or something like that,
2 is the Chrysler Jeep store.
3 Q. Who owns that store?
4 A. She was released by Mr. Johnson and went
5 to Tony Thomas is the operator there at that store,
6 the dealer. Yeah, she would have made all
7 transactions for that operation and also Lou Goss.
8 Any of that stuff, she paid.
9 Q. All right. Let's just work through these,
10 the next payment that was made under the note --
11 A. I need to go after Nissan for all this
12 stuff.
13 Q. Do you agree with me that a payment in the
14 amount of \$12,566.32 was made to Jones Nissan for
15 the promissory note in April of 2017, correct?
16 A. Yes, it looks like it.
17 Q. Okay. And if you look midway down the
18 document, you can see Jones Nissan is entering the
19 payment into their records on about April the 18th
20 of 2017, I believe?
21 A. Uh-huh.
22 Q. Do you agree with me that a payment was
23 made on the promissory note in May of 2017, as well,
24 in the amount of \$12,566.33?
25 A. Yes, it looks like it.

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1 Q. Do you agree with me that a payment was
2 made --
3 A. Yes.
4 Q. -- in May of 2017 in the same amount?
5 A. Yes.
6 Q. Do you agree with me that a payment was
7 made in the same amount in July of 2017?
8 A. It looks like it. I agree.
9 Q. Do you agree that a payment was made in
10 the same amount on the promissory note in August of
11 2017?
12 A. Uh-huh.
13 Q. "Yes"?
14 A. Yes.
15 Q. Thank you. Do you agree with me that a
16 payment was made in the same amount in September of
17 2017?
18 A. Yes, it looks like it. Yes, sir.
19 Q. Do you agree with me that a payment was
20 made in the same amount under the note in October of
21 2017?
22 A. Yes.
23 Q. Do you agree that a payment was made in
24 the same amount under the note in November of 2017?
25 A. Yes.

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1 Q. And if you look up here in the highlighted
2 portion, it indicates that the check was from Island
3 Real Estate Holdings, LLC. Are you familiar with
4 that company?

5 A. Yes, I am. What date is that?

6 Q. November the 1st of 2017 is when the
7 payment is entered into Jones' records.

8 A. Okay.

9 Q. What is Island Holdings, LLC?

10 A. It was a real estate account for -- it
11 held the mortgage for the Chrysler Jeep Dodge store
12 in Pawleys Island.

13 Q. Were you the sole member of that LLC?

14 A. Yes, sir.

15 Q. Why would the payment to Jones Nissan have
16 been coming from Island Real Estate Holdings, LLC,
17 in November of 2017?

18 A. I have no idea, unless one of the stores
19 didn't have money or whatever. I'm not sure.

20 Q. Is this the time frame where things might
21 have started to head south a little bit?

22 A. September 17th?

23 Q. Well, early November of 2017.

24 A. No, I think probably 2018 is when they
25 started -- when we realized they were heading south,

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1 and it could have been November. As a matter of
2 fact, it absolutely was, because we -- I'm not sure
3 when the bankruptcy proceedings were or whatever we
4 were trying to do, but I don't recall the dates.

5 Q. And this is another entry pertaining to
6 November of 2017. It looks like a payment in the
7 amount of \$10 was made representing the balance on
8 the November note payment. Do you recall that?

9 A. No, I don't. I mean -- I'm sorry, I don't
10 recall any of these transactions.

11 Q. All right. Do you agree with me that in
12 December of 2017, a payment would have been made to
13 Jones Nissan on the promissory note in the amount of
14 \$12,566.32?

15 A. I agree.

16 Q. Do you agree a payment in that same amount
17 would have been made under the note in January of
18 2018?

19 A. Correct.

20 Q. This one also came from Island Real Estate
21 Holdings, LLC?

22 A. Yes, it appears to be.

23 Q. Payment in the same amount would have also
24 been made under the note in February of 2018,
25 correct?

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1 A. Correct.

2 Q. A payment in the same amount would also
3 have been made under the note in March of 2018,
4 correct?

5 A. Wait a minute. I think I might have a
6 clear understanding of what that is now, what had
7 happened. It's probably about the time this audit
8 was coming in from Nissan of Sumter. They came in
9 and there could have been -- and we had to change
10 it, because there could be no record of this loan
11 being paid off because this was -- what we
12 classified it as, what we call is an off-the-book
13 transaction. Nowhere on our dealership books is
14 this note.

15 Q. So, in other words, you didn't want Nissan
16 Motor Corporation to be aware of this note deal?

17 A. Correct.

18 Q. Why was that?

19 A. It would have voided all covenants. We
20 would have been outside of the covenants of the
21 liquidity in the store.

22 Q. Did you know that when you entered into
23 this promissory note agreement with Jones Nissan?

24 A. Not to that degree. Not to this degree of
25 how it played out, no. It was just a broad

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1 transaction.

2 Q. But you understood it to some degree?

3 A. Yes, I did, which goes back to the point
4 of this APA document. You know, that could never be
5 -- because those documents go to the manufacturer.

6 Q. You agree with me that a payment was made
7 under the promissory note in the amount of
8 \$12,566.32 in April of 2018, correct?

9 A. I agree.

10 Q. Payment was made in that same amount under
11 the note in May of 2018, correct?

12 A. I concur.

13 Q. Payment was made in that same amount under
14 the note in June of 2018, right?

15 A. I concur.

16 Q. A payment was made under the note in that
17 same amount in July of 2018, correct?

18 A. I would concur.

19 Q. Payment was made in that same amount under
20 the note in August of 2018, correct?

21 A. Correct.

22 Q. Payment was made in that same amount under
23 the note in September of 2018, correct?

24 A. Yes.

25 Q. Payment was made in that same amount under

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Page 129 1 the note in October of 2018, correct? 2 A. Correct. 3 Q. Payment was paid in that same amount under 4 the note in November of 2018, correct? 5 A. Correct. 6 Q. Payment was made under the note in that 7 same amount in December of 2018, correct? 8 A. Correct. 9 Q. Payment was made under the note in that 10 same amount in January of 2019, correct? 11 A. Correct. 12 Q. Payment was made under the note in that 13 same amount in February of 2019, correct? 14 A. Correct. 15 Q. Payment was made in that same amount under 16 the note in March of 2019, correct? 17 A. Correct. 18 Q. Payment was made under the note in April 19 of 2019 in that same amount, correct? 20 A. Correct. 21 Q. Payment was made under the note in that 22 same amount in May of 2019, correct? 23 A. Correct. 24 Q. Payment was made under the note in that 25 same amount in June of 2019, correct?	Page 131 1 today. It's 4:00 now, so we're going to try to 2 reconvene at 4:45 or as close thereto as we can 3 to get this deposition completed today. 4 THE WITNESS: Okay. 5 (Whereupon, a recess was taken at 4:00 p.m. and 6 reconvened at 5:25 p.m.) 7 EXAMINATION RESUMED BY MR. HUDSON: 8 Q. Let me jump back to Exhibit 7, before we 9 move forward to some of the other ones. This is the 10 promissory note that we discussed earlier? 11 A. Yes, sir. 12 Q. So this paragraph in the middle that says 13 -- it just specifies how the payments are to be made 14 and it says, "In 59 consecutive equal annual 15 installments of \$12,566.32." 16 A. Okay. 17 Q. At the time that you signed this note on 18 or about February the 28th of 2017, was it your 19 intention to make the payments in accordance with 20 this note? 21 A. Yes, absolutely with this particular note 22 Exhibit F. Absolutely, it was my intent. I agreed 23 to do that. 24 Q. And you say Exhibit F. That's how it was 25 attached to the Complaint. For purposes of the
Page 130 1 A. Correct. 2 Q. Payment was made under the note in that 3 same amount in July of 2019, correct? 4 A. Correct. 5 Q. And then I think that is the final payment 6 that my clients have a record of. So that payment 7 in the amount of \$12,566.32 was made for the final 8 time under the promissory note in July of 2019. You 9 agree with that, don't you? 10 A. I do. Now, Mr. Hudson, how do we pick 11 this up again because apparently it's going to take 12 some more time? Can we reschedule -- can we finish 13 it at another date? 14 Q. We need to go ahead and knock it out 15 today. You got somewhere you need to be? 16 A. I do. I got a couple banking transactions 17 I need to try to make it to before the banks close 18 so we don't overdraw at the bank. 19 MR. HUDSON: I was not aware of that. We 20 moved the start time up so we could try to get 21 the whole thing completed today. Let's go off 22 the record real quick. 23 (Whereupon, a discussion was held off the record.) 24 MR. HUDSON: Mr. Holmes, has indicated he 25 needs to get to the bank before it closes	Page 132 1 deposition, it's Exhibit 7. 2 A. It's Exhibit 7. Okay. 3 Q. You might not be able to see that on your 4 end. 5 A. Absolutely. 6 Q. Okay. I'm going to jump forward to 7 Exhibit 16. These are some Merrill Lynch documents 8 and they're kind of hard to see -- 9 A. Sure. 10 Q. -- so let's do the best we can. 11 A. Now, John, were you privy to the mediation 12 we had before? 13 Q. I was not. 14 A. You were not. Okay. 15 Q. I was not. Can you see this document all 16 right? 17 A. I can. 18 Q. If I need to enlarge it, I'll try, but 19 what I'm going to show you now are various documents 20 that I received from Merrill Lynch pursuant to a 21 subpoena that was sent earlier in the case. 22 A. Okay. You got one from them. You were 23 able to get a document. Okay. Go ahead. 24 Q. Yes. This appears to be -- 25 A. But you see Lana's name on there? That's

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Page 141 1 were doing very well. So I had no reason to 2 challenge those people that actually filled these 3 documents out in anything that they was doing, 4 because it looked like, on the surface, we were 5 doing well. 6 Q. The only person from THAG who would be 7 authorized to give another employee or 8 representative authority to sign legal documents on 9 behalf of THAG would be you, right? 10 A. Now -- okay. The legalities of it, yes. 11 The legalities of it, yes, you are absolutely right, 12 Mr. Hudson. But did that actually happen all the 13 time? No, it didn't. 14 Q. And my point is, because you were the sole 15 member and the owner of THAG, you were the person 16 who had the authority to say, "Mark Sanchez, you've 17 got authority to sign contracts on our behalf or 18 Ms." -- is it Lana Barthelmes? 19 A. Yes. 20 Q. "You have authority to do that." That 21 permission and authorization had to come from you to 22 those other people, right? 23 A. Yes, sir. In our business, there's an 24 element of -- after a while, there becomes an 25 element of trust in our business. So like I was	Page 143 1 impaired, both of them. 2 Q. So what's the source of the funds going to 3 each? 4 A. The sources of the funds is borrowed 5 money. 6 Q. So where were you borrowing upon from that 7 you were sending to Cheraw Chevrolet? 8 A. Whichever, from the bank account -- well, 9 in that case, Nashville Ford. We took money out of 10 their operating account to prop up Cheraw's bank 11 account so that they could pass their -- so that 12 they could pay off their floor plan. And when the 13 contracts are cashed, then we'll take the money back 14 out of Cheraw and send it back to Nashville. 15 Q. And where is the money coming from that 16 you needed to provide to Nashville? 17 A. Where is the money coming from that we got 18 out of Nashville? It was already in Nashville. 19 Q. No, I thought you said you had to get 20 money to give to both stores, meaning Cheraw and 21 Nashville? 22 A. And we do. We have to get them to both of 23 them, but just not today. 24 Q. So today you only had to get money to 25 Cheraw?
Page 142 1 saying, in the scheme of -- in what you're saying 2 the theory of it and the practicality of it, yes, it 3 should be run by the letter of the law. Does it 4 automatically happen that way? Would we wing it? 5 Do I stop a deposition at four o'clock and the guys 6 call me and says, "Boss, we need money in the bank 7 and can you go get it to us?" -- I don't even know 8 why we need the money -- "and go transfer and 9 whatever," that happens. That's the real world. 10 Q. Is that what just happened now? 11 A. That's what just happened now. 12 Q. Where is that money coming from that 13 you're getting to those guys who need it? 14 A. Inner company from one store to the next. 15 Q. So in this particular scenario that we 16 just took the break for, what stores were involved 17 in that transfer? 18 A. Cheraw Chevrolet and Nashville Ford. 19 Q. Money was going from which store to which 20 store? 21 A. They were going from one store to the 22 next. 23 Q. Which store was providing money to the 24 other? 25 A. Both of them were -- both of them are	Page 144 1 A. Yeah, today Cheraw needed money. 2 Q. But Nashville did not need any today? 3 A. Not today, but they need their money back 4 to meet their -- they just didn't pay their 5 obligation today. 6 Q. Moving down to the next Merrill Lynch 7 document, this is a document up top that says, 8 "Additional pledge and control rider to loan 9 management account agreement adding additional 10 securities accounts." Do you see that? 11 A. I do. 12 Q. And the top right-hand corner indicates 13 that this also pertains to account 2247. Do you see 14 that? 15 A. I do. 16 Q. Midway down, if you read paragraph one, it 17 talks about granting of security interest in 18 additional securities accounts. Do you see that? 19 A. I do. 20 Q. Okay. Are you familiar with what this 21 paragraph does legally? 22 A. No. 23 Q. All right. Well, I'm just going to read 24 it for the record. So paragraph one says, "Grant of 25 Security Interest in Additional Securities Accounts.

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1 Pledgor hereby confirms its prior grant to the bank
2 under the LMA agreements in the securities account
3 and/or other collateral, and does hereby, as
4 security for the performance of borrower's
5 obligations and those of any guarantor and/or other
6 pledgor under the LMA agreement, assign, transfer,
7 pledge, grant, and convey to bank a continuing,
8 first priority lien and security interest in all of
9 its right, title, and interest in each of the
10 additional securities accounts listed below and
11 maintained at Merrill Lynch and/or bank, including
12 any successor or replacement accounts and all
13 monies, debts, claims, securities, securities
14 entitlements, financial assets, investment property,
15 instruments, certificates of deposit, general
16 intangibles of any sort now or hereafter held,
17 maintained or administered in, or credited to any
18 such securities account."

19 And then if you go down to the table
20 immediately below, it says, "List additional
21 securities accounts to be pledged." The account
22 listed there is SLP -- that might be a S -- but I
23 think it's SLP-02250. Do you see that?

24 A. I do.

25 Q. So what this means is this account 2250 is

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1 being pledged as additional security for the loan
2 management account 2247 that is being opened up with
3 Merrill Lynch, right?

4 A. Sure.

5 Q. And that SLP-02250 account is the one that
6 was opened up specifically to serve or to hold the
7 collateral of the \$650,000 that was being financed
8 by Jones Nissan as part of the purchase of that
9 Sumter Nissan dealership, right?

10 A. Sure.

11 Q. So in this document, it appears that
12 account 2250 is being pledged as collateral for a
13 new account that THAG was opening, which is account
14 2247, right?

15 A. I guess.

16 Q. Do you agree with me that by pledging
17 account 2257 as collateral for account 22 -- excuse
18 me. Do you agree with me that by pledging account
19 2250 as collateral for account 2247, THAG breached
20 the pledge agreement, as well as the promissory note
21 that it had previously entered into with Jones
22 Nissan?

23 A. If you say so. I mean, you're way over my
24 head with this.

25 Q. Well, do you agree with that, or not?

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1 A. I don't know. I mean, I don't really
2 understand what happened. So I mean, I don't know
3 -- I think you -- I think you understand it, so
4 that's what it is. I don't really get this deep.

5 Q. Who does get that deep for THAG?

6 A. Actually, the people that are my -- my
7 people that are working for me, they should. I
8 don't know if they do, but they would probably have
9 a much better understanding of it than I do,
10 unfortunately.

11 Q. Well, let's go to the signature page of
12 this particular document. It looks like your
13 signature is there at the bottom, right?

14 A. Yes, sir.

15 Q. And you signed that on October the 30th of
16 2017?

17 A. It looks like that, yes, sir.

18 Q. Would you have read this document before
19 you signed it?

20 A. No, sir, I don't read these documents. I
21 would be lying to you if I said I did.

22 Q. Do you agree with me that you should read
23 these documents before you sign them?

24 A. Apparently, it looks like I should. I
25 don't know where I get all the time in a day to do

Page 148
1 that. But to be honest with you, I do not read any
2 of these documents at all.

3 Q. You just sign them and go on about your
4 business?

5 A. Yes. I said, "Hey, give me an overview of
6 what this is. What does this do?" "Well, Boss,
7 this is a good deal. This is what we have to do to
8 get this deal done." I read it, everything looks
9 good, all right.

10 Q. Did you ask anyone for an overview of this
11 particular document that you've just gone through?

12 A. Do what now?

13 Q. Did you ask anyone for a summary or
14 overview of this exhibit we just discussed?

15 A. I don't think so, because it probably came
16 to me from my bank. Here is the thing. What am I
17 going to change in it? How could I change the form
18 when I need to get done with something? It is what
19 it is. The attorneys have you -- you guys have
20 drawn it up and the bank has made that agreement.

21 Q. Maybe it's not a matter of changing
22 anything in the document, but just making the
23 decision not to sign the document because you're
24 concerned about what it might accomplish.

25 A. And you are probably correct in that

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1 assumption. I just never looked at it that way.

2 That's why I'm sitting here, I guess.

3 Q. This is an account statement. Can you see
4 that?

5 A. Okay.

6 Q. It's kind of cut off certain portions.

7 A. You know, if this thing -- if everybody
8 went by the letter of the law on these documents
9 that was performed, how did this all happen? Where

10 was it downsized? How did this happen? The bank
11 attorneys, all this, how did this happen? Why

12 didn't I get stopped? Why didn't we get stopped
13 with this collateralized account? I mean, how were

14 we able to document if it was secured or not?

15 That's my question. How did it happen?

16 Q. That's my question. All right. This is
17 the account statement for --

18 A. Well, Mr. Hudson, if you're asking me to
19 tell you this answer, I can't -- there is no way I
20 can tell you that.

21 Q. All right. Look at this account statement
22 for account 2247.

23 A. Okay.

24 Q. And this is the statement for November 1,
25 2017 through November 30th, 2017.

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1 A. Okay.

2 Q. Are you with me so far?

3 A. I am.

4 Q. So this is the loan management account
5 that we just saw the application for that was opened
6 around April of 2017, okay?

7 A. Okay.

8 Q. And down here, if you can see my cursor
9 where it says "Collateral"?

10 A. Yes.

11 Q. The indication is that there was pledged
12 collateral in the account of about 3.3 million
13 dollars during this November 2017 time frame.

14 A. Okay.

15 Q. Why was there a need --

16 A. Which we can't see that, because of the --
17 you guys are on a screen right there that's blocked
18 out.

19 Q. Hang on. You need to be able to see what
20 I'm talking about. Are you not able to see my
21 screen right now?

22 A. We're able to see the screen, but we can't
23 see the dollar amounts associated with the available
24 credit at this time and the collateral.

25 Q. Do you see my cursor?

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1 A. Now we see it, yes, sir.

2 Q. Okay. Can you see the numbers now?

3 A. Yes.

4 Q. And the number I'm specifically looking at
5 is beside the pledged collateral description. And
6 the amount is \$3,373,591.45, right?

7 A. Correct.

8 Q. Why was there a need to have such a
9 significant amount of pledged collateral in that
10 account 2247 as of November 2017?

11 A. I don't know. But I do know that Allied
12 saw this statement, or a statement like this, and
13 that's where everything hit the rubber, and met the
14 road, and all that kind of stuff, because they were
15 looking for a certain amount of liquidity that we
16 didn't have. They called the -- they called the
17 floor plan line for us. That's where it all started
18 to snowball, because they saw we didn't have the
19 liquidity that we didn't have, that they thought we
20 had.

21 Q. And what is the role that Allied Bank
22 plays in all of this? What debt did they hold or
23 what were they underwriting or funding?

24 A. They were funding the floor plan with
25 Island Chrysler; they were funding the mortgage with

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1 Island Chrysler; they were funding the floor plan

2 with Myrtle Beach Mitsubishi; they were funding the

3 mortgage, I believe, for Myrtle Beach Mitsubishi;

4 they were funding the floor plan of Nissan of

5 Orangeburg; and the SBA was funding Orangeburg's

6 real estate. So when they saw this or something

7 similar or one month or whatever, they says, "Oh,

8 you don't have liquidity. We're done with you,

9 Terry, we're done," \$3 million. So that represented

10 a total of about \$20 million that they called and

11 said, "We are done with you. We suggest you find

12 new floor plans." So you have 90 days to find a new

13 floor plan source, and mortgages, and all that for

14 these three entities, in which we didn't have any

15 money, 90 days. December 24th at 7:00, they were

16 still calling me Christmas Eve night to say, "Where

17 is our money? Do you have this floor plan charge?"

18 Q. Not one of those entities about which

19 Allied was concerned was Nissan of Sumter, LLC, was
20 it?

21 A. No, it was not concerned with Sumter.

22 Q. They were concerned with the dealerships
23 around the coast?

24 A. The coast and Orangeburg.

25 Q. And Orangeburg?

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1 A. Yes, sir.

2 Q. Do you agree with me that this pledged

3 collateral sum of \$3.3 million includes the \$650,000

4 that had previously been deposited into an account

5 2250 with Merrill Lynch?

6 A. I don't know. There should be a breakout

7 somewhere, but I don't know if it was. Wait a

8 minute. Let's think about this. Does this give you

9 an account number anywhere on this statement?

10 Q. Well, I've picked and chosen some

11 documents to keep us from getting overwhelmed with

12 paper, but let me show you some additional documents

13 to see if we can kind of put it together. So this

14 is a transaction report from this November 1, 2017

15 through November 30, 2017 time frame for account

16 2247. Can you see all that?

17 A. I can.

18 Q. All right. Down towards the bottom, it

19 says, "your collateral," and then beneath that it

20 says, "pledged collateral accounts."

21 A. Yes.

22 Q. Are you with me so far?

23 A. Yes.

24 Q. And it's got two accounts identified. One

25 is 2213 in the name of THAG; the other one is 2250

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1 in the name of THAG, right?

2 A. Correct.

3 Q. So this document tells us that the two

4 accounts that are pledged as collateral for account

5 number 2247 are those two documents down at the

6 bottom -- or these two accounts, rather, down at the

7 bottom, right?

8 A. Yes.

9 Q. I'm going to jump ahead a couple. All

10 right, Mr. Holmes. If you look at this document

11 that I've got up on the screen, it's dated May the

12 2nd of 2017 over here on the left-hand side. Do you

13 see that?

14 A. Yes.

15 Q. And it says, "Review your recent transfer.

16 As you requested, we have transferred cash or

17 securities from your account. Please take a moment

18 to review the transfer details below." And down

19 below it says you've got \$649,710.67 that has been

20 transferred from account 2250 to account 2213,

21 right?

22 A. Well, yes.

23 Q. What was the reason for that particular

24 transfer at that point in time?

25 A. I have no idea. \$649,710.67?

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1 Q. Yes, sir.

2 A. What is that? 5-2-17?

3 Q. That's right.

4 A. At about that time, we bought the

5 Nashville Ford store, so I don't know. It could

6 have been to capitalize that store. But to be

7 honest with you, I don't have an idea; I'm just

8 speculating.

9 Q. But you agree with me that this \$649,710

10 sum came from the account that was specifically

11 opened to collateralize the debt owed to Jones

12 Nissan, right?

13 A. Repeat that question, Counsel.

14 Q. This \$649,710 amount was transferred out

15 of account 2250, which was specifically opened to

16 hold the \$650,000 that was to collateralize the debt

17 owed to Jones Nissan under the promissory note,

18 right?

19 A. No, I wasn't aware of that.

20 Q. You weren't aware of what?

21 A. I wasn't aware that that was -- the

22 account that was specifically pledged to the Jones

23 account, I wasn't aware of that, and I also wasn't

24 aware of how that could actually happen.

25 Q. I'm going to jump back to Exhibit 8. This

Page 156

1 is the pledge agreement we looked at earlier.

2 A. Okay.

3 Q. Do you see that?

4 A. Yes, sir, I can.

5 Q. Down here in paragraph one, it talks about

6 the security interest that THAG is giving to Jones

7 Nissan on February the 28th of 2017.

8 A. Okay.

9 Q. All right. And right here in paragraph

10 one, it says, "The pledgor hereby pledges to the

11 lender and gives and grants lender a continuing and

12 unconditional security interest in the following

13 described property and in all increases in income,

14 dividends, distributions, and profits therefrom and

15 in all substitutions therefore and in all proceeds

16 thereof in any form. Merrill Lynch account number

17 250, having a portfolio value of \$650,000, is more

18 fully described in the pledged collateral account

19 control agreement." So the important part is this

20 250 number with the description of the account here,

21 okay?

22 A. Okay. 250. Okay. 250, that is where you

23 get the account number. Okay.

24 Q. That's right. And so then if we go back

25 to the document we were previously on, what this

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1 funds. I don't know.

2 Q. Well, let me ask you this question.

3 A. Okay.

4 Q. This document we're looking at indicates

5 that account 2250, along with account 2213, is

6 pledged as collateral for account 2247. Do you see

7 that?

8 A. Okay, I see pledged collateral accounts,

9 yeah, those two accounts, yes, sir, 2250 and 2213.

10 Q. 2250 is the important one, because that's

11 the one that was open for the Jones Nissan deal,

12 right?

13 A. Yes, sir, I think they're all important.

14 Q. But the one that's important to me is

15 2250.

16 A. I understand.

17 Q. Do you agree with me that by pledging

18 account number 2250 as collateral for account 2247,

19 you breached the pledge agreement that you signed

20 for purposes of the Jones Nissan transaction?

21 A. No, I don't agree with you.

22 Q. Why do you not agree with me?

23 A. Because I don't know what actually

24 happened.

25 Q. Why does that matter? The pledged

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1 collateral account agreement or -- or the pledge

2 agreement said that the account that was pledged for

3 purposes of the Jones Nissan deal was not to serve

4 as collateral or a security for any other

5 transaction. What is difficult to understand about

6 that?

7 A. I don't know. Are you asking me why does

8 it matter? And that's my question to you. I don't

9 know. Why does it matter?

10 Q. Look, we can go back through all these

11 documents and we will stay here until midnight, if

12 we need to get clear on it.

13 A. I don't know if we need to, because we're

14 probably not going to get much clearer than we

15 already are. Let me use the restroom. Can I take a

16 five-minute break? Thank you.

17 (Whereupon, a recess was taken.)

18 EXAMINATION RESUMED BY MR. HUDSON:

19 Q. Mr. Holmes, we're back to Exhibit 8, which

20 is the pledge agreement.

21 A. Okay.

22 Q. Paragraph four, which talks about

23 warranties of the pledgor says, "The pledgor

24 represents and warrants, in so long as the

25 indebtedness remains unpaid, shall be deemed

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1 continuously to represent and warrant that." Then

2 subparagraph B says, "The pledgor is the owner of

3 the collateral, free of all security interests or

4 other encumbrances except the security interest." Do

5 you agree with me that once account 2250 was pledged

6 as collateral for account 2247, THAG was in breach

7 of subpart B of paragraph four?

8 A. I guess. I'm not relating to this very

9 much. I'm sorry, I'm just not, when it comes to

10 that.

11 Q. Paragraph six on the next page deals with

12 covenants of the pledgor. It says, "The pledgor" --

13 A. Excuse me, sir. Where did this document

14 come from? Whose document is this?

15 Q. This is Exhibit 6. This is the pledge

16 agreement that was entered into on February the 28th

17 of 2017 by THAG and Jones Nissan.

18 A. Nobody ever read this to me.

19 Q. Well, sir, isn't that your signature on

20 the bottom of page 4?

21 A. It is, but the way we're going over it

22 now, nobody never did this to me.

23 Q. Well, did you read the document yourself?

24 A. No, sir, I did not.

25 Q. Were you able to read at the time?

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1 A. Apparently -- I mean, I did not read it.

2 Q. And I'm not trying to be flippant in

3 saying that. But, I mean, if you had the desire to

4 read this document before signing it, you would have

5 been able to do that, correct?

6 A. I just don't review these documents. I

7 don't ever review them.

8 Q. But you should, though, before you sign a

9 legal document like this, right?

10 A. I understand that. I understand that now.

11 I just don't know how it's helping me at this

12 particular point.

13 Q. Paragraph six --

14 A. I mean, that's what I should do, but I

15 don't see where that's going to happen. Go ahead,

16 Counselor.

17 Q. Paragraph six on page 2 of the pledge

18 agreement says, "The pledgor," and then in subpart

19 B, "will keep the collateral free from all security

20 notice or other encumbrances except the security

21 interest." Do you agree with me that when THAG

22 assigned account 2250 as collateral from account

23 2247, it was in breach of the covenant in subpart B

24 of paragraph six?

25 A. I'm unaware, counselor. I'm sorry.

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Page 177 1 Q. Weathers was your attorney? 2 A. Yes, sir, I believe he was at that 3 particular point in time. But it could have been 4 Nissan says, "You know what? You guys need to do 5 another exhibit and this one has got to say this," 6 and it may be one sentence that's in there. As long 7 as we find that one sentence is what they wanted to 8 get us past the road, that's what it was. 9 Q. Exhibit 4 is the third amendment to the 10 asset purchase agreement. This is the one that 11 deals with seller financing? 12 A. Yes, this one I did not see at all. 13 Q. Did you read this document before you 14 signed it? 15 A. I didn't see it because, first of all, 16 this particular document is not an asset purchase 17 agreement. 18 Q. I know. It's amendment to the asset 19 purchase agreement. 20 A. I mean, it's not an amendment to the asset 21 purchase agreement. 22 Q. What do you mean? 23 A. It doesn't speak to the asset purchase 24 agreement and it doesn't have this language in it. 25 I'm not used to seeing that.	Page 179 1 Q. Is that your signature on the bottom of 2 the last page of this exhibit? 3 A. It appears to be. 4 Q. But you signed this document without 5 reading it like you did the others, correct? 6 A. I never saw this. I would scroll through 7 it, or whatever, but this particular one, it only 8 speaks to seller financing. It doesn't make sense 9 to me, because in the scheme of things, I wanted to 10 do the Jones deal. I wanted to do the Jones deal. 11 I wasn't going to do anything that was going to mess 12 this deal up off the table. I wasn't going to do 13 that because it was -- I thought it was going to be 14 part of the success to our future, this particular 15 deal, and I was doing what the manufacturers asked 16 me and wanted me to do. This was outside the 17 manufacturers there, so certainly -- and I probably 18 said too much anyway. I wouldn't agree with this 19 particular document. 20 Q. The issue of seller financing was very 21 important coming down the home stretch of this 22 agreement, wasn't it? 23 A. Yes. In order for this deal to have been 24 put together, yes, the seller financing was, 25 absolutely, unless we wouldn't have had to find some
Page 178 1 Q. Let's look at it. We're on the first page 2 of Exhibit 4, which is the third amendment to the 3 asset purchase agreement. Do you see that up top? 4 A. I do. 5 Q. And then about five paragraphs down, it 6 states, "Paragraph three of the asset purchase 7 agreement shall be amended by adding the following," 8 and then it references paragraph 3-A-3, which talks 9 about seller financing, right? 10 A. Yeah, I just don't know how it ties into 11 that even paragraph three. I mean -- 12 Q. It's amending paragraph three, is what the 13 document says. 14 A. Sure, I see that. I just don't know if 15 that's even optional. If that's a part of -- that 16 would have to be -- you would have to get 17 manufacturer's approval to add this in. 18 Q. Did you do that? 19 A. No, we didn't do it. Because like I'm 20 telling you, I don't remember seeing this document 21 whatsoever or else this would have -- this document 22 right here would have voided all the other 23 transactions, this document. 24 Q. Then why did you sign it? 25 A. I don't even know how it got signed.	Page 180 1 more. 2 Q. Right. If the seller had not been willing 3 to finance \$650,000 of the agreed-upon purchase 4 price, this deal would not have gotten done, right? 5 A. Yes, and the sellers are aware of that 6 too. 7 Q. But you were also aware of that, correct? 8 A. Yes, as well as the sellers. 9 Q. Well, I understand. But the sellers 10 aren't the ones claiming that they never saw this 11 third amendment to the APA like you are. So the 12 seller's position is yes, that's a valid amendment, 13 and the reason that amendment was done is because 14 the deal was not going to happen unless we were 15 willing to finance \$650,000 worth of the purchase 16 price. 17 A. The seller wasn't in a position to make 18 that argument. 19 Q. What are you talking about? 20 A. The sellers -- this argument of saying 21 that the deal couldn't happen unless if this was put 22 in an asset purchase agreement, they didn't have the 23 -- they didn't have the ability to do that. That 24 was strictly a buyer's situation to do that, and 25 they know that.

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1 A. He works for the firm. The actual
2 accountant's name was Travis Horton.

3 Q. Yes, I notice Exhibits 21 and 22 to the
4 deposition are valuation reports. One is for Cheraw
5 Chevy Buick, LLC; Exhibit 22 is for Nashville Ford
6 of Georgia, LLC. These two valuation reports were
7 prepared by HHM, right?

8 A. Yes, sir.

9 Q. How did you get to HHM? Was that through
10 Robert Malone?

11 A. HHM is a parent company, is the accounting
12 firm. Rob works for the accounting firm.

13 Q. I got you. The name of Robert's Company
14 is Henderson, Hutcherson and McCullough, LLC?

15 A. That is HHM.

16 Q. I got you. That makes sense.

17 A. I think it's a firm that has probably 40
18 or 50 car accountants. They only do car
19 dealerships.

20 Q. That firm does specialize in auto
21 dealerships?

22 A. Yes, sir, that's all they do. And I think
23 I probably met them at one of our trade
24 associations.

25 Q. So at present, how many auto dealerships

Page 202

1 do you own?

2 A. These two right here that you have the
3 valuation reports on.

4 Q. And those are the only two?

5 A. Yes, sir.

6 Q. Is THAG, LLC, still a going concern?

7 A. No.

8 Q. Does it generate any revenue at present at
9 all?

10 A. Absolutely no.

11 Q. Was anybody maintaining the books and
12 records for THAG?

13 A. Well, I mean, it doesn't operate, but HHM
14 is the accounting for all of our deals.

15 Q. Your 2020 tax return indicates a residence
16 address of 1556 Casilda Drive in Florence. Do you
17 still live there?

18 A. Yes, sir, still live there.

19 Q. Is that house owned or leased?

20 A. Leased.

21 Q. Who is the landlord?

22 A. Chandler Pointe.

23 Q. Is that an apartment or a house?

24 A. It's a townhouse.

25 Q. How long have you lived there?

Page 203

1 A. Maybe 2019 -- 2018 or 2019, one of those
2 two.

3 Q. What's your monthly rent?

4 A. It's like \$1200 a month.

5 Q. Does anyone live there with you?

6 A. Well, my niece does.

7 Q. Who is that?

8 A. Symone Gaymon.

9 Q. And she is your brother or sister's
10 daughter?

11 A. My sister's daughter. And she currently
12 works at the Chevrolet dealership.

13 Q. In Cheraw?

14 A. Yes, sir.

15 Q. That's the only Chevy dealership you
16 currently have?

17 A. Yes, sir.

18 Q. Who owns the dirt on which that dealership
19 operates?

20 A. It has a mortgage.

21 Q. Who holds that mortgage?

22 A. We do.

23 Q. Is it Cheraw Chevrolet Holdings?

24 A. Well, no, GMAC, General Motors is on it.
25 And we're trying to get it financed as we speak,

Page 204

1 which takes a lot to buy it.

2 Q. GMAC is General Motors Acceptance Corp?

3 A. That is correct.

4 Q. And it's your testimony that they hold the
5 mortgage on the Cheraw Chevy property?

6 A. Yes.

7 Q. And you-all make a monthly mortgage
8 payment to GMAC Mortgage holdings?

9 A. Yes, sir.

10 Q. What is that payment?

11 A. I don't remember.

12 Q. Can you ballpark it?

13 A. I want to say maybe ten grand, somewhere
14 in that area.

15 Q. You don't have any ownership interest in
16 GMAC holdings?

17 A. You mean Chevrolet, General Motors?

18 Q. Yes, sir.

19 A. No. I wish.

20 Q. How about the dirt on which the Nashville
21 dealership is located? Who owns that?

22 A. Ford Motor Credit.

23 Q. Over the course of your career, have you
24 owned the dirt to any of your dealership locations?

25 A. Yes, pretty much all of it -- all of them.

Terry Holmes

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Page 205 1 Q. Do you still own -- 2 A. They were financed. 3 Q. Do you still own any of those properties? 4 A. No, I don't own any of them. I think the 5 Lugoff property is still in a forbearance agreement. 6 I don't think we've settled that yet. Even though 7 Mr. Johnson was supposed to be buying it, I'm not 8 sure where he is with it. 9 Q. When did you get rid of the Sumter Nissan 10 dealership? 11 A. I think the final asset purchase agreement 12 -- some time in, I want to say, August of 2019. 13 Q. How much did you sell it for? 14 A. I didn't sell it for anything, he just 15 assumed the operation. There was no value. He paid 16 for some of the assets and I got stuck with the 17 debt. 18 Q. Who assumed the operation? 19 A. Mr. T.J. Johnson. 20 Q. How did you find him? 21 A. I don't know. I don't remember. I think 22 he found me. 23 Q. Do you know him personally? 24 A. No, not really. Just a business 25 associate.	Page 207 1 A. No. 2 Q. Any side been accused of drinking or doing 3 drugs? 4 A. No. 5 Q. Do you still talk to your wife? 6 A. Yes, sometimes. 7 Q. How would you characterize your current 8 relationship? 9 A. It's strained, because of the litigation 10 process. 11 Q. Do you-all have any children together? 12 A. We do. 13 Q. How many? 14 A. Two. 15 Q. How old are they? 16 A. 36 and 31. 17 Q. Where do they live? 18 A. The 36-year-old lives in Alpharetta, 19 Georgia; the 31-year-old lives in Myrtle Beach, 20 South Carolina. 21 Q. What are your kids' names? 22 A. Brittanie and Salena Holmes. 23 Q. Do you currently provide your children any 24 sort of monthly allowance for living expenses or 25 otherwise?
Page 206 1 Q. What's the current state of that Nissan 2 dealership? 3 A. I mean, we were supposed to -- he finished 4 building a building and started a new operation 5 right down the street. 6 Q. Do you know if he's profitable? 7 A. I think they're all very profitable, very 8 profitable. 9 Q. You're currently in the process of going 10 through a divorce, is that right? 11 A. That is correct. 12 Q. And your wife's name is Pamela A. Holmes? 13 A. That is correct. 14 Q. What is the status of the divorce? 15 A. We're waiting for a trial date. 16 Q. What is the -- 17 A. We're in final discovery. 18 Q. Why are you-all getting divorced? 19 A. Irreconcilable differences. 20 Q. Is it a fault-based divorce? 21 A. No, sir. 22 Q. Has either side been accused of 23 infidelity? 24 A. No. 25 Q. Any side been accused of abuse?	Page 208 1 A. No. 2 Q. They're self-sufficient? 3 A. Yes. 4 Q. Are they married? 5 A. Yes. 6 Q. Do they both keep the last name Holmes? 7 A. No. 8 Q. What last name do they go by? 9 A. Their husband's last name. One is White 10 and the other is Goofingan. 11 Q. I'm sorry. Say that last one again. 12 A. Goofingan, G-o-o-f-i-n-g-a-n. 13 Q. Just give me a snapshot of your current 14 monthly expenses. You told me you pay about \$1200 a 15 month in rent. What other financial liabilities do 16 you currently have? 17 A. I pay my wife \$3,000 a month right now 18 until we reach an agreement, and just miscellaneous 19 credit card bills, and stuff like that. I pay about 20 \$1,000 on my credit card bill. 21 Q. \$1,000 total or on each? 22 A. No, \$1,000 total. Well, I say it averages 23 about \$1500. 24 Q. How many credit cards do you currently 25 carry?

Terry Holmes

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1 A. Just one.
2 Q. What type is it?
3 A. It's a MasterCard by Chase.
4 Q. What's the current balance on it?
5 A. Approximately \$40,000.
6 Q. Any type of insurance premiums that you
7 have to pay on a monthly basis? Health insurance,
8 life insurance, anything?
9 A. Any type of -- yes, I got life insurance
10 policies.
11 Q. What are those premiums monthly?
12 A. I estimate at probably \$400 -- well, yeah,
13 about \$300.
14 Q. That's monthly?
15 A. Yes sir.
16 Q. Who are the companies that underwrite the
17 policy or policies?
18 A. The name of them?
19 Q. Yes, sir.
20 A. I think Northwestern is one and Assurity
21 is the other one, I want to think. I'm not aware.
22 I can find that information out for you.
23 Q. Are they term policies or whole life
24 policies?
25 A. I don't know the difference. They don't

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1 have a cash value, if that's what you mean.
2 Q. That is. So it sounds like they're both
3 term policies?
4 A. Yes, sir.
5 Q. Is Nissan of Sumter, LLC, still a going
6 concern?
7 A. No, sir.
8 Q. When was the last time it generated any
9 revenue?
10 A. I think probably June or July of 2019.
11 Q. And that company was founded solely to
12 operate the dealership that you purchased from Jones
13 Nissan?
14 A. That is correct.
15 Q. What are all of your current sources of
16 income, Mr. Holmes?
17 A. I get salary from the dealership and I get
18 medical retirement from the military.
19 Q. When did you serve in the military?
20 A. 1985 to 1992.
21 Q. What branch?
22 A. U.S. Air Force.
23 Q. Did you see any combat?
24 A. No.
25 Q. Did you receive an honorable discharge?

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1 A. Yes. And medical retirement.
2 Q. What was the reason for that?
3 A. Propane explosion.
4 Q. Do you receive a monthly check from the
5 government?
6 A. Yes, I do.
7 Q. How much is it for?
8 A. Approximately \$2,000 a month.
9 Q. What do you receive from the dealership
10 each month?
11 A. \$4,000.
12 Q. And that is from Cheraw Chevy, Nashville,
13 or both?
14 A. Both.
15 Q. So you receive \$4,000 per month combined
16 from those two dealerships?
17 A. Yes, and I get a 10 percent -- I just
18 started getting a 10 percent bonus of profit, if
19 it's profitable.
20 Q. Who made that decision to give you a 10
21 percent bonus based on profitability?
22 A. I did.
23 Q. Is Cheraw Chevy currently profitable?
24 A. Slightly. It depends on --
25 Q. What's its monthly revenue on average

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1 right now?
2 A. Monthly revenue?
3 Q. Yes, sir.
4 A. I don't know. Maybe close to a million
5 dollars.
6 Q. Per month?
7 A. Yes.
8 Q. That's pretty good, isn't it?
9 A. No.
10 Q. What do you strive for? I don't have that
11 knowledge.
12 A. Well, let's clarify that. Now, when you
13 might say "revenue," you know, if you sell a \$70,000
14 vehicle or \$80,000, they're expensive. If you sell
15 ten of those, that's about \$100,000, so that number
16 just doesn't mean anything. The profitability of
17 the store would be marginal or just breakeven.
18 Q. I understand that you got expenses that
19 come out of the revenue number.
20 A. Lots of them.
21 Q. I mean, Cheraw is not that populous of an
22 area, so that revenue number sounded pretty good to
23 me. I was assuming you would be profitable out of
24 that, but that's not the case?
25 A. No, sir, not when you build in some of the

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1 Q. Why did you get rid of it?

2 A. We couldn't afford -- we sold the

3 companies and couldn't afford to expense it.

4 Expense reduction.

5 Q. Do you own any boats?

6 A. No, sir.

7 Q. I've seen reference to a company called

8 THAG Strategic Investment Services, LLC. Was that

9 company different from THAG, LLC?

10 A. Yes.

11 Q. What's the difference?

12 A. You know, I don't know. We just kind of

13 -- it was set up as another holding company of

14 another holding company. They're not active.

15 Q. Is it still in existence?

16 A. Yes.

17 Q. Is it still a going concern?

18 A. Yes.

19 Q. Does that company still generate revenue?

20 A. No.

21 Q. Has THAG, LLC, ever paid any dividends?

22 A. No.

23 Q. Does it or has it ever held periodic

24 meetings?

25 A. No.

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1 Q. What steps, if any, does it take to

2 maintain corporate formalities?

3 A. What steps does THAG -- can you repeat

4 your question again, sir?

5 Q. What steps, if any, has THAG taken during

6 the course of its existence to maintain corporate

7 formalities, meaning to convene board meetings, keep

8 meeting minutes, maintain corporate books and

9 records, things of that nature?

10 A. You know, I don't know. Very minimum to

11 do. I mean, the annual registrations may be paid to

12 keep the companies open for these litigations and

13 stuff like that, but nothing in excess of whatever

14 the going concerns have done, so it doesn't own

15 anything.

16 Q. Does that hold true with respect to Nissan

17 of Orangeburg, LLC, as well?

18 A. Yes, sir.

19 Q. Or excuse me, Nissan of Sumter, LLC, is

20 what I meant to ask you.

21 A. Yes, sir. John, I have to take a quick

22 potty break again.

23 MR. HUDSON: That's fine. We're about

24 done, though, but go ahead and take that.

25 (Whereupon, a recess was taken.)

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1 EXAMINATION RESUMED BY MR. HUDSON:

2 Q. All right. I've put up Exhibit 20, which

3 is a marital asset summary --

4 A. Yes, sir.

5 Q. -- I was provided a few months ago, I

6 believe.

7 A. I wasn't aware, but go ahead.

8 Q. This is dated December the 31st of 2019?

9 A. Yes.

10 Q. Is that the date of your separation?

11 A. Yes.

12 Q. When was this asset summary prepared?

13 A. Probably -- I mean, maybe June, July of

14 this year.

15 Q. You mean of last year?

16 A. Yes.

17 Q. Of 2022?

18 A. 2022, yes, sir.

19 Q. Why was this prepared?

20 A. It's something that the attorneys wanted

21 to request.

22 Q. Who prepared it?

23 A. Both attorneys. I mean, both accountants

24 prepared it.

25 Q. And when you say "both," that would have

Page 220

1 been Mr. Malone?

2 A. Yes. Well, not -- his firm. It's kind of

3 a forensic -- Blake Kinder is the one that did it.

4 Q. Are there any revisions or amendments that

5 need to be made to this document to make it

6 currently more accurate than it is?

7 A. Yeah, maybe a little bit. There's still

8 discovery going.

9 Q. What can you identify for me right now

10 that would need to be amended to make it more

11 accurate?

12 A. I think she has more -- she has more money

13 than what we put in there for her.

14 Q. Does your wife work?

15 A. No. I was hoping you would have her

16 deposed.

17 Q. I'm trying. I'll get there.

18 A. All right. That's what I'm talking about.

19 Everybody needs to feel this.

20 Q. I think this is on the third page, but it

21 identifies several lawsuits against THAG. Section 8

22 goes A through H. Just give me a general summary of

23 Dewanda Jacobs versus THAG; Janet McCarty; Jasmine

24 Sherman. Tell me what each one is about. You don't

25 have to be very detailed.

EXHIBIT F

EXHIBIT E

Pledged Collateral Account Control Agreement

Account Number (Internal Use Only)

Account Number (Internal Use Only)

PLEGDED COLLATERAL ACCOUNT CONTROL AGREEMENT

INSTRUCTIONS: Complete Boxes A, B, and C.

1. The Parties

The Parties to this agreement ("Agreement") are the Client named below, the Creditor named below and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"),

2. The Pledged Account

Client has granted Creditor a security interest in Merrill Lynch Account Number [redacted] pursuant to a separate Pledge or Security Agreement between Client and Creditor.

If the Account will be a new Merrill Lynch account, Client hereby instructs Merrill Lynch to transfer the assets listed in Exhibit A to the Account. The Account shall be maintained as a cash securities account, and will be titled "[Name of Client] Pledged Collateral Account for [Name of Creditor]" or a substantially similar title.

The purpose of this Agreement is to perfect the Creditor's security interest in the Account by granting Creditor control over the Account; however, this Agreement does not create Creditor's security interest in the Account in that Client and Creditor have a separate Pledge or Security Agreement for such purpose.

Client represents that client has not granted a security interest in the Account to any party other than Creditor, except for Merrill Lynch's broker lien referenced in section 7 and any lien for service fees to an Investment Manager or Agent named in Box B in section 4. Merrill Lynch has not entered into a Control Agreement with respect to the Account with any other party and agrees that it will not do so while this Agreement is in effect. The manager signing this Agreement on behalf of Merrill Lynch hereby represents, to the best of his or her knowledge, that no person other than Client, Creditor, Merrill Lynch and any Investment Manager or Agent named in Box B in section 4 has any claim, lien or interest in the Account or the assets in the Account. Except as set forth below in section 3, all assets in or credited to the Account, including without limitation, any cash or money account designated by the Client for the sweep of cash balances (e.g. money market mutual funds or bank deposit accounts) will be treated as financial assets under Article 8 of the New York Uniform Commercial Code.

3. Excluded Assets

Client and Creditor acknowledge that the following assets (each an "Excluded Asset" and, collectively, "Excluded Assets") are not covered by this Agreement even if shown, for information purposes, on a periodic account statement for the Account, because Merrill Lynch is not the legal custodian of such assets (i.e., they are not in or credited to the Account): shares of the Merrill Lynch Institutional Funds (unless such shares are held directly by Merrill Lynch), non-listed limited partnership interests, annuities and life insurance contracts, and precious metals. Merrill Lynch will not be responsible for assuring that any Excluded Assets are not acquired with Assets from the Account.

4. Client's Authority over the Account

Until Creditor delivers to Merrill Lynch a Notice of Exclusive Control pursuant to section 6, Client will have full authority to give instructions with respect to assets in the Account in regard to voting and other rights, but will not have the authority to give any entitlement orders with respect to, or terminate or withdraw assets from the Account, except as may be provided in Box C, without written consent by Creditor. Client's authority with respect to trading in the Account and receipt of income from the Account will be governed by the completion of boxes B and C, which authority Creditor may revoke at any time by providing written notice to Merrill Lynch delivered to Merrill Lynch at the address of the branch office servicing the Account as indicated on the most recent account statement.

If an Investment Manager or Agent is named in Box B, Creditor agrees that the assets in the Account are subject to Client's agreement with such manager or agent and that periodic payment of normal advisory and service fees from assets in the Account pursuant to such an agreement is permitted without consent of Creditor.

Box B: Is Client permitted to trade in the Account? ☒ Yes ☐ No. If yes, except as otherwise provided in section 6, Merrill Lynch may comply with any trading instructions from Client or the Investment Manager or Agent named below without the consent by Creditor.

Principal of Merrill Lynch, advisory service, Investment Manager or Agent designated by separate power of attorney or equivalent document on file with Merrill Lynch.

Box C: Is Client permitted to withdraw from the Account? ☒ Yes ☐ No. If yes, Client is authorized to obtain all interest and regular cash dividends earned on assets in the Account monthly by check or by transfer to account for [redacted].

Pledged Collateral Account Control Agreement

Account Number (Internal Use Only)

5. Control by Creditor

Merrill Lynch agrees to comply with any instructions it receives from Creditor at any time to transfer, sell, redeem, close open trades or otherwise liquidate any assets in the Account (including instructions to transfer assets directly to, or into an account in the name of, Creditor), without further consent by Client. All instructions to transfer assets from the Account must be in writing. If Creditor is an entity, Merrill Lynch is authorized to take instructions from any person Merrill Lynch reasonably believes represents Creditor.

6. Notice of Exclusive Control

Creditor may at any time deliver to Merrill Lynch a "Notice of Exclusive Control" substantially in the form of Exhibit B. Upon receipt of such notice by the manager of the Merrill Lynch office servicing the Account, Merrill Lynch will cease complying with trading instructions from, or on behalf of, Client with respect to the Account, cease distributing to Client interest and regular cash dividends earned on assets in the Account, and refuse to accept any other instructions from Client intended to exercise any authority with respect to the Account except upon instruction of Creditor.

7. Priority of Creditor's Security Interest

So long as this Agreement is in effect, Merrill Lynch subordinates in favor of Creditor any security interest, lien, or right of setoff it may have, now or in the future, against assets in the Account, except Merrill Lynch may retain a prior lien on assets in the Account to secure payment for assets purchased for the Account and to collect normal commissions and service fees.

8. Duplicate Statements and Confirmations

Merrill Lynch will send Creditor duplicate copies of periodic account statements and trade confirmations, if any, contemporaneously with those sent to Client. If Creditor stops receiving such duplicate account statements and trade confirmations, Creditor shall provide Merrill Lynch with written notice of such at the address of the branch office servicing the Account as indicated on the account statement.

9. Responsibility and Protection of Merrill Lynch

Except for permitting a transfer of assets from the Account in violation of section 4, Merrill Lynch will not be liable to Creditor for complying with instructions from Client, or any Investment Manager or Agent named in Box B in section 4, that are received by Merrill Lynch before Merrill Lynch receives a Notice of Exclusive Control in accordance with section 6. Merrill Lynch will not be liable to Client for complying with a Notice of Exclusive Control or any instructions received from any person Merrill Lynch reasonably believes represents Creditor. Merrill Lynch has no duty to investigate whether Creditor is authorized under the Pledge or Security Agreement to give such Notice of Exclusive Control or such instructions.

Client hereby agrees to indemnify and hold harmless Merrill Lynch, its officers, directors, employees and agents, and any Investment Manager or Agent named in Box B in section 4, against claims, liabilities and expenses arising out of maintenance of the Account pursuant to this Agreement (including reasonable attorneys' fees), except if such claims, liabilities or expenses are caused solely by Merrill Lynch's or such manager's or agent's gross negligence or willful misconduct, respectively.

Creditor hereby agrees to indemnify and hold harmless Merrill Lynch, its officers, directors, employees and agents, and any Investment Manager or Agent named in Box B in section 4, against claims, liabilities and expenses (including reasonable attorneys' fees) arising out of Merrill Lynch's compliance with any instructions from Creditor with respect to the Account except if such claims, liabilities or expenses are caused solely by Merrill Lynch's or such manager's or agent's gross negligence or willful misconduct, respectively.

This Agreement does not create any obligations for Merrill Lynch except for those expressly set forth in this Agreement.

10. Termination; Survival

Creditor may terminate this Agreement by providing written notice to Merrill Lynch at the address of the branch office servicing the Account as indicated on the most recent account statement. Upon such notification by Creditor to Merrill Lynch that Creditor's security interest in the Account has terminated, this Agreement will automatically terminate. Merrill Lynch may terminate this Agreement by providing thirty (30) days written notice to Creditor and Client. In the event that Merrill Lynch voluntarily terminates this Agreement, Merrill Lynch shall transfer the assets in the Account as directed in writing by the Creditor. Section 9, "Responsibility and Protection of Merrill Lynch," will survive termination of this Agreement.

11. Effect of Agreement

Client and Creditor agree that this Agreement supplements the applicable Merrill Lynch account agreement with respect to the Account, and any related agreement if the Account is a managed account under a Merrill Lynch advisory program with a manager named in Box B, and that it does not abridge any rights that Merrill Lynch might otherwise have, except as provided in section 7. If there is any inconsistency between this Agreement and such Merrill Lynch account agreements this Agreement will control. The Parties also acknowledge that there are no other understandings or agreements with Merrill Lynch concerning the Account except for this Agreement, the Merrill Lynch account agreement(s) and any agreement with an Investment Manager or Agent named in Box B to which Merrill Lynch may be a party. If the account number identified or referenced in Box A above is changed for any reason by Merrill Lynch, this Agreement shall also cover the successor or replacement account number.

12. Governing Law

This Agreement and the Account will be governed by the internal laws of the State of New York with respect to interpretation and enforcement.

13. Amendments

No amendment of, or waiver of a right under, this Agreement will be binding unless it is in writing and signed by the party to be charged.

14. Severability

To the extent a provision of this Agreement is unenforceable, this Agreement will be construed as if the unenforceable provision were omitted.

15. Successors and Assigns of Creditor

A successor to or assignee of Creditor's rights and obligations under the Pledge or Security Agreement between Creditor and Client will succeed to Creditor's rights and obligations under this Agreement.

Pledged Collateral Account Control Agreement

Acceptance (Member's Use Only)

SIGNATURE PAGE

INSTRUCTIONS:
Fill in names and addresses and sign. Use Exhibit A to list the assets to be transferred into the Merrill Lynch Pledged Collateral Account.

PLEASE NOTE:
This Agreement may be executed in counterparts, but the preparator should provide the completed original to Merrill Lynch with signed photocopy counterparts provided to Client and Creditor.

Client:

Client's Name (Print) THAG, LLC
 Signature [Signature] Date 1-12-2017
 Name of Individual Signing (Print) TERRY E. HOLMES
 Title MANAGING MEMBER
 Client's Address: Street 8433 OCEAN HIGHWAY
 City SAWLEYS ISLAND State/Province SC
 Postal Code (zip code) 29585 Country USA

Creditor:

PLEASE NOTE:
This is the name to whom periodic account statements and trade confirmations will be addressed unless another officer's name is provided to Merrill Lynch for this purpose.

Creditor's Name (Print) Jones Nissan, Inc
 Signature [Signature] Date 1-20-17
 Name of Individual Signing (Print) John T. Jones, Jr.
 Title (an authorized officer) President
 Creditor's Address: Street PO. Box 458
 City Sumter State/Province SC
 Postal Code (zip code) 29151-0458 Country USA

Merrill Lynch, Pierce, Fenner, & Smith Incorporated:

Name (Print) _____
 Managing Director/Director/Complex Director (or delegate of Complex Director evidenced by Branch Office Supervisory Designation)
 Signature _____ Date _____
 Managing Director/Director/Complex Director (or delegate of Complex Director evidenced by Branch Office Supervisory Designation)

Merrill Lynch Wealth Management makes available products and services offered by Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S) and other subsidiaries of Bank of America Corporation.

Investment products:

Are Not FDIC Insured	May Lose Value	Are Not Bank Guaranteed

MLPF&S is a registered broker-dealer, Member SIPC and a wholly owned subsidiary of Bank of America Corporation.

EXHIBIT G

EXHIBIT F

\$650,000.00

February 28, 2017
Sumter, SC

FOR VALUE RECEIVED, the Undersigned (the "Obligor") promises to pay to the order of Jones Nissan, Inc. (the "Holder"), payable at Sumter, South Carolina, the sum of Six Hundred Fifty Thousand and No/100 (\$650,000.00) Dollars, with interest at the rate of Six Percent (6.00%) per annum, past due interest to bear interest at the same rate; principal and interest being payable as follows:

In fifty nine (59) consecutive, equal annual installments of Twelve Thousand Five Hundred Sixty Six and 32/100 (\$12,566.32) and a sixtieth consecutive installment of the balance then due, all in accordance with the amortization schedule attached hereto and made a part hereof.

PROVIDED, HOWEVER, that should default be made in the payment of said principal, or any installment thereof, or said interest, or any portion thereof, on the due date, the Holder hereof, his successors and assigns, may at his/their option declare the entire remaining balance immediately due and payable. The Obligor hereunder agrees to pay all costs of collection, including a reasonable attorney's fee, in case payment shall not be made at maturity. Obligor does hereby waive demand, presentment, notice of non-payment, dishonor, protest, and notice of protest.

THAG, LLC

By: Terry L. Holmes

Terry L. Holmes
Its

EXHIBIT

Holmes 7 3-23-23 E1 R.375

EXHIBIT H

EXHIBIT G

PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT is made this 28 day of February, 2017, by THAG, LLC (the "Pledgor") in favor of JONES NISSAN, INC. (the "Lender") whose address is 1260 Broad Street, Sumter, South Carolina 29150.

Recitals

Pledgor has executed and delivered a promissory note (as amended, extended or renewed from time to time, the "Note") dated February 28, 2017 in the original principal amount of Six Hundred Fifty Thousand Dollars (\$650,000.00) in favor of the Lender. Pledgor has agreed to secure its obligations under the Note in accordance with the terms hereof.

NOW, THEREFORE, for good and valuable consideration, the Pledgor agrees as follows:

1. Security Interest. The Pledgor hereby pledges to the Lender and gives and grants the Lender a continuing and unconditional security interest (the "Security Interest") in the following described property and in all increases, income, dividends, distributions and profits therefrom, and in all substitutions therefor and in all proceeds thereof in any form (the "Collateral"):

Merrill Lynch Account No. 250 having a portfolio value of \$650,000 as more fully described in Pledged Collateral Account Control Agreement appended hereto and made a part hereof (or any reissue, replacement or substitute thereof or therefor).

2. Delivery of Collateral. The Lender hereby accepts delivery of the Collateral on behalf of itself and any future transferee of the Indebtedness. Pledgor will execute and deliver to the Lender all assignments, endorsements, powers and other documents requested at any time and from time to time by the Lender with respect to the Collateral and the rights and powers granted to the Lender hereunder.

3. Indebtedness Secured. The Security Interest secures payment when due of all Indebtedness (as defined herein) to the Lender. As used in this Agreement, the term "Indebtedness" means: all principal, interest, costs, expenses (including attorneys' fees) and other amounts now or hereafter due under the Note (including, without limitation, all principal amounts advanced thereunder before, on or after the date hereof).

4. Warranties of the Pledgor. The Pledgor represents and warrants and so long as the Indebtedness remains unpaid shall be deemed continuously to represent and warrant that: (a) each item constituting Collateral is genuine and in all respects what it purports to be; (b) the Pledgor is the owner of the Collateral free of all security interests or other encumbrances except the Security Interest; and (c) the Pledgor is authorized to enter into this Security Agreement.

5. Irrevocable Proxy. Pledgor irrevocably constitutes and appoints the Lender as the

Pledgor's proxy with full power without limitation to do all things which the Pledgor could do as an owner of the Collateral, giving to the Lender full power of substitution and revocation. Notwithstanding the foregoing, the Pledgor alone shall have the rights under this paragraph and the Lender may not exercise those rights so long as no Event of Default or Default has occurred. The proxy contained in this paragraph shall terminate when this Agreement terminates. The Pledgor hereby revokes all proxies heretofore given to any person or persons and agrees not to give any other proxies in derogation of this proxy so long as this Agreement is in force.

6. Covenants of Pledgor. The Pledgor: (a) will defend the Collateral against the claims of all persons; (b) will keep the Collateral free from all security interests or other encumbrances except the Security Interest; (c) will not assign, sell, transfer, deliver or otherwise dispose of the Collateral or any interest therein or attempt to do the same without the prior written consent of the Lender; (d) will notify the Lender promptly in writing of any change in the Pledgor's address, name or identity, specified above; (e) in connection herewith will execute and deliver to the Lender such financing statements and other documents, pay all costs of filing financing statements and other documents in all public offices requested by the Lender, and take such other action as the Lender may deem advisable to perfect the Security Interest created by this Agreement; and (f) will pay taxes, assessments and other charges of every nature which may be levied or assessed against the Collateral.

7. Income from Collateral.

(a) Until the occurrence of an Event of Default, the Pledgor reserves the right to receive all income from the Collateral. If the Lender receives any of the income prior to the occurrence of any Event of Default, it will pay the income promptly to the Pledgor.

(b) From and after the occurrence of an Event of Default, the Pledgor will not demand or receive any income from the Collateral. If the Pledgor receives any such income without demand the Pledgor will pay it promptly to the Lender. The Lender may apply the net cash receipts of such income to payment of any of the Indebtedness. However, the Lender shall account for and pay over to the Pledgor all Collateral remaining, and any income remaining, after termination of this Agreement.

8. Default.

(a) Each of the following events or conditions shall constitute an "Event of Default" hereunder: (i) the Pledgor's failure to pay any Indebtedness when due; (ii) the Pledgor's failure to perform any other obligation now or hereafter owed to the Lender; (iii) the occurrence of any Event of Default under the Note; or (iv) material falsity in any certificate, statement, representation or warranty at any time furnished to the Lender by or on behalf of the Pledgor pursuant to or in connection with this Agreement or otherwise (including warranties in this Agreement).

(b) Upon the occurrence of an Event of Default, the Lender may: (i) declare all or any part of the Indebtedness to be immediately due without notice; and (ii) exercise such other rights and remedies as are available hereunder or otherwise.

(c) Upon the occurrence of any Event of Default, the Lender's rights with respect to the Collateral shall be those of a secured party under the Uniform Commercial Code and under any other applicable law from time to time in effect. The Lender shall also have any additional rights granted herein and any other agreement now or hereafter in effect between the Pledgor and the Lender.

(d) The Pledgor agrees that any notice by the Lender of the sale or disposition of Collateral or any other intended action hereunder, whether required by the Uniform Commercial Code or otherwise, shall constitute reasonable notice to the Pledgor if the notice is mailed by regular or certified mail, postage prepaid, at least thirty days before the action to the Pledgor's address as specified in this Agreement or to any other address which the Pledgor has specified in writing to the Lender as the address to which notices shall be given to the Pledgor.

(e) The Pledgor shall pay all costs and expenses incurred by the Lender in enforcing this Security Agreement, realizing upon any Collateral and collecting any Indebtedness (whether incurred in connection with collection, trial or appeal) including a reasonable attorney's fee whether suit is brought or not and to the extent of the Pledgor's liability for repayment of any of the Indebtedness, shall be liable for any deficiency in the event that disposition of the Collateral does not satisfy the Indebtedness in full.

9. Miscellaneous.

(a) The Pledgor appoints the Lender as the Pledgor's attorney-in-fact to perform all acts which the Lender deems appropriate, to perfect and continue the Security Interest, to protect and preserve the Collateral and to endorse and transfer all or any part of the Collateral. Notwithstanding the foregoing, the Pledgor alone shall have the rights under this paragraph and the Lender may not exercise those rights so long as no Event of Default or Default has occurred. The proxy contained in this paragraph shall terminate when this Agreement terminates.

(b) Upon the Pledgor's failure to perform any of its duties hereunder the Lender may, but it shall not be obligated to, perform any of such duties and the Pledgor shall forthwith upon demand reimburse the Lender for any reasonable expense incurred by the Lender in so doing.

(c) No delay or omission by the Lender in exercising any right hereunder or with respect to any Indebtedness shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude the Lender from any other or further exercise of that right or the exercise of any other right or remedy. The Lender may cure any default by the Pledgor in any reasonable manner without waiving the default so cured and

without waiving any other prior or subsequent default by the Pledgor. All rights and remedies of the Lender under this Agreement and under the Uniform Commercial Code shall be deemed cumulative.

(d) The Lender shall exercise reasonable care in the custody and preservation of the Collateral to the extent required by law and it shall be deemed to have exercised reasonable care if it takes such action for that purpose as the Pledgor shall reasonably request in writing. However, no omission to do any act not requested by the Pledgor shall be deemed a failure to exercise reasonable care and no omission to comply with any requests by the Pledgor shall of itself be deemed a failure to exercise reasonable care.

(e) The rights and benefits of the Lender under this Agreement shall, if the Lender agrees, inure to any party acquiring any interest in the Indebtedness or any part thereof.

(f) The terms "Lender" and "Pledgor" as used in this Agreement include the heirs, personal representatives, and successors or assigns of those parties.

(g) This Agreement may not be modified or amended nor shall any provision of it be waived except in writing signed by the Pledgor and by an authorized officer of the Lender.

(h) This Agreement shall be construed under the Uniform Commercial Code of South Carolina and any other applicable South Carolina laws in effect from time to time.

(i) This Agreement is a continuing agreement which shall remain in force until the Lender shall actually receive written notice of its termination and thereafter until all of the Indebtedness contracted for or created before receipt of the notice and any extensions or renewals of that Indebtedness (whether made before or after receipt of the notice) together with all interest thereon both before and after the notice shall be paid in full.

10. Waiver. The Pledgor hereby waives any right that the Pledgor may have to notice and a hearing before possession or sale of any Collateral is effected by the Lender by self-help, replevin, attachment or otherwise.

DATED the day and year first above-written.

THAG, LLC



Terry L. Holmes

Its

(SEAL)

EXHIBIT I

EXHIBIT E-1



Thag LLC
8883 Ocean Hwy
Pawleys Island, SC 29586-6902

January 19, 2017

RE: Verification of Deposit - Credit Reference

Important Notice

This is in response to the Verification of Deposit (VOD) request for the Merrill Lynch account of Thag LLC. Details appear below.

Account Type	WOMA
Account Number	XXX-XX250
Value as of Date (Close of Business (COB))	01/18/2017
Total Portfolio Value*	\$850,000.00

☐ If checked, the portfolio value provided represents an average balance.

*This total is as of COB on the listed date. However, the balance provided is monthly/quarterly as Merrill Lynch does not maintain daily balance records. It includes Money Fund shares/balances, marginable/non-marginable securities, and outstanding loans. If an average balance is requested, it is calculated based upon the monthly/quarterly balance.

BBIF* Money Fund Shares	\$0.00
Market Value of Marginable Securities	\$0.00
Outstanding Loans from Marginable Securities	\$0.00
Commercial Line of Credit	\$0.00
Outstanding Loans from Commercial Line of Credit	\$0.00
Current Available Funds as of (<01/19/2017>) at 11:00	\$850,000.00
Comments	

Signature of Merrill Lynch Branch Office Management Team (OMT)

Willard Hardy Resident Trustee

Printed Name

Date

Jan 19, 2017

EXHIBIT

EXHIBIT J

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER) Assignment of Asset Purchase Agreement

This Assignment of Asset Purchase Agreement, hereinafter "the Assignment", is made by and between THAG, LLC, hereinafter "Assignor", and Nissan of Sumter, LLC, hereinafter "Assignee," and shall be effective as of February 28, 2017.

WITNESSETH:

Whereas, Jones Nissan, Inc. James E. Jones and John T. Jones, Jr., collectively as Seller and THAG, LLC as Purchaser entered into an Asset Purchase Agreement dated July 25, 2016 for the purchase of assets associated with the Jones Nissan, Inc. Nissan dealership (hereinafter the "Contract"); and

Whereas, Assignor desires to assign all of its right, title and interest in and to the Contract to Assignee, and Assignee desires to accept all of the right, title and interest of the Assignor in and to the Contract; and

Now, Therefore, Know All Persons by These Presents, for and in consideration of Ten Dollars (\$10.00), the covenants herein set forth, together with other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Assignor transfers, sells, negotiates, assigns, endorses, transfers, grants, conveys, delivers and assigns any and all of its right, title, interest and benefit in and to the Contract to Assignee, its Successors and Assigns.

To have and to hold the same together with all rights, titles, interests, privileges, claims, demands and equities existing and to exist in connection with the Contract unto Assignee, its Successors and Assigns, forever.

Witness the Hand and Seal of Terry L. Holmes, member of THAG, LLC this 28th day of February, 2017

THAG, LLC, Assignor

22/11 (L.S.)
By: Terry L. Holmes
Its: Member

Witness the Hand and Seal of Terry L. Holmes, member of Nissan of Sumter, LLC this 28th day of February, 2017.

Nissan of Sumter, LLC, Assignee

22/11 (L.S.)
By: THAG Strategic Investment Services of Sumter, LLC
Its: Member
By: Terry L. Holmes
Its: Member

EXHIBIT K

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC; Terry L.
Holmes; and Merrill Lynch, Pierce, Fenner &
Smith, Incorporated,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

AFFIDAVIT OF KAREN H. ("NEECIE")
OLIVER

PERSONALLY appeared before me, Karen H. ("Necie") Oliver, who first being duly sworn, deposes and says:

1. My name is Karen H. Oliver and I go by "Necie." I am over 18 years of age and am competent to make this affidavit.
2. I am currently the Controller for Jones Buick GMC, Inc. in Sumter, South Carolina, and have served in this position since approximately 2000. I previously served as the Controller for Jones Nissan, Inc. ("Jones Nissan") from approximately 1990 until the dealership sold in 2017, and I still perform certain work for Jones Nissan on an as-needed basis.
3. As the Controller for Jones Nissan, my job duties included, among other things, maintaining the company's books and financial records, reviewing the company's financial records, preparing financial statements and quarterly tax reports for the company, ensuring company accounts were balanced, and processing payments received by the company. As the Controller for Jones Nissan, I was familiar with—and remain familiar with—the company's business records, including its financial and accounting records.

4. As the Controller for Jones Nissan, I am familiar with the Promissory Note ("Note") at issue and the payments it required. A copy of the Note is attached as **EXHIBIT 1** and incorporated herein by reference. In particular, the Note required monthly payments, inclusive of principal and interest, to be made as follows:

In fifty nine (59) consecutive, equal annual installments of Twelve Thousand Five Hundred Sixty Six and 32/100 (\$12,566.32) and a sixtieth consecutive installment of the balance then due, all in accordance with the amortization schedule attached hereto and made a part hereof.

The Note set an interest rate for the loan of Six Percent (6.00%) per annum. Attached as **EXHIBIT 2** is a copy of the amortization schedule referenced in the Note and made a part thereof.

5. As Jones Nissan's Controller, I was involved in receiving and processing the payments made on the Note. Jones Nissan began receiving monthly Note payments in March 2017, and the payments were made continually and consistently through July 2019. Each monthly payment—with two exceptions where the November 2017 and December 2017 payments were initially \$10.00 short and were supplemented by separate \$10.00 cash payments—was made by check and totaled either \$12,566.32 or \$12,566.33. Each monthly payment was drawn on an account in the name of THAG, LLC, THAG, Inc., Island Real Estate Holdings, LLC or Nissan of Sumter, LLC. Set forth immediately below is a schedule of the monthly Note payments received by Jones Nissan:

		DATE PAID	AMOUNT
1	March, 2017	03/17/2017	\$12,566.32
2	April, 2017	04/18/2017	\$12,566.32
3	May, 2017	05/8/2017	\$12,566.33
4	June, 2017	06/16/2017	\$12,566.33

5	July, 2017	07/6/2017	\$12,566.33
6	August, 2017	08/10/2017	\$12,566.33
7	September, 2017	09/01/2017	\$12,566.33
8	October, 2017	10/02/2017	\$12,566.33
9	November, 2017	11/01/2017	\$12,566.32
10	December, 2017	12/01/2017	\$12,566.32
11	January, 2018	01/10/2018	\$12,566.32
12	February, 2018	02/01/2018	\$12,566.32
13	March, 2018	03/01/2018	\$12,566.32
14	April, 2018	04/02/2018	\$12,566.32
15	May, 2018	05/07/2018	\$12,566.32
16	June, 2018	06/01/2018	\$12,566.32
17	July, 2018	07/01/2018	\$12,566.32
18	August, 2018	08/03/2018	\$12,566.32
19	September, 2018	08/28/2018	\$12,566.32
20	October, 2018	10/03/2018	\$12,566.32
21	November, 2018	11/01/2018	\$12,566.32
22	December, 2018	12/04/2018	\$12,566.32
23	January, 2019	01/07/2019	\$12,566.32
24	February, 2019	02/01/2019	\$12,566.32
25	March, 2019	03/05/2019	\$12,566.32
26	April, 2019	04/11/2019	\$12,566.32
27	May, 2019	05/03/2019	\$12,566.32

28	June, 2019	06/05/2019	\$12,566.32
29	July, 2019	07/02/2019	\$12,566.32
	TOTAL		\$364,423.34

6. At present, Jones Nissan has received 29 Note payments totaling \$364,423.34. At present, 31 Note payments totaling \$389,555.98 remain outstanding. The outstanding balance consists of \$360,035.15 in principal and \$29,520.83 in interest. I calculated these principal and interest sums by adding the monthly principal and interest payments due for payments 31 through 60 as shown on the amortization schedule attached as **EXHIBIT 2**.

7. Each time Jones Nissan received a monthly Note payment, I, as Controller, would enter the payment in the company's books, generate a receipt, and then deposit the payment in the company bank account. I would also notate each payment received on the amortization schedule when it came in; the handwritten annotations on **EXHIBIT 2**, with the exception of the handwritten sentence at the bottom of page 3, are mine. This was my regular practice as Controller for the company, and these records were kept in the course of the company's regularly conducted business activity. Attached as **EXHIBIT 3** and incorporated herein by reference is a copy of the receipt for each Note payment received by Jones Nissan.

FURTHER AFFIANT SAYETH NOT.

Karen H. Oliver
Karen H. "Necie" Oliver

SWORN TO AND SUBSCRIBED before me
this 25 day of April, 2023.
Karen E. Smith
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: MARCH 25, 2025

EXHIBIT 1

EXHIBIT F

\$650,000.00

February 28, 2017
Sumter, SC

FOR VALUE RECEIVED, the Undersigned (the "Obligor") promises to pay to the order of Jones Nissan, Inc. (the "Holder"), payable at Sumter, South Carolina, the sum of Six Hundred Fifty Thousand and No/100 (\$650,000.00) Dollars, with interest at the rate of Six Percent (6.00%) per annum, past due interest to bear interest at the same rate; principal and interest being payable as follows:

In fifty nine (59) consecutive, equal annual installments of Twelve Thousand Five Hundred Sixty Six and 32/100 (\$12,566.32) and a sixtieth consecutive installment of the balance then due, all in accordance with the amortization schedule attached hereto and made a part hereof.

PROVIDED, HOWEVER, that should default be made in the payment of said principal, or any installment thereof, or said interest, or any portion thereof, on the due date, the Holder hereof, his successors and assigns, may at his/their option declare the entire remaining balance immediately due and payable. The Obligor hereunder agrees to pay all costs of collection, including a reasonable attorney's fee, in case payment shall not be made at maturity. Obligor does hereby waive demand, presentment, notice of non-payment, dishonor, protest, and notice of protest.

THAG, LLC

By: 22/1/16

Terry L. Holmes
Its

EXHIBIT

Holmes 7 3-23-23 E

R.392

EXHIBIT 2

EXHIBIT

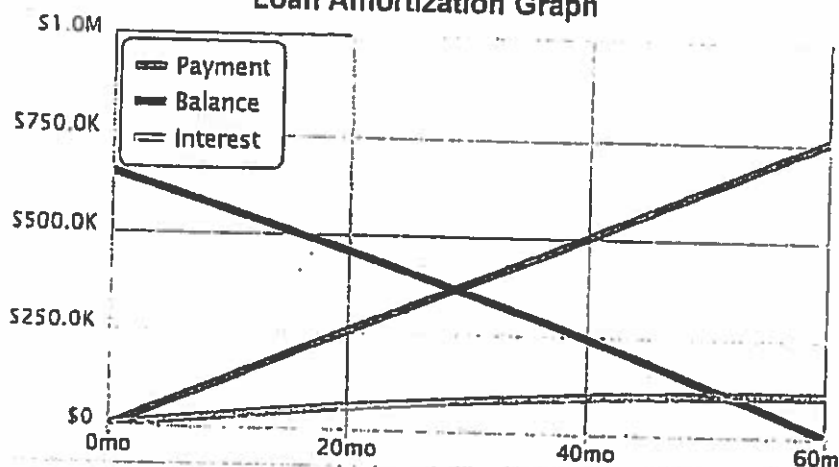
Holmes 15 3-23-23 ET

Amortization CalculatorAct # 295A
int 801

Loan Amount **650000**
 Loan Term **5** years
 Interest Rate (APR) **6** %

Calculate**Monthly Pay: \$12,566.32**

Total of 60 Loan Payments **\$753,979.26**
 Total Interest **\$103,979.26**

Loan Amortization Graph**Payment Breakdown**

Principal
Interest

Monthly Amortization Schedule

Annual Schedule

Monthly Schedule

	Beginning Balance	Interest	Principal	Ending Balance	
1	\$650,000.00	\$3,250.00	\$9,316.32	\$640,683.68	Mar - 17
2	\$640,683.68	\$3,203.42	\$9,362.90	\$631,320.78	Apr - 17
3	\$631,320.78	\$3,156.60	\$9,409.72	\$621,911.06	May - 17
4	\$621,911.06	\$3,109.56	\$9,456.76	\$612,454.29	June - 17
5	\$612,454.29	\$3,062.27	\$9,504.05	\$602,950.24	July 17
6	\$602,950.24	\$3,014.75	\$9,551.57	\$593,398.67	Aug 17
7	\$593,398.67	\$2,966.99	\$9,599.33	\$583,799.35	Sept 17
8	\$583,799.35	\$2,919.00	\$9,647.32	\$574,152.02	Oct 17
9	\$574,152.02	\$2,870.76	\$9,695.56	\$564,456.46	Nov 17
10	\$564,456.46	\$2,822.28	\$9,744.04	\$554,712.42	Dec 17
11	\$554,712.42	\$2,773.58	\$9,792.78	\$544,919.66	Jan 18
12	\$544,919.66	\$2,724.80	\$9,841.72	\$535,077.94	Feb 18
		year 1 end			
13	\$535,077.94	\$2,675.39	\$9,890.93	\$525,187.01	Mar 18
14	\$525,187.01	\$2,625.94	\$9,940.38	\$515,246.62	Apr 18
15	\$515,246.62	\$2,576.23	\$9,990.09	\$505,256.54	May 18

16	\$505,258.54	\$2,526.28	\$10,040.04	\$495,216.50	June 18	PL 5/23
17	\$495,216.50	\$2,476.08	\$10,090.24	\$485,126.26	July 18	PL 6/29
18	\$485,126.26	\$2,425.63	\$10,140.69	\$474,985.57	Aug 18	PL 8/2
19	\$474,985.57	\$2,374.93	\$10,191.39	\$464,794.18	Sept 18	PL 8/28
20	\$464,794.18	\$2,323.87	\$10,242.35	\$454,551.83	Oct 18	PL 9/5
21	\$454,551.83	\$2,272.76	\$10,293.56	\$444,258.26	Nov 18	PL 11/1
22	\$444,258.26	\$2,221.29	\$10,345.03	\$433,913.23	Dec 18	PL 12/4
23	\$433,913.23	\$2,169.57	\$10,396.75	\$423,516.48	Jan 19	PL 1/1
24	\$423,516.48	\$2,117.58	\$10,448.74	\$413,067.74	Feb 19	PL 2/1
	year 2 end					
25	\$413,067.74	\$2,065.34	\$10,500.98	\$402,566.76	Mar 19	PL 3/5
26	\$402,566.76	\$2,012.83	\$10,553.49	\$392,013.27	Apr 19	PL 4/1
27	\$392,013.27	\$1,960.07	\$10,606.25	\$381,407.02	May 19	PL 5/3
28	\$381,407.02	\$1,907.04	\$10,659.28	\$370,747.73	June 19	PL 6/11
29	\$370,747.73	\$1,853.74	\$10,712.58	\$360,035.15	July 19	PL 7/2
30	\$360,035.15	\$1,800.18	\$10,766.14	\$349,269.00	Aug 19	PL 8/19
31	\$349,269.00	\$1,746.35	\$10,819.97	\$338,449.03	Sept 19	
32	\$338,449.03	\$1,692.25	\$10,874.07	\$327,574.95	Oct 19	
33	\$327,574.95	\$1,637.87	\$10,928.45	\$316,846.51	Nov 19	
34	\$316,846.51	\$1,583.23	\$10,983.09	\$305,663.42	Dec 19	
35	\$305,663.42	\$1,528.32	\$11,038.00	\$294,625.41	Jan 20	
36	\$294,625.41	\$1,473.13	\$11,093.19	\$283,532.22	Feb 20	
	year 3 end					
37	\$283,532.22	\$1,417.66	\$11,148.66	\$272,383.56	Mar 20	
38	\$272,383.56	\$1,361.92	\$11,204.40	\$261,179.16	Apr 20	
39	\$261,179.16	\$1,305.90	\$11,260.42	\$249,918.73	May 20	
40	\$249,918.73	\$1,249.59	\$11,316.73	\$238,602.00	June 20	
41	\$238,602.00	\$1,193.01	\$11,373.31	\$227,228.69	July 20	
42	\$227,228.69	\$1,136.14	\$11,430.18	\$215,798.52	Aug 20	
43	\$215,798.52	\$1,078.99	\$11,487.33	\$204,311.19	Sept 20	
44	\$204,311.19	\$1,021.56	\$11,544.76	\$192,766.42	Oct 20	
45	\$192,766.42	\$963.83	\$11,602.49	\$181,163.93	Nov 20	
46	\$181,163.93	\$905.82	\$11,660.50	\$169,503.43	Dec 20	
47	\$169,503.43	\$847.52	\$11,718.80	\$157,784.63	Jan 21	
48	\$157,784.63	\$788.92	\$11,777.40	\$146,007.23	Feb 21	
	year 4 end					
49	\$146,007.23	\$730.04	\$11,836.28	\$134,170.95	Mar 21	
50	\$134,170.95	\$670.85	\$11,895.47	\$122,275.48	Apr 21	
51	\$122,275.48	\$611.38	\$11,954.94	\$110,320.54	May 21	
52	\$110,320.54	\$551.60	\$12,014.72	\$98,305.82	June 21	
53	\$98,305.82	\$491.53	\$12,074.79	\$86,231.03	July 21	
54	\$86,231.03	\$431.16	\$12,135.16	\$74,095.86	Aug 21	

55	\$74,095.86	\$370.48	\$12,195.84	\$61,900.02	Sept 21
56	\$61,900.02	\$309.50	\$12,258.82	\$49,643.20	Oct 21
57	\$49,643.20	\$248.22	\$12,318.10	\$37,325.09	Nov 21
58	\$37,325.09	\$188.63	\$12,379.69	\$24,945.40	Dec 21
59	\$24,945.40	\$124.73	\$12,441.59	\$12,503.80	Jan 22
60	\$12,503.80	\$62.52	\$12,503.80	\$0.00	Feb 22
year 5 end					

by Calculator.net

Still owes 30 payments of 12566.33
 totaling 376,989.90

EXHIBIT 3



1260 BROAD ST • P.O. BOX 1375 • SUMTER, SC 29151
803-469-3424 (Local) • 800-868-0338 (Toll Free)
FAX: 803-469-3428 • www.jonesnissan.com

PAGE 1 OF 1

AMOUNT PAID BY COMMENT
12,566.32 CHECK NOTE PAYMENT

71546

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 17MAR2017 10:13
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202C	12,566.32	71546	NISSAN-SUMTER
		2	220	-12,566.32	55056	NOTE-PYMT

CUSTOMER COPY



PAGE 1 OF 1

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803-469-3424 (Local) • 800-868-0338 (Toll Free)
FAX: 803-469-3428 • www.jonesnissan.com

AMOUNT PAID BY COMMENT
12,566.32 CHECK CK100267 -APRIL SALE PYMT

71567

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 18APR2017 16:17
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71567	NISS-SUMTER
		2	262	-12,566.32	APR-SALE-PYMT-NOS	APR-SALE-PYMT-NOS

CUSTOMER COPY



PAGE 1 OF 1

1260 BROAD ST · P.O. BOX 1375 · SUMTER, SC 29151
803-469-3424 (Local) · 800-866-0338 (Toll Free)
FAX: 803-469-3428 · www.jonesnissan.com

AMOUNT	PAID BY	COMMENT
12,566.33	CHECK	NOTE PYMT

71577

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.33

DATE-TIME: 08MAY2017 14:16
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202C	12,566.33	71577	NISSAN-SUMTER
		2	262	-12,566.33	NISS-NOTE-PYMT	NISS-NOTE-PYMT

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PAGE 1 OF 1

AMOUNT PAID BY COMMENT
12,566.33 CHECK NOTE PAYMENT

71589

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.33
DATE-TIME: 16JUN2017 07:12
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.33	71589	NISSAN-SUMTER
		2	295A	-12,566.33	NOTE-PYMT-NISS-SU	NOTE-PYMT-NISS-SU

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PAGE 1 OF 1

AMOUNT PAID BY COMMENT
12,566.33 CHECK LOAN PAYMENT

71593

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

55056

SC 29150

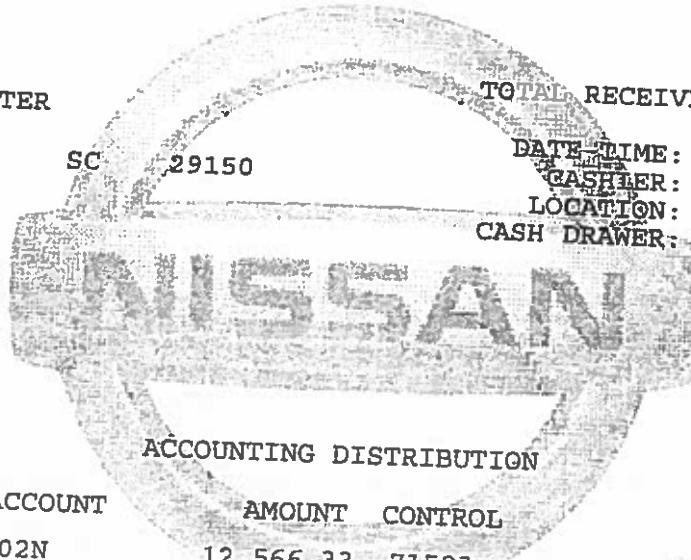
TOTAL RECEIVED: \$12,566.33

DATE TIME: 06JUL2017 14:45

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL
2	5	2	202N	12,566.33	71593
		2	295A	-12,566.33	LOAN-PYMT-NOS

CONTROL2

NISS-SUMTER
LOAN-PYMT-NOS

**CASH
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EL
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023 May 22 1:21 PM - GEORGETOWN - COMMON PLEAS - CASE#202
P2200373

ADDITIONAL INFORMATION IF APPLICABLE

CHECK	VENDOR	VENDOR NAME		CHECK DATE	
100715	JONES002	JONES NISSAN		7/03/2017	
INVOICE	INVOICE DATE	INVOICE AMOUNT	DISCOUNT	AMOUNT PAID	REMARKS
	7/03/2017	9362.90	.00	9362.90	JONES LOAN PAYMENT
	7/03/2017	1067.81	.00	1067.81	JONES LOAN PAYMENT
	7/03/2017	2135.62	.00	2135.62	JONES LOAN PAYMENT
INVOICE TOTAL		12566.33	DISCOUNT TOTAL	.00	PAY TOTAL
12566.33				12566.33	CUSTOMER NUMBER
REMITTANCE ADVICE					

RECEIVED

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10-011 8-10-011

NISSAN OF SOUTHERN LLC
1200 Broad St
Sumter, SC 29106

Rec #
71593



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AMOUNT PAID BY COMMENT
12,566.33 CHECK LOAN PAYMENT

71603

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.33

DATE-TIME: 10AUG2017 07:24
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.33	71603	NISSAN-SUMTER
		2	295A	-12,566.33	NISS-LOAN-PYMT	NISS-LOAN-PYMT

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ADDITIONAL INFORMATION: IF APPLICABLE

CHECK	VENDOR	VENDOR NAME	CHECK DATE		
100898	JONE002	JONES NISSAN	8/07/2017		
INVOICE	INVOICE DATE	INVOICE AMOUNT	DISCOUNT	AMOUNT PAID	MEMO DESCRIPTION
	8/07/2017	1067.81	.00	1067.81	JONES LOAN PAYMENT
	8/07/2017	2135.62	.00	2135.62	JONES LOAN PAYMENT
	8/07/2017	9362.90	.00	9362.90	JONES LOAN PAYMENT
REMITTANCE ADVICE		INVOICE TOTAL	DISCOUNT TOTAL	PAID TOTAL	CUSTOMER NUMBER
		12566.33	.00	12566.33	

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RELEASE OF DEBTOR LLC
1200 Broad St
Boulder, CO 80501

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Rec #
71603



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PAGE 1 OF 1

AMOUNT PAID BY COMMENT 71610
12,566.33 CHECK SEPT NOTE PYMT

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

SC 29150

55056

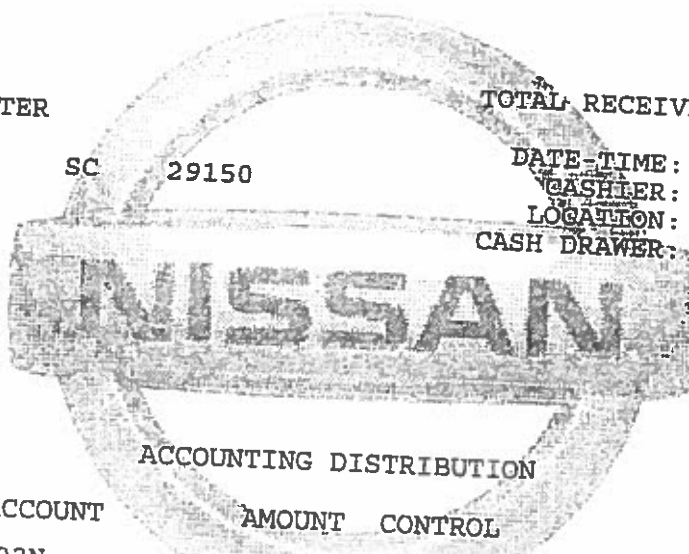
TOTAL RECEIVED: \$12,566.33

DATE-TIME: 01SEP2017 10:45

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL
2	5	2	202N	12,566.33	71610
		2	295A	-12,566.33	NISS-NOTE-PYMT

CONTROL2
NISS-SUMTER
NISS-NOTE-PYMT

CASH
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23 May 22 1:21 PM - GEORGETOWN - COMMON PLEAS - CASE#2020-2200373

ADDITIONAL INFORMATION - IF APPLICABLE:

CHECK	VENDOR	VENDOR NAME		CHECK DATE		
101056	JONE002	JONES NISSAN		8/29/2017		
INVOICE	INVOICE DATE	INVOICE AMOUNT	DISCOUNT	AMOUNT PAID	REMARKS	
	8/29/2017	12566.33	.00	12566.33	JONES SEPT 17 LOAN PAYMENT	
INVOICE TOTAL		12566.33	DISCOUNT TOTAL	.00	PAID TOTAL	CUSTOMER NUMBER
REMITTANCE ADVICE		12566.33	.00	12566.33		



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15601 8/29/2017

NISSAN OF SUMMIT LLC
1200 Broad St
Summit, NC 28149

Rec #
71610



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AMOUNT PAID BY COMMENT
12,566.33 CHECK OCT NOTE PYMT

71618

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.33
DATE-TIME: 02OCT2017 07:24
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.33	71618	NISS-SUMTER
		2	295A	-12,566.33	OCT-NOTE-PYMT	OCT-NOTE-PYMT

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CHECK 101226	VENDOR JONE002	VENDOR NAME JONES NISSAN		CHECK DATE 9/28/2017	
INVOICE 928R	INVOICE DATE 9/28/2017	INVOICE AMOUNT 12566.33	DISCOUNT .00	AMOUNT PAID 12566.33	MEMO INFORMATION RENT PAYMENT
REMITTANCE ADVICE		INVOICE TOTAL 12566.33	DISCOUNT TOTAL .00	PAID TOTAL 12566.33	CUSTOMER NUMBER

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19901 E_APBW

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NISSAN OF SUMTER LLC
1260 Broad St
Sumter, SC 29150

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PAGE 1 OF 1

AMOUNT PAID BY COMMENT 71623
12,556.32 CHECK NOTE PYMT - CHECK FROM ISLAND REAL
ESTATE HOLDINGS LLC

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

55056

SC 29150

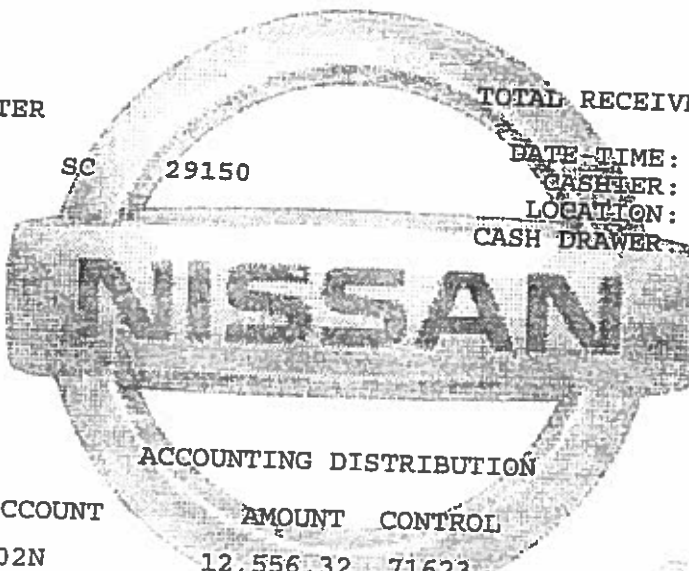
TOTAL RECEIVED: \$12,556.32

DATE-TIME: 01NOV2017 07:33

CASHIER: NEECIE

LOCATION:

CASH DRAWER



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL
2	5	2	202N	12,556.32	71623
		2	295A	-12,556.32	NOS-NOTE-PYMT

CONTROL2

NISS-SUMTER
NOS-NOTE-PYMT

CASH
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PAGE 1 OF 1

AMOUNT 10.00 PAID BY CASH COMMENT 71625
BALANCE ON NOV NOTE PYMT

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

55056

SC 29150

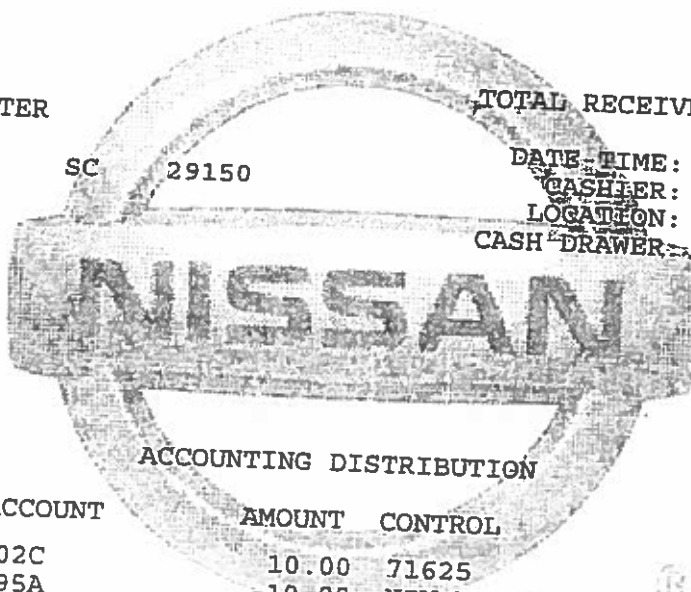
TOTAL RECEIVED: \$10.00

DATE-TIME: 02NOV2017 08:15

CASHIER: NEECIE

LOCATION:

CASH-DRAWER



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT
2	5	2	202C
		2	295A

AMOUNT CONTROL

10.00 71625

-10.00 NOV-NOTE-PYMT

CONTROL2

NISS-SUMTER
NOV-NOTE-PYMT

CASH
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REC # 71623

ISLAND REAL ESTATE HOLDINGS LLC
8983 OCEAN HIGHWAY
PAWLEYS ISLAND, SC 29585

3073

67-160/532

PAY TO THE
ORDER OF

DATE 10-31-17

Jones Nissan Inc.

Twelve Thousand Five Hundred Fifty-Six and 32/100 \$ 12,556.32 DOLLARS



BRANCH BANKING AND TRUST COMPANY
1-800-BANK-EST-BETTER

FOR

22/11

00003073 053201607 0005223776797



1280 BROAD ST • P.O. BOX 1375 • SUMTER, SC 29151
803-489-3424 (Local) • 800-868-0338 (Toll Free)
FAX: 803-469-3428 • www.jonesnissan.com

PAGE 1 OF 1

AMOUNT PAID BY COMMENT
12,556.32 CHECK NOTE PAYMENT

71632

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

55056

SC 29150

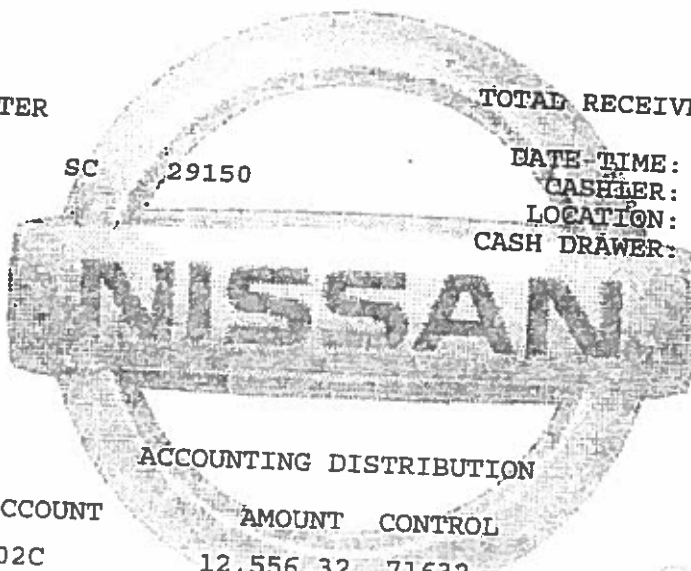
TOTAL RECEIVED: \$12,556.32

DATE-TIME: 01DEC2017 09:24

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT
2	5	2	202C
		2	295A

AMOUNT	CONTROL
12,556.32	71632
-12,556.32	NISS-NOTE-PYMT

CONTROL2

NISS-SUMTER
NISS-NOTE-PYMT

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FAX: 803-469-3428 • www.jonesnissan.com

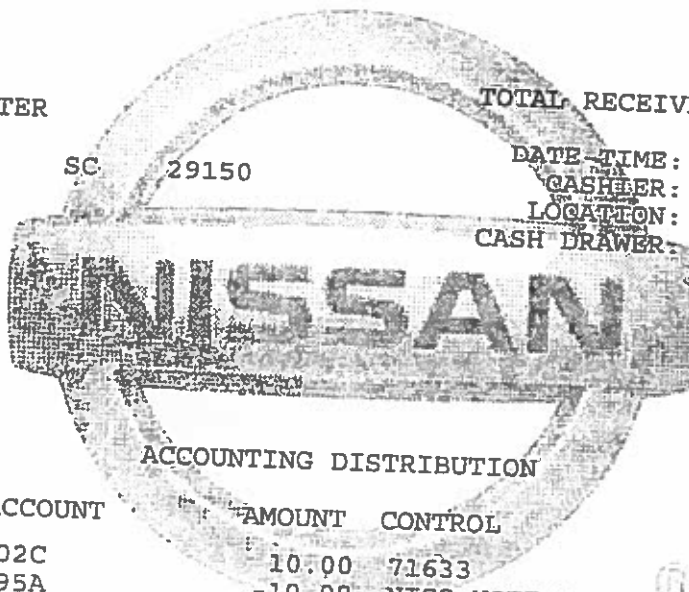
PAGE 1 OF 1

AMOUNT 10.00 PAID BY CASH COMMENT 71633
BALANCE OWED ON NOTE PYMT

NISSAN OF SUMTER
1260 BROAD ST
SUMTER
55056

SC 29150

TOTAL RECEIVED: \$10.00
DATE-TIME: 06DEC2017 07:55
CASHIER: NEECIE
LOCATION:
CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL
2	5	2	202C	10.00	71633
		2	295A	-10.00	NISS-NOTE-PYMT

CONTROL2
NISS-SUMTER
NISS-NOTE-PYMT

CASH
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ISLAND REAL ESTATE HOLDINGS LLC
8983 OCEAN HIGHWAY
PAWLEYS ISLAND, SC 29585

3080

67-160/532

ELECTRONICALLY FILED - 2023 May 22 1:21 PM

GEORGETOWN - COMMON PLEAS - CASE#2020CP2200373

PAY TO THE
ORDER OF

Jones Nissan Inc.

DATE 11/29/2017

Twelve thousand five hundred fifty six

\$ 12556.32

32/100

DOLLARS

BB&T

BRANCH BANKING AND TRUST COMPANY
1-800-BANK BB&T BB&T.com

FOR

Rent

2214

James Barthel

⑈00003080⑈ ⑆053201607⑆0005223776797⑈

Rec'd
12/1/17

Rec #
71632



PAGE 1 OF 1

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FAX: 803-469-3428 • www.jonesnissan.com

AMOUNT PAID BY COMMENT 71642
12,566.32 CHECK CK FROM ISLAND REAL ESTATE HOLDINGS LLC

NISSAN OF SUMTER
1260 BROAD ST
SUMTER
55056

SC 29150

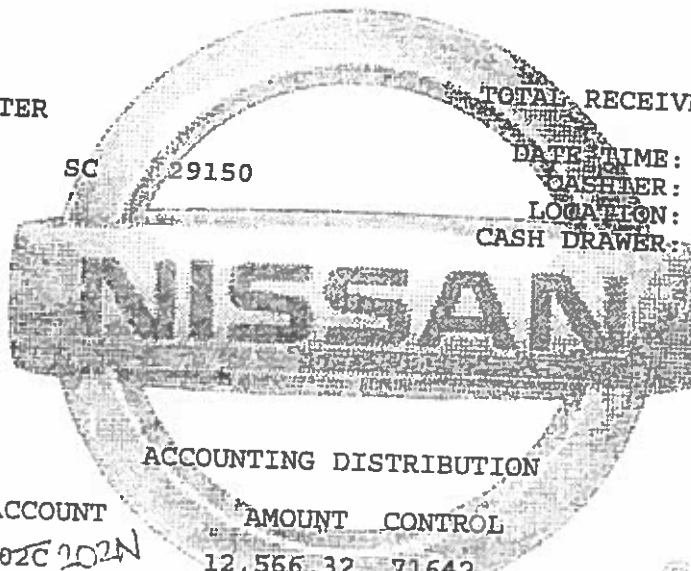
TOTAL RECEIVED: \$12,566.32

DATE TIME: 10JAN2018 14:49

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL
2	5	2	202C 202N	12,566.32	71642
		2	295A	-12,566.32	NOTE-PYMT-NISS

CONTROL2

(R) NISS-SUMTER
NOTE-PYMT-NISS

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AMOUNT PAID BY COMMENT
12,566.32 CHECK PD BY ISLAND REAL ESTATE HOLDINGS 1/31

71647

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 01FEB2018 11:44
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71647	NISS-SUMTER
		2	295A	-9,841.72	NISS-NOTE-PYMT	NISS-NOTE-PYMT
		2	801	-2,724.60	NISS-NOTE-PYMT	NISS-NOTE-PYMT

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AMOUNT PAID BY COMMENT 71652
12,566.32 CHECK CHECK RECD 2/28/18 FROM ISLAND REAL
ESTATE HOLDINGS

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32

DATE-TIME: 01MAR2018 14:28
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71652	NISS-SUMTER
		2	295A	-9,890.93	PRINCIPAL-NISSAN	PRINCIPAL-NISSAN
		2	801	-2,675.39	INT-NOTE-NISS	INT-NOTE-NISS

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AMOUNT PAID BY COMMENT 71656
12,566.32 CHECK CK# 3106 ISLAND REAL ESTATE HOLDINGS LLC

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

SC 29150

55056

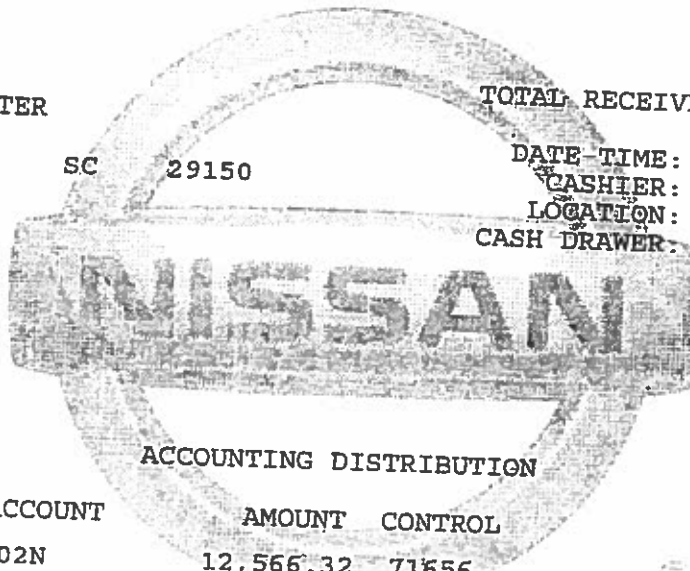
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DATE-TIME: 02APR2018 14:13

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL
2	5	2	202N	12,566.32	71656
		2	295A	-9,940.38	NISS-NOTE-PYMT
		2	801	-2,625.94	NISS-NOTE-PYMT

CONTROL2

NISSAN-SUMTER
NISS-NOTE-PYMT
NISS-NOTE-PYMT

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AMOUNT	PAID BY	COMMENT	
12,566.32	CHECK	CK# 3112	71662
		MAY NOTE PYMT	

ISLAND REAL ESTATE HOLDINGS
NISSAN OF SUMTER

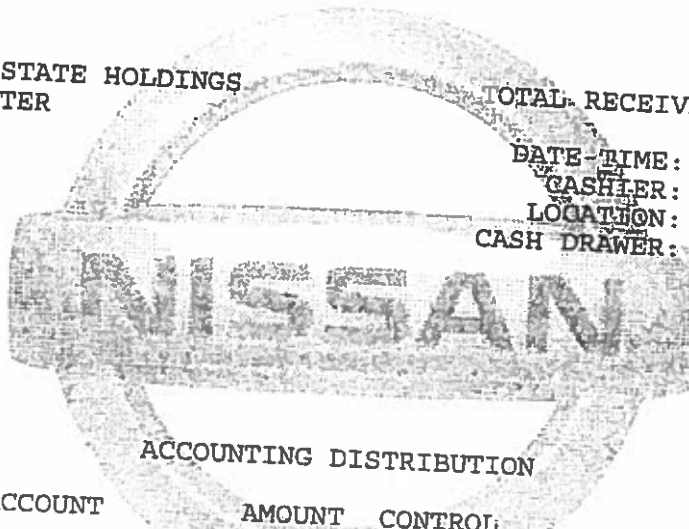
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DATE-TIME: 07MAY2018 13:15

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL
2	5	2	202C	12,566.32	71662
		2	295A	-9,990.09	MAY-NOTE-PYMT
		2	801	-2,576.23	MAY-NOTE-PYMT

CONTROL2

NISS-SUMTER
MAY-NOTE-PYMT
MAY-NOTE-PYMT

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AMOUNT PAID BY COMMENT 71663
12,566.32 CHECK CK 3119 ISLAND REAL ESTATE HOLDINGS

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32

DATE-TIME: 01JUN2018 08:33
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71663	NISS-SUMTER
		2	295A	-10,040.04	NISS-NOTE-PYMT	NISS-NOTE-PYMT
		2	801	-2,526.28	NISS-NOTE-PYMT	NISS-NOTE-PYMT

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AMOUNT PAID BY COMMENT 71667
12,566.32 CHECK CK 114 THAG INC RECD 6-29]
NOTE PYMT

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

SC 29150

55056

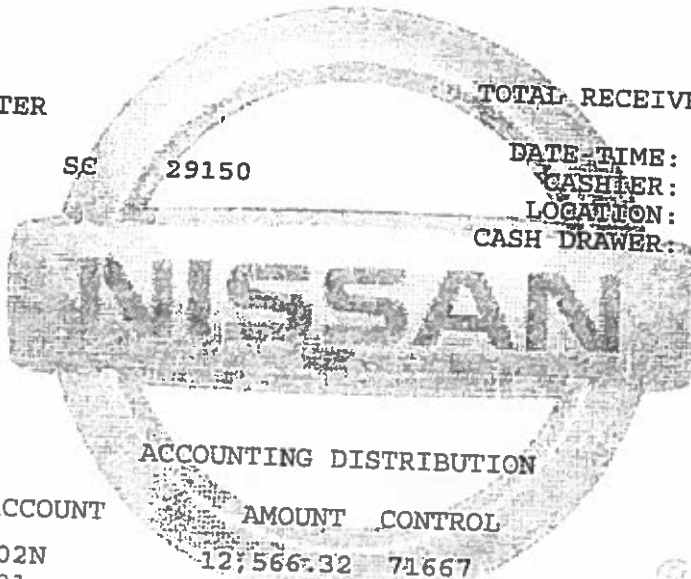
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DATE-TIME: 01JUL2018 13:42

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL
2	5	2	202N	12,566.32	71667
		2	801	-2,476.08	NISS-NOTE-PYMT
		2	295A	-10,090.24	NISS-NOTE-PYMT

CONTROL2

THAG-NISS-SUMTER
NISS-NOTE-PYMT
NISS-NOTE-PYMT

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AMOUNT PAID BY COMMENT
12,566.32 CHECK CK#101 THAG LLC
NOTE PYMT

71671

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

55056

SC 29150

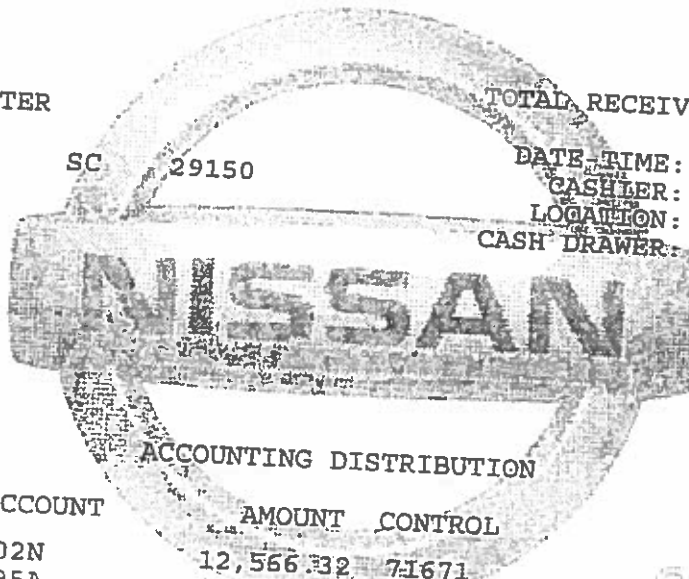
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DATE-TIME: 03AUG2018 07:29

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL
2	5	2	202N	12,566.32	71671
		2	295A	-10,140.69	NISS-NOTE-PYMT
		2	801	-2,425.63	NISS-NOTE-PYMT

CONTROL2

NISSAN-SUMTER
NISS-NOTE-PYMT
NISS-NOTE-PYMT

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AMOUNT PAID BY COMMENT
12,566.32 CHECK NOTE PYMT

71673

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 28AUG2018 11:40
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71673	THAG-NISS-SUMTER
		2	295A	-10,191.39	SEPT-NOTE-PYMT	SEPT-NOTE-PYMT
		2	801	-2,374.93	SEPT-NOTE-PYMT	SEPT-NOTE-PYMT

CUSTOMER COPY



1260 BROAD ST • P.O. BOX 1375 • SUMTER, SC 29151
803-469-3424 (Local) • 800-868-0338 (Toll Free)
FAX: 803-469-3428 • www.jonesnissan.com

PAGE 1 OF 1

AMOUNT PAID BY COMMENT
12,566.32 CHECK CK#114- THAG LLC
OCT NOTE PYMT

71675

NISSAN OF SUMTER
1260 BROAD ST
SUMTER
55056

SC 29150

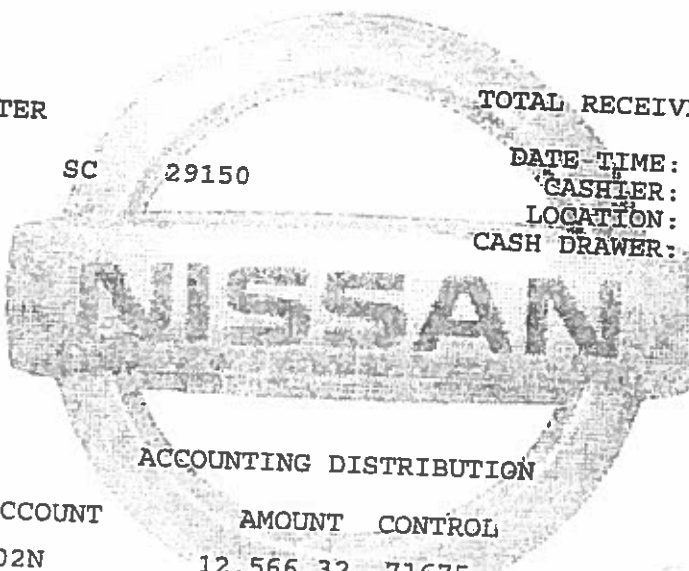
TOTAL RECEIVED: \$12,566.32

DATE TIME: 03OCT2018 13:19

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71675	NISS-SUMTER
		2	295A	-10,242.35	NISS-OCT-NOTE-PYM	NISS-OCT-NOTE-PYT
		2	801	-2,323.97	NISS-OCT-NOTE-PYT	NISS-OCT-NOTE-PYT

CASH
RECEIPT
CUSTOMER COPY

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PAGE 1 OF 1

AMOUNT PAID BY COMMENT
12,566.32 CHECK CK# 117 THAG LLC
NOTE PYMT

71677

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 01NOV2018 13:30
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71677	NIIS-SUMTER
		2	295A	-10,293.56	NISS-NOTE-PYMT	NISS-NOTE-PYMT
		2	801	-2,272.76	NISS-NOTE-INT	NISS-NOTE-INT

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PAGE 1 OF 1

1260 BROAD ST - P.O. BOX 1375 - SUMTER, SC 29151
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FAX: 803-469-3428 - www.jonesnissan.com

AMOUNT PAID BY COMMENT
12,566.32 CHECK CK# 122 THAG LLC

71680

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 04DEC2018 14:34
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CC	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71680	NISS-SUMTER
		2	295A	-10,345.03	NISS-NOTE-PYMT	NISS-NOTE-PYMT
		2	801	-2,221.29	NISS-INT-NOTE-PAY	NISS-INT-NOTE-PAY

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803-469-3424 (Local) • 800-868-0338 (Toll Free)
FAX: 803-469-3428 • www.jonesnissan.com

PAGE 1 OF 1

AMOUNT
12,566.32

PAID BY
CHECK

COMMENT
CK# 127 THAG LLC
NOTE PYMT

71682

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

55056

SC 29150

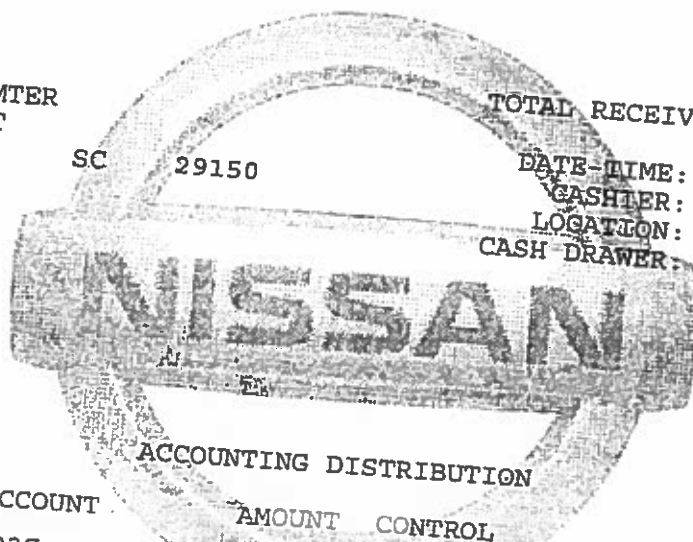
TOTAL RECEIVED: \$12,566.32

DATE-TIME: 07JAN2019 08:07

CASHIER: NEECIE

LOCATION:

CASH DRAWER:



ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL
2	5	2	202C	12,566.32	71682
		2	295A	-10,396.75	NISS-NOTE-PYMT
		2	801	-2,169.57	NISS-NOTE-INT

CONTROL2

NISS-SUMTER
NISS-NOTE-PYMT
NISS-NOTE-INT

CASH
RECEIPT
CUSTOMER COPY

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803-469-3424 (Local) • 800-868-0338 (Toll Free)
FAX: 803-469-3428 • www.jonesnissan.com

PAGE 1 OF 1

AMOUNT PAID BY COMMENT
12,566.32 CHECK CK# 143 THAG LLC
NOTE-PYMT

71684

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 01FEB2019 14:19
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71684	NISS-SUMTER
		2	295A	-10,448.74	NISS-NOTE-PYMT	NISS-NOTE-PYMT
		2	801	-2,117.58	NISS-NOTE-PYMT	NISS-NOTE-PYMT

CUSTOMER COPY



PAGE 1 OF 1

1260 BROAD ST • P.O. BOX 1375 • SUMTER, SC 29151
803-469-3424 (Local) • 800-868-0338 (Toll Free)
FAX: 803-469-3428 • www.jonesnissan.com

AMOUNT PAID BY COMMENT
12,566.32 CHECK CK# 161 THAG LLC
NOTE PYMT

71686

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32

DATE-TIME: 05MAR2019 07:41
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71686	NISS-SUMTER
		2	295A	-10,500.98	NISS-NOTE-PYMT	NISS-NOTE-PYMT
		2	801	-2,065.34	NISS-NOTE-PYMT	NISS-NOTE-PYMT

CUSTOMER COPY



PAGE 1 OF 1

1260 BROAD ST · P.O. BOX 1375 · SUMTER, SC 29151
803-469-3424 (Local) · 800-868-0338 (Toll Free)
FAX: 803-469-3428 · www.jonesnissan.com

AMOUNT PAID BY COMMENT
12,566.32 CHECK NOTE PYMT

71690

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 11APR2019 10:32
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71690	NISS-SUMTER
		2	295A	-10,553.49	NISS-NOTE-PYMT	NISS-NOTE-PYMT
		2	801	-2,012.83	NISS-NOTE-PYMT	NISS-NOTE-PYMT

CUSTOMER COPY

THAG LLC
8983 OCEAN HWY
PAWLEYS ISLAND SC 29585

4/8/19 Date

168
67-88/532

Pay to the
Order of

Jones Nissan

CHECK AMOUNT

twelve thousand five hundred sixty six \$ 12,566 32
Dollars

SOUTH STATE BANK
SouthStateBank.com

For

Stacey K Smoak

⑆053200983⑆8010000422989⑆00168

MP

Rec'd 4-11 a man brought
it in here

Rec #
71690

NISSAN of
SUMTER
1260 Broad Street
Sumter, South Carolina 29150

Mecie @ Jones Buick!

Rocel
4-11
right
after
called
start
cell.
on her



PAGE 1 OF 1

1260 BROAD ST • P.O. BOX 1375 • SUMTER, SC 29151
803-469-3424 (Local) • 800-868-0338 (Toll Free)
FAX: 803-469-3428 • www.jonesnissan.com

AMOUNT PAID BY COMMENT 71692
12,566.32 CHECK CK# 171 THAG LLC NOTE PYMT

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 03MAY2019 14:50
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202C	12,566.32	71692	NISS-SUMTER
		2	295A	-10,606.25	NISS-MAY-NOTE-PYM	NISS-MAY-NOTE-PYM
		2	801	-1,960.07	NISS-MAY-NOTE-PMT	NISS-MAY-NOTE-PMT

CUSTOMER COPY

THAG LLC
8983 OCEAN HWY
PAWLEYS ISLAND SC 29585

4/26/19 Date

171
87-98/532

Pay to the Order of Jones Nissan

Twelve thousand five hundred sixty six + 32/100 \$ 12566.32
Dollars

SOUTH STATE BANK
SouthStateBank.com

For _____

Stacy K Smoak

⑆053200983⑆80⑆0000422989⑆00⑆7⑆

Recd
5-3-19

Rec #
71692



PAGE 1 OF 1

1260 BROAD ST · P.O. BOX 1375 · SUMTER, SC 29151
803-469-3424 (Local) · 800-868-0338 (Toll Free)
FAX: 803-469-3428 · www.jonesnissan.com

AMOUNT PAID BY COMMENT
12,566.32 CHECK CK# 175 THAG LLC
NOTE PYMT

71694

NISSAN OF SUMTER
1260 BROAD ST
SUMTER SC 29150
55056

TOTAL RECEIVED: \$12,566.32
DATE-TIME: 05JUN2019 10:26
CASHIER: NEECIE
LOCATION:
CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71694	NISS-SUMTER
		2	295A	-10,659.28	NISS-NOTE-PYMT	NISS-NOTE-PYMT
		2	801	-1,907.04	NISS-NOTE-PYMT	NISS-NOTE-PYMT

CUSTOMER COPY

THAG LLC
8983 OCEAN HWY
PAWLEYS ISLAND SC 29585

175

67-98/532

5/31/19

Date

CHECK NUMBER

Pay to the
Order of

Jones Nissan

\$ 12566.32

Twelve thousand five hundred sixty six + 32/100

Dollars



Payable
Safe
Deposit
Details on back

SOUTH STATE BANK
SouthStateBank.com

For

Stacey K Smoak

⑆053200983⑆8010000422989⑆00175

Printed Name

Rec'd
6/5/19

Rec #
71694



1260 BROAD ST • P.O. BOX 1375 • SUMTER, SC 29151
803-469-3424 (Local) • 800-868-0338 (Toll Free)
FAX: 803-469-3428 • www.jonesnissan.com

PAGE 1 OF 1

AMOUNT PAID BY COMMENT
12,566.32 CHECK CK# 192 THAG LLC
NOTE PYMT JULY 19

71696

NISSAN OF SUMTER
1260 BROAD ST
SUMTER

SC 29150

55056

TOTAL RECEIVED: \$12,566.32

DATE-TIME: 02JUL2019 10:55

CASHIER: NEECIE

LOCATION:

CASH DRAWER:

ACCOUNTING DISTRIBUTION

CO	JOURNAL	CO	ACCOUNT	AMOUNT	CONTROL	CONTROL2
2	5	2	202N	12,566.32	71696	NISS-SUMTER
		2	295A	-10,712.58	NISS-NOTE-PYMT	NISS-NOTE-PYMT
		2	801	-1,853.74	NISS-INT-NOTE-PYM	NISS-INT-NOTE-PMT

CASH
RECEIPT

ELECTRONICALLY FILED - 2023 May 22 1:21 PM - GEORGETOWN - COMMON PLEAS - CASE#2020CP2200373

EXHIBIT L

EXHIBIT I

SMITH ROBINSON

Smith Robinson Holler DuBose and Morgan, LLC
Attorneys at Law
126 North Main Street
Post Office Box 580
Sumter, South Carolina 29150

G. Murrell Smith, Jr.
Jonathan M. Robinson
David C. Holler, Jr.
John K. DuBose, III
Thomas Morgan, Jr.

J. Alexander Hooks**
P. Edward Brasher, Jr.
Shanon N. Peake

*Also Admitted in NC, GA
**Also Admitted in NC

Of Counsel:
J. Kennedy DuBose, Jr.
Jack W. Erter, Jr.
Harry C. Wilson, Jr.

Telephone: (803) 778-2471
Facsimile: (803) 778-1643

E-Mail Address: jackarter@smithrobinsonlaw.com
Writer's Direct Dial Number: (803) 774-6241
Writer's Direct Dial Facsimile: (803) 938-9925
Reply to Sumter Office

TO: Thag, LLC
8933 Ocean Highway
Pawleys Island, SC 29585
Attn: Terry L. Holmes, Member/Manager

FROM: Jack W. Erter, Jr.

DATE: August 20, 2019

SUBJECT: Notice of Default; Promissory Note dated February 28, 2017 in the original amount of \$650,000.00 in favor of Jones Nissan, Inc. ("Lender/Creditor")

We represent the referenced Lender/Creditor, Jones Nissan, Inc., and in that regard you are hereby notified that you are in default under the terms of the Note referenced above in that the installment due on the 28th day of July, 2019 in the amount of \$12,566.32 has not been paid. As per the terms of the Note, demand is hereby made upon you for the full payment of the entire outstanding balance in the amount of \$360,035.15.

To secure the indebtedness, you entered into a pledge agreement with Lender/Creditor dated February 28, 2017 (the "Pledge Agreement") pursuant to which you pledged to Lender/Creditor Merrill Lynch Account No. [REDACTED] having a portfolio value of \$650,000 thereby granting to Lender/Creditor a security interest in said account. In connection therewith, you entered into a Pledged Collateral Account Control Agreement dated January 19, 2017 with Lender/Creditor and Merrill Lynch (the "Pledged Account Control Agreement") pursuant to which Merrill Lynch has agreed to comply with any instructions it receives from Lender/Creditor at any time to transfer, sell, redeem, close open trades or otherwise liquidate any Assets in the Account (including instructions to transfer assets directly to, or into an account in the name of Lender/Creditor), without further consent by you. This is to further notify you that as a consequence of your default, Lender/Creditor is delivering to Merrill Lynch a "Notice of Exclusive Control" as called for under the referenced Pledged Account Control Agreement.

Camden Office
935 Broad Street
PO Drawer 39
Camden, SC 29021
803-432-1992
803-432-0784 (f)

Columbia Office
2530 Devine Street, Ste. 1-B
Columbia, SC 29205
803-254-5445
803-254-5007 (f)

Sumter Office
126 N. Main Street
PO Box 580
Sumter, SC 29151
803-778-2471
803-778-1643 (f)

EXHIBIT

Holmes 10 3-23-23

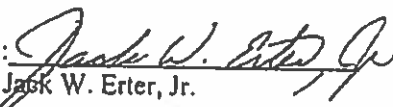
R.440

Smith Robinson

This is to further notify you that if payment of the entire amount is not received on or before the 30th day of August, 2019, legal proceedings shall be instituted against you and the costs of collection and attorney's fees shall be added to your account.

Smith Robinson Law Firm

By:


Jack W. Erter, Jr.

Encl

EXHIBIT M

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

VS.

THAG, LLC; Nissan of Sumter, LLC; Terry L. Holmes; and Merrill Lynch, Pierce, Fenner & Smith, Incorporated,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

AFFIDAVIT OF JAMES E. JONES

PERSONALLY appeared before me, James E. Jones, who first being duly sworn, deposes and says:

1. My name is James E. Jones. I am over 18 years of age and am competent to make this affidavit.

2. I am the secretary and treasurer of Jones Nissan, Inc. ("Jones Nissan"), which owned the Jones Nissan automobile dealership in Sumter, South Carolina, from 1990 until early 2017. My brother, John Jones, and I were actively involved in the negotiation and sale of the dealership to THAG, LLC and Terry Holmes in 2017. Accordingly, I am familiar with the details of the sale transaction, particularly the financing aspect of the deal that was accomplished through the use of a Promissory Note ("Note") and other documents that memorialized the terms of the parties' financing agreement.

3. A copy of the Note is attached as **EXHIBIT 1** and incorporated herein by reference.

The Note required monthly payments, inclusive of principal and interest, to be made as follows:

In fifty nine (59) consecutive, equal annual installments of Twelve Thousand Five Hundred Sixty Six and 32/100 (\$12,566.32) and a sixtieth consecutive installment of the balance then due, all in

accordance with the amortization schedule attached hereto and made a part hereof.

The Note set an interest rate for the loan of Six Percent (6.00%) per annum. Attached as **EXHIBIT 2** is a copy of the amortization schedule referenced in the Note and made a part thereof. I wrote the handwritten sentence on the bottom of page 3 during late August or early September of 2019 after I learned that the collateralized funds that should have been on deposit in THAG's pledged Merrill Lynch account were no longer there. It has come to my attention that my notation is incorrect insofar as I stated only 30 payments are due and owing, when in fact there are 31 such payments due and owing.

4. Once the sale transaction between Jones Nissan and THAG, LLC and Terry Holmes was finalized, I gave a copy of the amortization schedule to Nectie Oliver, Jones Nissan's Controller, and requested that she handle receipt and processing of the payments due under the Note in accordance with Jones Nissan's normal business practices.

5. Jones Nissan received monthly Note payments from March 2017 through July 2019. Each monthly payment totaled either \$12,566.32 or \$12,566.33. Set forth immediately below is a schedule of the monthly Note payments received by Jones Nissan:

		DATE PAID	AMOUNT
1	March, 2017	03/17/2017	\$12,566.32
2	April, 2017	04/18/2017	\$12,566.32
3	May, 2017	05/8/2017	\$12,566.33
4	June, 2017	06/16/2017	\$12,566.33
5	July, 2017	07/6/2017	\$12,566.33
6	August, 2017	08/10/2017	\$12,566.33

7	September, 2017	09/01/2017	\$12,566.33
8	October, 2017	10/02/2017	\$12,566.33
9	November, 2017	11/01/2017	\$12,566.32
10	December, 2017	12/01/2017	\$12,566.32
11	January, 2018	1/10/2018	\$12,566.32
12	February, 2018	02/01/2018	\$12,566.32
13	March, 2018	03/01/2018	\$12,566.32
14	April, 2018	04/02/2018	\$12,566.32
15	May, 2018	05/07/2018	\$12,566.32
16	June, 2018	06/01/2018	\$12,566.32
17	July, 2018	07/01/2018	\$12,566.32
18	August, 2018	08/03/2018	\$12,566.32
19	September, 2018	08/28/2018	\$12,566.32
20	October, 2018	10/03/2018	\$12,566.32
21	November, 2018	11/01/2018	\$12,566.32
22	December, 2018	12/04/2018	\$12,566.32
23	January, 2019	01/07/2019	\$12,566.32
24	February, 2019	02/01/2019	\$12,566.32
25	March, 2019	03/05/2019	\$12,566.32
26	April, 2019	04/11/2019	\$12,566.32
27	May, 2019	05/03/2019	\$12,566.32
28	June, 2019	06/05/2019	\$12,566.32
29	July, 2019	07/02/2019	\$12,566.32

EXHIBIT 1

EXHIBIT F

\$650,000.00

February 28, 2017
Sumter, SC

FOR VALUE RECEIVED, the Undersigned (the "Obligor") promises to pay to the order of Jones Nissan, Inc. (the "Holder"), payable at Sumter, South Carolina, the sum of Six Hundred Fifty Thousand and No/100 (\$650,000.00) Dollars, with interest at the rate of Six Percent (6.00%) per annum, past due interest to bear interest at the same rate; principal and interest being payable as follows:

In fifty nine (59) consecutive, equal annual installments of Twelve Thousand Five Hundred Sixty Six and 32/100 (\$12,566.32) and a sixtieth consecutive installment of the balance then due, all in accordance with the amortization schedule attached hereto and made a part hereof.

PROVIDED, HOWEVER, that should default be made in the payment of said principal, or any installment thereof, or said interest, or any portion thereof, on the due date, the Holder hereof, his successors and assigns, may at his/their option declare the entire remaining balance immediately due and payable. The Obligor hereunder agrees to pay all costs of collection, including a reasonable attorney's fee, in case payment shall not be made at maturity. Obligor does hereby waive demand, presentment, notice of non-payment, dishonor, protest, and notice of protest.

THAG, LLC

By: Terry L. Holmes

Terry L. Holmes
Its

EXHIBIT

Holmes 7 3-23-23 ET

R.447

EXHIBIT 3

EXHIBIT

Holmes 12 3-23-23 ET

Jones Nissan
1230 Broad St.
Sumter, Sc. 29150

Good Morning Mr Jones.

I am forwarding a check in the amount of \$2500.00. Due to the excessive debt and demands, I was forced to sell most of the dealerships and assets. I am forced to only send a portion of my payments as agreed upon. As i get my affairs in order, I intend to bring my payments back to the agreed upon amount. I appreciate your understanding in this matter, as I rectify my financial situation.

Sincerely
Terry Holmes

FILED - 2023 May 22 1:21 PM - GEORGETOWN - COMMON PLEAS - CASE#2020CP2201

THIS DOCUMENT HAS A VOID BACKGROUND • MICROPRINT BORDERS AND SIGNATURE LINE • WATERMARK PRESENT. HOLD UP TO LIGHT TO VIEW.

Cashier's Check



First Citizens Bank

First-Citizens Bank & Trust Company
Raleigh, North Carolina

66-1252/531

Branch No. 301

0500571691

August 14, 2019

Date

Pay to the order of ****JONES NISSAN****

\$ **\$2,500.00**

****Two Thousand Five Hundred Dollars and 00/100****

Dollars

Notice To Customers
The purchase of an Indemnity Bond or an Insurance Bond may be required before an official check of this bank will be replaced or refunded in the event it is lost, misplaced or stolen.

Remitter ****TERRY L HOLMES****

05-10050M (02/17)

Ayssa Cauten

⑈0500571691⑈ ⑆053112521⑆ 223980198101⑈994990

EXHIBIT N

EXHIBIT J

JONES NISSAN INC

**1260 BROAD STREET
SUMTER, SC 29150
803-469-3424**

Via Federal Express

TO: Merrill Lynch Wealth Management
10267 Ocean Highway
Pawleys Island, SC 29585
Attn: Scott Hurston, Manager

FROM: Jack W. Erter, Jr.

DATE: August 22, 2019

SUBJECT: Notice of Exclusive Control
Pledge Collateral Account Control Agreement dated 01/19/2017- Account
[REDACTED] (the "Account")
Client: Thag, LLC
Creditor: Jones Nissan, Inc.

Pursuant to Paragraph 9 of the referenced Pledged Collateral Account Control Agreement (the "Control Agreement"), this is to notify you that the undersigned Creditor is exercising its right to "exclusive control" of the captioned Merrill Lynch "pledged account". Per the terms of the Control Agreement, you are to cease complying with trading instructions from, or on behalf of, Client with respect to the Account, cease distributing to Client interest and regular cash dividends earned on assets in the Account, and refuse to accept any other instructions from Client intended to exercise any authority with respect to the Account except upon instruction of the undersigned Creditor.

Enclosures: To assist you with the above, please find enclosed herewith the following:

Pledge Collateral Control Agreement entered into between Client, Creditor and Merrill Lynch.

EXHIBIT

Holmes 11 3-23-23 I

R.451

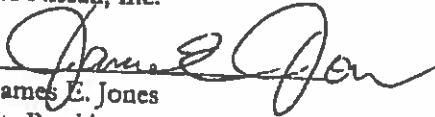
If you need anything further to carry out the subject "exclusive control" instructions, you are authorized and directed to contact counsel for the Creditor whose name, address and telephone number are set forth below:

Jack W. Erter, Jr.
Smith Robinson Law Firm
PO Box 580
Sumter, SC 29151
803-774-6241

Further instructions with regard to the disposition of the Account will be forthcoming in the near future.

Jones Nissan, Inc.

By:


James E. Jones
Its President

Encl.

EXHIBIT O

EXHIBIT

Holmes 12 3-23-23 ET

Jones Nissan
1230 Broad St.
Sumter, Sc. 29150

Good Morning Mr Jones.

I am forwarding a check in the amount of \$2500.00. Due to the excessive debt and demands, I was forced to sell most of the dealerships and assets. I am forced to only send a portion of my payments as agreed upon. As i get my affairs in order, I intend to bring my payments back to the agreed upon amount. I appreciate your understanding in this matter, as I rectify my financial situation.

Sincerely
Terry Holmes

THIS DOCUMENT HAS A VOID BACKGROUND • MICROPRINT BORDERS AND SIGNATURE LINE • WATERMARK PRESENT. HOLD UP TO LIGHT TO VIEW.

Cashier's Check**First Citizens Bank**First-Citizens Bank & Trust Company
Raleigh, North Carolina

66-1252/531

Branch No. **301****0500571691**

August 14, 2019

Date

Pay to the order of ****JONES NISSAN****\$ **\$2,500.00******Two Thousand Five Hundred Dollars and 00/100****Notice To Customers
The purchase of an Indemnity Bond or an Insurance Bond may be required before an official check of this bank will be replaced or refunded in the event it is lost, misplaced or stolen.

Dollars

Remitter ****TERRY L HOLMES****

05-10050M (02/17)

EXHIBIT P

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC; Terry L.
Holmes; and Merrill Lynch, Pierce, Fenner &
Smith, Incorporated,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

AFFIDAVIT OF JOHN D. HUDSON, JR.

PERSONALLY appeared before me, John D. Hudson, Jr., who first being duly sworn, deposes and says:

1. I am a licensed attorney in the State of South Carolina and have been so licensed since 2000. I have enjoyed a certificate of good standing from the South Carolina Supreme Court since my admission to the Bar. I was admitted to practice before the United States District Court for the District of South Carolina in 2000 and the United States Court of Appeals for the Fourth Circuit in 2003.

2. I am employed by McLeod Law Group, LLC ("MLG"), which represents the Plaintiff, Jones Nissan, Inc., in the above matter. I am the attorney primarily responsible for handling this matter, though my paralegal, Melissa Urch, and Mullins McLeod have also spent time working on the case. This affidavit is being submitted in support of Plaintiff's request for an award of the collection costs, including reasonable legal fees, incurred in this matter.

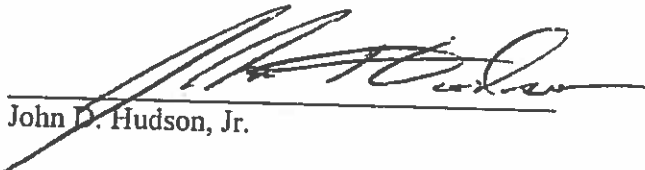
3. Jones Nissan, Inc. entered into a contingency fee agreement ("fee agreement") with McLeod Law Group, LLC pursuant to which it agreed to pay thirty-three and one-third percent (33.33%) of any recovery in this matter as its legal fee. The fee agreement also provides for the

recovery of all costs and expenses incurred by McLeod Law Group, LLC in pursuit of this matter. This fee agreement is a version of McLeod Law Group, LLC's standard contingency fee agreement used with clients; the other version provides for a forty percent (40%) fee to the firm from any recovery proceeds obtained.

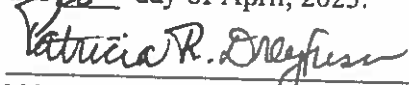
4. Defendants' outstanding debt owed to Plaintiff on the Promissory Note is \$389,555.98, and thirty-three and one third percent (33.33%) of this sum is \$129,839.01. As of the date of this affidavit, MLG has incurred \$3,487.30 in costs and expenses related to its collection efforts in this case. A detailed summary of these expenses will be provided to the Court upon request. Plaintiff seeks an award of these fees and expenses as part of its damages in this case.

5. I certify under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.


John D. Hudson, Jr.

SWORN TO AND SUBSCRIBED before me
this 28th day of April, 2023.



NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 6-18-2023

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC; Terry L. Holmes; and Merrill Lynch, Pierce, Fenner & Smith, Incorporated,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

**PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Jones Nissan, Inc., by and through its undersigned counsel, submits this memorandum in further support of its motion for summary judgment and in response to the Affidavit of Terry L. Holmes filed on July 11, 2023. The affidavit is a self-serving attempt by Holmes to create a sham issue of material fact supporting the counterclaims and defenses asserted by THAG, LLC, Nissan of Sumter, LLC, and Terry L. Holmes (together, "Defendants"). The Court should disregard the Holmes affidavit and give it no weight in deciding Plaintiff's summary judgment motion.

In the affidavit, Holmes claims, among other things, that THAG, LLC and Nissan of Sumter, LLC made the required monthly payments under the promissory note until "further performance" (i.e., continuing to make the monthly payments they agreed to make and had been making for 29 months) was "frustrated and rendered impossible" by Plaintiff's purported "non-performance/breaches." Aff. of Holmes ¶ 4. As Plaintiff explained in its memorandum in support of its motion for summary judgment, however, it performed all of its obligations under the agreement at issue in this case. The only obligation remaining to be performed was Defendants' obligation to continue making the agreed-upon monthly payments.

Moreover, the evidence—particularly Holmes’ own prior testimony and statements—contradicts the affidavit. Holmes testified in his deposition that he had fallen into dire financial straits and had been forced to sell most of his dealerships and assets *before* he stopped making the required payments to Plaintiff. (Dep. of Terry Holmes at 111:6–115:25, Ex. E to Memo in Support of MSJ). In August 2019, as he admitted during his deposition, he submitted a partial payment to Plaintiff with a letter stating,

Good Morning Mr Jones.

I am forwarding a check in the amount of \$2500.00. Due to the excessive debt and demands, I was forced to sell most of the dealerships and assets. I am forced to only send a portion of my payments as agreed upon. As i get my affairs in order, I intend to bring my payments back to the agreed upon amount. I appreciate your understanding in this matter, as I rectify my financial situation.

Sincerely
Terry Holmes

(Aug. 2019 Letter and Cashier’s Check, Ex. O to Memo in Support of MSJ; Dep. of Terry Holmes at 111:6–115:25, Ex. E to Memo in Support of MSJ). In his deposition, Holmes admitted under oath that he prepared the letter because he “just wanted to let them know what the circumstances I was in and what my intent was.” (Dep. of Terry Holmes at 111:20–25, Ex. E to Memo in Support of MSJ). Specifically, his financial circumstances were “highly impaired, greatly impaired and diminished by -- I don’t know -- 80, 90 percent” because he was “highly leveraged and . . . overleveraged,” and as a result he had been forced to sell four dealerships he owned. (*Id.* at 112:1–113:17). He also admitted that he was obligated to pay Plaintiff more than \$12,000 per month and that he intended to resume making the requirement payments if he could turn his two remaining dealerships around and “get those profitable.” (*Id.* at 113:18–114:22). Thus, he admitted in his deposition that he stopped making the required payments because he could no longer afford to make them, not because of any act or omission by Plaintiff.

Despite these admissions, Defendants continue to assert baseless counterclaims and defenses against Plaintiff. Faced with an imminent hearing on Plaintiff's motion for summary judgment and no evidence supporting the counterclaims or defenses, Holmes recast the counterclaims in the form of an affidavit and filed it with the Court in an effort to manufacture issues of material "fact." The affidavit is a sham and should be disregarded.

A court may disregard an affidavit for purposes of summary judgment "when it was submitted 'to contradict that party's own prior sworn statement' in 'an attempt to create a sham issue of material fact.'" *McMaster v. Dewitt*, 411 S.C. 138, 149, 767 S.E.2d 451, 456 (Ct. App. 2014) (quoting *Cothran v. Brown*, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (2004)). In deciding whether to disregard an affidavit because the affidavit is a sham, courts consider six factors:

(1) whether an explanation is offered for the statements that contradict prior sworn statements; (2) the importance to the litigation of the fact about which there is a contradiction; (3) whether the nonmovant had access to this fact prior to the previous sworn testimony; (4) the frequency and degree of variation between statements in the previous sworn testimony and statements made in the later affidavit concerning this fact; (5) whether the previous sworn testimony indicates the witness was confused at the time; (6) when, in relation to summary judgment, the second affidavit is submitted.

Id. Each of these factors is met by Holmes' affidavit.

First, Defendants offer no explanation for the statements in the affidavit that contradict Holmes' prior sworn testimony. The affidavit merely states the contradictory "facts" as if the deposition testimony never occurred. Holmes "cannot create a conflict and resist summary judgment with an affidavit that . . . does not give a satisfactory explanation of why the testimony is changed." *Id.* at 149, 767 S.E.2d at 457 (alteration in original) (affirming a trial court's decision to disregard an affidavit because it "contains no justification" for the contradiction and "makes no reference to [the affiant's] deposition testimony at all"). Second, the contradiction is important to the outcome of this litigation. Without the affidavit, Defendants have no evidence supporting their

counterclaims or defenses. *Id.* (“Under this consideration, the more important the fact contradicted by the affidavit is to the outcome of litigation, the more likely a circuit court will be justified in refusing to consider the affidavit.”).

Third, Defendants had access to the purported “facts” in the affidavit—which are within Holmes’ personal knowledge—years before Holmes’ deposition, yet Holmes’ testimony under oath in his deposition contradicts the affidavit. Fourth, the affidavit directly contradicts Holmes’ deposition testimony. *Id.* (“Because his statement in the affidavit . . . directly contradicts his deposition testimony, this consideration weighs in favor of excluding the affidavit.”). Fifth, Holmes’ deposition testimony is clear and provides no indication that he was confused at the time. Finally, Defendants filed the affidavit *two days* before the scheduled hearing on Plaintiff’s motion for summary judgment. Thus, like the affidavit the Court of Appeals held was properly disregarded in *McMaster*, the “last-minute submission of the affidavit indicates” Defendants were “attempting to create an issue of fact for purposes of summary judgment.” *Id.* at 151, 767 S.E.2d at 458.

The Holmes affidavit is a transparent attempt to manufacture sham “facts” to defeat summary judgment by recasting Defendants’ pleadings in affidavit form. The Court should reject Defendants’ attempt, disregard the affidavit, and grant Plaintiff’s motion for summary judgment.

Respectfully Submitted,

MCLEOD LAW GROUP, LLC
928 Washington Street
Post Office Box 2014
Columbia, SC 29202
Tel. 803-451-6057
Fax 844-270-0726

s/John D. Hudson, Jr.
W. Mullins McLeod, Jr. (14148)
mullins@mcleod-lawgroup.com
John D. Hudson, Jr. (68646)

john@mcleod-lawgroup.com

Attorneys for the Plaintiff

July 13, 2023

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC; Terry L.
Holmes, and Merrill Lynch, Pierce, Fenner &
Smith, Inc.

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

**Defendants' Response in Opposition to
Plaintiff's Motion for Summary Judgment**

NOW COME Defendants and submit their Response in Opposition to Plaintiff's Motion for Summary Judgment as follows:

Introduction and Factual Background

This case arises from the sale of an automobile dealership in Sumter, South Carolina. In 2016, Nissan Motor Company approached THAG, LLC and asked it to look into purchasing the Jones Nissan dealership in Sumter because it was under-performing by Nissan's standards. Deposition Transcript of Terry Holmes attached hereto as Exhibit A, at 13. Thus, at Nissan Motor Company's direction, THAG, LLC began discussions with Jones Nissan about purchasing this dealership. *Id.* at 14-15.

Jones Nissan agreed to sell its dealership to THAG, LLC for \$2.25 million and the parties entered into an Asset Purchase Agreement in July 2016. This agreement was subsequently amended several times over the following months and assigned by THAG to Nissan of Sumter, LLC. Nissan Motor Company valued the dealership at \$1.6 million and agreed to extend financing for the sale to this amount only. Jones Nissan offered to finance the remaining \$650,000 of the purchase price upon execution of a promissory note from THAG, LLC. See generally Complaint.

From the outset of the purchase, there were problems. Knowing that Nissan of Sumter would have no choice but to use the Jones Nissan lot while it waited for the new dealership facility to be constructed, Jones Nissan charged Nissan of Sumter an exorbitant amount of rent to use the Jones Nissan lot. Jones Nissan demanded \$27,500 in monthly rent, when the market rent value for the lot was \$9,186 per month. Affidavit of Terry Holmes attached as Exhibit B, at ¶ 6. After 24 months, Jones Nissan raised the rent to \$32,000 per month. Id. Whereas Jones Nissan had promised that a 1.5 acre lot would be made available along with a building on the premises, it delivered only a 0.25 acre lot and no building, which was insufficient space for Nissan of Sumter to display its inventory. Id. at ¶¶ 7-9. Of particular concern, Jones Nissan continued to own and operate a competing car dealership next door to Nissan of Sumter, which was in violation of the asset purchase agreement. Id. at ¶ 10.

Notwithstanding these concerns, and what Nissan of Sumter alleges were breaches of the parties' agreements, Nissan of Sumter continued to make regular payments to Jones Nissan under the promissory note, until around June 2019 when the cumulative effect of Jones Nissan's breaches frustrated the Nissan of Sumter business and rendered any further performance impossible. Id. at ¶ 4. Nissan of Sumter's floor plan loan was called and it was forced to turn over the dealership to new ownership in exchange for no consideration. Exhibit A at 205. This lawsuit followed.

All of the key issues in this case are disputed. During his deposition, Terry Holmes denied that he owes the \$360,000 in outstanding principal that is claimed by Jones Nissan. Id. at 16. Mr. Holmes denied that he owed interest on this amount or attorney's fees. Id. at 28-29. Mr. Holmes denied that Nissan of Sumter breached the Asset Purchase Agreement or the Promissory Note. Id. at 30-31.

The parties have been engaged in discovery. Jones Nissan has taken the depositions of Terry Holmes and the attorney who assisted Nissan of Sumter with the closing of the sale, Greg Weathers.

Jones Nissan has indicated it wishes to take the deposition of Marcus Sanchez, a former employee of THAG and Nissan of Sumter. On April 26, 2023, Defendants submitted Interrogatories and Requests for Production to Plaintiff. Those discovery requests have not yet been answered, and Defendants recently had to file a Motion to Compel Plaintiff's responses.

Standard of Review

Since summary judgment is an extreme remedy, and deprives a party of its right to trial, the remedy should be cautiously invoked. A motion for summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. SCRCP 56(c); Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991); Baird v. City of Charleston, 333 S.C. 519, 511 S.E.2d 69 (1999). In making this determination the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. Law v. S.C. Dep't of Corrs., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). In fact, it is only necessary for the non-moving party to submit a scintilla of evidence warranting the determination of a question of fact by the jury. Tanner v. Florence County, 333 S.C. 549, 511 S.E.2d 369 (Ct.App. 1999).

Argument and Citation of Authority

The Plaintiff's motion for summary judgment fails because (1) there are genuine issues of material fact concerning its claims; (2) there are genuine issues of material fact concerning Defendants' counterclaims; and (3) discovery has not been completed.

1. There Are Genuine Issues of Material Fact Concerning Plaintiff's Claims

As the plaintiff, Jones Nissan bears the burden of proof as to each and every element of its claims against each one of the Defendants. Thus, in order to prevail on its motion for summary judgment, Jones Nissan must demonstrate that there is no set of facts which, if presented by

Defendants and accepted by the finder of fact, along with all reasonable inferences in Defendants' favor, would absolve or excuse the Defendants from liability, either in whole or in part.

In this case, the Defendants have presented sufficient factual issues which preclude a summary judgment. According to Terry Holmes, the Defendants breached their obligations under the Asset Purchase Agreement and Promissory Note by over-charging Nissan of Sumter for lot rent, offering insufficient space for Nissan of Sumter to display its inventory, and owning and operating a competing auto dealership next door to Nissan of Sumter. These breaches were significant enough to cause the financial ruin of the Defendants within 2 years and their subsequent inability to make further payments to Jones Nissan. Presented with this evidence, the finder of fact could reasonably conclude that Jones Nissan breached the contract and thus the Defendants' performance was excused.

It is unclear what is Plaintiff's theory of recovery against Terry Holmes individually. Mr. Holmes signed many of the documents at issue, but always in his representative capacity for THAG, LLC or Nissan of Sumter, LLC. Plaintiff may argue that the corporate veil should be pierced, but it would be extremely rare for a court to award summary judgment on an issue such as piercing the corporate veil, holding that the corporate forms should be ignored, without a trial.

The Plaintiff also argues that it is entitled to attorney's fees based upon its contingency agreement, or one-third of the total judgment, which would be about \$120,000 if the entire amount claimed were awarded. Importantly, this would not represent an amount that was actually paid by the Plaintiff to its counsel in pursuit of its claims. Defendants submit that the Court need not reach this issue because summary judgment is inappropriate in any event, but feel compelled to mention it.

Plaintiff neglects to mention that it reached a settlement with Merrill Lynch for a portion of the amount claimed, and which would entitle the Defendants to a set-off even if the Court were inclined to grant summary judgment. The amount of this settlement is believed to be \$125,000. Defendants have requested this information/documentation in discovery, but have not yet received it.

2. There Are Genuine Issues of Material Fact Concerning Defendants' Counterclaims

The Defendants bear the burden of proof as to their counterclaims for breach of contract. For the same reasons as above, the Defendants have met their initial burden to show that issues of fact remain which preclude the award of summary judgment as to their counterclaims. Because the counterclaims may be viewed as a complete defense or set-off of Plaintiff's claims, it would be improper to grant summary judgment as to one set of claims and reserve the other set for trial.

3. Discovery Has Not Been Completed

Summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact. Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. 48, 54-55, 677 S.E.2d 32, 36 (Ct. App. 2009).

In this case, the Defendants submitted discovery requests to Plaintiff on April 26, 2023. Plaintiff filed the instant motion for summary judgment on May 12, 2023. On June 23, 2023, counsel for Defendants sent a Rule 11 communication asking Plaintiff to respond to its discovery within ten (10) days so that he would not have to file a motion to compel. Unfortunately, no responses were received and Defendants filed a Motion to Compel Discovery on July 10, 2023.

The discovery requests at issue go to the very heart of the Plaintiff's case, for example:

Interrogatory No. 4: Set forth an itemized statement of all damages.

Interrogatory No. 6: For each person known to the party or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important

facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Interrogatory No. 9: Please list the amount and date of all payments made by Defendants to Plaintiff and include any other credit(s) which Plaintiff agrees Defendants are entitled to.

Interrogatory No. 11: Please list the amount of any settlement(s) concerning Plaintiff's claims which have been paid by a party other than Defendants, including but not limited to Merrill Lynch.

Plaintiff may argue that Defendants had a "full and fair" opportunity to conduct discovery prior to 3 months ago. This ignores that at the time Defendants submitted discovery requests, no motion for summary judgment was pending. Furthermore, the Plaintiff has continued to conduct discovery, including a deposition of Greg Weathers on June 22, 2023 and another anticipated deposition of Marcus Sanchez. The Defendants should be allowed the same latitude in continuing to conduct discovery regarding these disputed issues of fact.

Conclusion

Because there are genuine issues of material fact remaining for trial, and discovery has not been completed, the Plaintiff's Motion for Summary Judgment should be denied.

THE BOSTIC LAW GROUP, P.A.

/s Christopher M. Ramsey
Christopher M. Ramsey
2236 Ashley Crossing Drive
Charleston, SC 29414
(843) 571-2525
Fax: (843) 571-7050
cramsey@bosticlaw.com
Attorneys for the Defendants

July 13, 2023

Terry Holmes

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF
COMMON PLEAS OF THE
FIFTEENTH JUDICIAL CIRCUIT

JONES NISSAN, INC., CIVIL ACTION NO.
 Plaintiff, 2020-CP-22-00373
 vs.

THAG, LLC, NISSAN OF SUMTER,
LLC, TERRY L. HOLMES, and
MERRILL LYNCH, PIERCE,
FENNER & SMITH, INC.,
 Defendants.

DEPOSITION OF TERRY L. HOLMES

DATE TAKEN: March 23, 2023
TIME BEGAN: 12:22 p.m.
TIME ENDED: 7:55 p.m.
LOCATION: (via videoconference)

REPORTED BY: Eileen Thompson, CCR
 EveryWord, Inc.
 P.O. Box 1459
 Columbia, South Carolina 29202
 803-212-0012

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Terry Holmes

ELECTRONICALLY FILED - 2023 Jul 13 8:35 AM - GEORGETOWN - COMMON PLEAS - CASE#2020CP2200373

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1 A. That is correct.

2 Q. Who asked that a portion of the purchase

3 price be financed? Who made that request?

4 A. You know, I don't remember. I don't

5 recall how that actually -- that transaction

6 actually come in, but we do typically create a

7 broker or something what would suggest some

8 arrangements in order to be able to put a deal

9 together that's excessive -- excessive goodwill on

10 the thing to cover that.

11 Now, understanding this, when we bought

12 the store, the reason why I was approached by it is

13 that it was underperforming under Nissan standards.

14 And typically an underperforming store, there's not

15 excess goodwill for it. But in an attempt to bring

16 two markets together, we tried to facilitate the

17 deal. And goodwill is calculated on a multiple of

18 -- on a multiple of profitability for a multiple of

19 years, whether it's three times earnings or four

20 times earnings of that case.

21 Q. How do you know that?

22 A. It's typical in our businesses, from what

23 I've seen. You know, I'm not a professional on

24 that. But typically, when deals are performed, it's

25 based off of net earnings times a multiple, which

Page 14

1 ranges sometimes.

2 Q. When you say "the store was

3 underperforming by Nissan standards," you're

4 referring to the Jones Nissan dealership?

5 A. Yes, sir.

6 Q. How badly was it underperforming,

7 according to your understanding?

8 A. You know, I don't really know, but the

9 manufacturer approached me and said that they needed

10 -- approached me and said that they -- we needed to

11 facilitate this deal to get it going, because I had

12 gotten awarded at a previous point, which is Lugoff

13 of South -- an open point, I was awarded that

14 particular point before Nissan of Sumter. However,

15 Nissan came back to me and said, "Before we give you

16 the Lugoff point, you need to arrange a deal with

17 Jones to buy him out, then we will award you,"

18 because that store was underperforming at that time

19 and they wanted to sell.

20 Q. So were you basically going to come in and

21 be somewhat of a savior, is that what you're saying?

22 A. No, I'm not saying that, because I'm not

23 Superman or anything like that. But we were going

24 to give it our best effort to try to put together

25 scales of economy and try to make it a business case

Page 15

1 for it with good intent.

2 Q. Did you approach Jones Nissan about

3 purchasing their business or did they approach you?

4 A. I was instructed to approach them. I knew

5 nothing about them selling their business.

6 Q. Who instructed you to approach Jones

7 Nissan?

8 A. Nissan of -- Nissan Motor Company.

9 Q. Did they make you do that?

10 A. Did they make me? No. I mean, they

11 suggested that we get together and create a business

12 opportunity.

13 Q. And you, in turn, did that, correct?

14 A. Yes, sir, per their instructions.

15 Q. Do you admit that THAG, LLC breached the

16 promissory note it entered into with Jones Nissan in

17 February of 2017?

18 A. Once again, Mr. Hudson, I don't have that

19 promissory note in front of me. I don't know how it

20 was written or do it, because I mean, I apologize

21 for that, but I don't have that to see what it is.

22 What you say is -- you know, you need to understand

23 that.

24 Q. Yes. And listen, let me be crystal clear.

25 We can get into all this and we will talk as much as

Page 16

1 we need to. I'm just trying to figure out what

2 you're willing to concede versus what you're going

3 to challenge. So we will spend as long today as we

4 need to walk through this.

5 A. I understand.

6 Q. Do you admit that THAG, LLC owes Jones

7 Nissan \$360,035.15, in outstanding principal on the

8 promissory note?

9 A. No, sir.

10 Q. Why do you not admit that?

11 A. Well, there's various factors that I think

12 that we did in good faith to pay them a lot more

13 than what -- than what this deal actually called for

14 in trying to make this work. This is a very -- this

15 was a very complicated, very complicated transaction

16 that we entered into, just to try to make a buy-sell

17 go in favor of the Joneses.

18 Q. Explain that to me.

19 A. Well, let me just give you one thing that

20 I can recall in the memories of this is when I got

21 -- when we agreed to purchase the Jones Nissan

22 facility -- I mean, purchase the franchise, there

23 was nowhere to put it. So the premise is that we

24 can wait a year and find a facility to do it. Now,

25 one of the things that I can recall -- and I don't

Terry Holmes

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1 remember this. The debt service was about \$1.5
 2 million per month and we were -- no matter what we
 3 did, all we could produce was about \$800,000 in
 4 gross -- \$800,000 to 900,000, leaving a deficit of
 5 about \$45,000 per month.

6 Q. Did you ever ask Nissan to finance a
 7 portion of the asking price that the Jones were
 8 asking for their business?

9 A. Yes.

10 Q. What did they say?

11 A. They had the performer and they financed,
 12 I think -- I believe, the goodwill. And don't quote
 13 me, but estimated was somewhere around \$2.2 million,
 14 what I think the goodwill asking price was. Now,
 15 that number is just strictly a number that was
 16 provided by the seller, what they wanted to make --
 17 to change. Was it warranted? Probably not, because
 18 when they came back and did projections, NMAC says
 19 that, Look, we're going to do this, but we're only
 20 going to finance \$1.6 million for you and that's it.
 21 And hence, that's when all the other stuff started.
 22 It only qualified for \$1.6 million goodwill, and
 23 that was pressing all -- doing a performer at 100 --
 24 almost 200 percent sales increase than what they
 25 were doing before.

Page 26

1 Q. And so what you're saying is that Nissan
 2 was not willing to finance the amount of the
 3 purchase price that was going to be needed to get
 4 that deal consummated with Jones Nissan, is that
 5 right?

6 A. They had a cap and the cap that they put
 7 was \$1.6 million.

8 Q. Which meant the additional funds over and
 9 above the cap that Nissan put on the deal was going
 10 to have to be provided for by you or someone else,
 11 correct?

12 A. Correct.

13 Q. And the way that was handled was to see if
 14 Jones Nissan would agree to finance that difference,
 15 correct?

16 A. No, sir. I mean, initially, yes, but they
 17 said the cap price on this store was \$1.6 million.
 18 This is what they -- what it would bring. Nissan
 19 Motor Company had no indication of the extra
 20 \$600,000 that Jones wanted. That was nowhere in the
 21 thing, because it would have -- it would have -- the
 22 deal may not have passed their litmus test because
 23 of the excessive amount.

24 Q. Well, did you tell Nissan corporate that?

25 A. No, I didn't.

Page 27

1 Q. Why not?

2 A. I don't know.

3 Q. You would agree that you should have?

4 A. Going -- let me see. I don't remember. I
 5 don't recall that particular, I just know that they
 6 didn't -- they didn't know of this side note that we
 7 did and they -- you know, typically, that's between
 8 the buyer and the seller.

9 Q. Did you ever let Jones Nissan know that
 10 their asking price was in excess of what Nissan
 11 corporate was willing to finance?

12 A. Absolutely.

13 Q. How did they respond?

14 A. I don't remember how they -- I think --
 15 you know, but like I said, we had brokers in this
 16 deal and it was suggesting maybe they would take a
 17 side note to do it.

18 Q. You say there were brokers involved in
 19 that deal?

20 A. And that would have been the only way it
 21 could have been done.

22 Q. Who were the brokers involved in the deal?

23 A. You know, I want to say I had Joy McQuade,
 24 which was -- I forget his name -- his company,
 25 McQuade Brokers, out of, I think, Lake Oconee,

Page 28

1 Georgla.

2 Q. And that's who was representing your
 3 interests?

4 A. I believe so. I'm not sure on that. I
 5 mean, because he did a lot of different deals for
 6 me. And typically, I know he did the Orangeburg
 7 deal, Nissan of Orangeburg, and I think he would
 8 have been involved with this. I don't remember
 9 exactly how all that went. And I'm not trying to be
 10 evasive, I'm just telling you that I just don't
 11 recall how this specific transaction came about.

12 Q. Mr. Holmes, do you admit that THAG, LLC
 13 owes Jones Nissan interest on the outstanding
 14 principal promissory note debt at a rate of 6
 15 percent per annum?

16 A. I would -- it seems like a standard -- a
 17 standard loan agreement. But, once again, I don't
 18 know -- once again, I don't know what entity it was
 19 that actually performed it. I don't know if it was
 20 THAG, which I would believe it was Nissan of Sumter
 21 that the promissory note was the LLC.

22 Q. You admit that THAG, LLC owes Jones Nissan
 23 reasonable attorneys' fees associated with its
 24 efforts to collect the outstanding promissory note
 25 debt?

Terry Holmes

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1 A. To be honest with you, no, I don't.
 2 Q. Why not?
 3 A. Because, you know, I think we were over
 4 fair and paying what we paid with attempt to paying
 5 them. And the goodwill and everything that we paid,
 6 the hundred -- \$500,000 in excess rent to help the
 7 goodwill for 24 months, all the things after the
 8 fact that we didn't contend a -- and I'm not trying
 9 to get into all that, but I think we were way more
 10 than fair, way more than fair in satisfying the
 11 Joneses, and that's why I don't understand even why
 12 we're here today, to be honest with you.
 13 Q. Do you agree that Nissan of Sumter, LLC,
 14 breached the asset purchase agreement assigned to it
 15 by THAG in 2017?
 16 A. No, sir.
 17 Q. Why not?
 18 A. I don't know. It just doesn't sound
 19 right. Asset purchase agreements are -- asset
 20 purchase agreements are generally made to the
 21 manufacturer between the buyer and seller. And
 22 everything -- if you look, probably everything
 23 that's spelled out in the asset purchase agreement
 24 was completed.
 25 Q. Well, do you know that to be the case, or

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1 do you just want that to be the case?
 2 A. I'm just talking about standard practices,
 3 if you will. And going back to asset purchase
 4 agreements, those are -- once again, they are
 5 approved through the manufacturer, which the
 6 manufacturer signs off on an asset purchase
 7 agreement. And in order for the parties to be sold
 8 -- and that speaks to new vehicles, used vehicles,
 9 parts, service, and whatever is listed -- spelled it
 10 out in that document, and I believe everything was
 11 performed in that document.
 12 Q. And I don't want to talk about standard
 13 practices that may generally hold true throughout
 14 the automobile dealer industry, okay. I want to
 15 talk about the specific asset purchase agreement at
 16 issue in this lawsuit, okay?
 17 A. Sure.
 18 Q. So with that being said, let me ask this
 19 question again, just so I can get your response.
 20 A. Okay.
 21 Q. Do you admit that Jones Nissan of Sumter,
 22 LLC, breached the asset purchase agreement assigned
 23 to it by THAG, LLC, in 2017?
 24 A. Do I agree that they breached it? No sir,
 25 I don't believe it.

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1 Q. Do you admit that Nissan of Sumter, LLC,
 2 breached the promissory note assigned to it by THAG
 3 in 2017?
 4 A. I don't know how to answer that question.
 5 Q. Truthfully.
 6 A. Absolutely. I don't believe it -- you
 7 know, I don't believe it, you know, -- and I'm
 8 talking in the spirit of the contract. I think we
 9 did everything over and above to perform
 10 satisfactorily as best we could. That's what I
 11 believe.
 12 Q. Do you admit that Nissan of Sumter, LLC,
 13 owes Jones Nissan \$360,035.15 in outstanding
 14 principal owed on the promissory note?
 15 A. No, sir.
 16 Q. Why not?
 17 A. Well, when I think about the excessive
 18 amount of money that I paid already and when you
 19 really look at it, I personally feel that I may need
 20 to be -- I should be recouping some of the money
 21 that I paid.
 22 Q. Why is that?
 23 A. Because the excessive amount of money that
 24 I paid in already way over dictates what their note
 25 says.

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1 Q. How much money have you --
 2 A. And I don't think what they were paid,
 3 they could have gotten anywhere else.
 4 Q. Well, you agreed to pay them that amount,
 5 didn't you?
 6 A. I tried to pay them that amount, and we
 7 did in other forms.
 8 Q. All right. We'll walk through it.
 9 A. Okay.
 10 Q. You admit that Nissan of Sumter, LLC, owes
 11 Jones Nissan interest on the outstanding principal
 12 debt at a rate of 6 percent per annum?
 13 A. You know, I don't agree to that now. I
 14 don't agree to the contract anymore.
 15 Q. Why don't you agree to the contract
 16 anymore?
 17 A. Because I think -- once again, I think
 18 they have been well compensated for the entire deal,
 19 very well compensated.
 20 Q. You would like to modify the contract, is
 21 that right?
 22 A. No, I didn't say that. I just said that
 23 they have been well compensated, in essence, for the
 24 purchase of this entire deal.
 25 Q. Were they compensated in accordance with

Terry Holmes

Page 205 1 Q. Do you still own -- 2 A. They were financed. 3 Q. Do you still own any of those properties? 4 A. No, I don't own any of them. I think the 5 Lugoff property is still in a forbearance agreement. 6 I don't think we've settled that yet. Even though 7 Mr. Johnson was supposed to be buying it, I'm not 8 sure where he is with it. 9 Q. When did you get rid of the Sumter Nissan 10 dealership? 11 A. I think the final asset purchase agreement 12 -- some time in, I want to say, August of 2019. 13 Q. How much did you sell it for? 14 A. I didn't sell it for anything, he just 15 assumed the operation. There was no value. He paid 16 for some of the assets and I got stuck with the 17 debt. 18 Q. Who assumed the operation? 19 A. Mr. T.J. Johnson. 20 Q. How did you find him? 21 A. I don't know. I don't remember. I think 22 he found me. 23 Q. Do you know him personally? 24 A. No, not really. Just a business 25 associate.	Page 207 1 A. No. 2 Q. Any side been accused of drinking or doing 3 drugs? 4 A. No. 5 Q. Do you still talk to your wife? 6 A. Yes, sometimes. 7 Q. How would you characterize your current 8 relationship? 9 A. It's strained, because of the litigation 10 process. 11 Q. Do you-all have any children together? 12 A. We do. 13 Q. How many? 14 A. Two. 15 Q. How old are they? 16 A. 36 and 31. 17 Q. Where do they live? 18 A. The 36-year-old lives in Alpharetta, 19 Georgia; the 31-year-old lives in Myrtle Beach, 20 South Carolina. 21 Q. What are your kids' names? 22 A. Brittanie and Salena Holmes. 23 Q. Do you currently provide your children any 24 sort of monthly allowance for living expenses or 25 otherwise?
Page 206 1 Q. What's the current state of that Nissan 2 dealership? 3 A. I mean, we were supposed to -- he finished 4 building a building and started a new operation 5 right down the street. 6 Q. Do you know if he's profitable? 7 A. I think they're all very profitable, very 8 profitable. 9 Q. You're currently in the process of going 10 through a divorce, is that right? 11 A. That is correct. 12 Q. And your wife's name is Pamela A. Holmes? 13 A. That is correct. 14 Q. What is the status of the divorce? 15 A. We're waiting for a trial date. 16 Q. What is the -- 17 A. We're in final discovery. 18 Q. Why are you-all getting divorced? 19 A. Irreconcilable differences. 20 Q. Is it a fault-based divorce? 21 A. No, sir. 22 Q. Has either side been accused of 23 infidelity? 24 A. No. 25 Q. Any side been accused of abuse?	Page 208 1 A. No. 2 Q. They're self-sufficient? 3 A. Yes. 4 Q. Are they married? 5 A. Yes. 6 Q. Do they both keep the last name Holmes? 7 A. No. 8 Q. What last name do they go by? 9 A. Their husband's last name. One is White 10 and the other is Goofingan. 11 Q. I'm sorry. Say that last one again. 12 A. Goofingan, G-o-o-f-i-n-g-a-n. 13 Q. Just give me a snapshot of your current 14 monthly expenses. You told me you pay about \$1200 a 15 month in rent. What other financial liabilities do 16 you currently have? 17 A. I pay my wife \$3,000 a month right now 18 until we reach an agreement, and just miscellaneous 19 credit card bills, and stuff like that. I pay about 20 \$1,000 on my credit card bill. 21 Q. \$1,000 total or on each? 22 A. No, \$1,000 total. Well, I say it averages 23 about \$1500. 24 Q. How many credit cards do you currently 25 carry?

IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC; and Terry
L. Holmes,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

Affidavit of Terry L. Homes

1. My name is Terry Holmes. I am over the age of 18 and competent to testify regarding my personal observation of events.
2. I am the single member-owner of THAG, LLC and Nissan of Sumter, LLC.
3. I was involved in the execution of the Asset Purchase Agreement and modifications thereto with Jones Nissan, Inc. in my capacity as principal of THAG, LLC and Nissan of Sumter, LLC.
4. THAG, LLC and Nissan of Sumter, LLC performed their respective obligations under the Asset Purchase Agreement and the modifications thereto. Specifically, the monthly payments were made pursuant to the contract until further performance was frustrated and rendered impossible by the non-performance/breaches by Jones Nissan, Inc.
5. Jones Nissan, Inc. misrepresented material facts concerning the market value of the dealership. Specifically, Jones Nissan represented that the franchise was worth \$2,250,000, when in fact it was worth only \$1,600,000 as evidenced by the amount that Nissan was willing to finance.
6. Jones Nissan, Inc. charged an exorbitant amount of rent to THAG/Nissan of Sumter in exchange for use of the dealership property. Specifically, Jones Nissan insisted upon \$27,500 in monthly rent, when the actual market value for rent of the facility was \$9,186 per month. After 24 months, Jones Nissan raised the rent to \$32,000 per month.
7. Jones Nissan, Inc. promised THAG/Nissan of Sumter that it would be allowed to rent a 1.5 acre lot, but delivered only a 0.25 acre lot for its use.
8. Jones Nissan, Inc. did not rent THAG/Nissan of Sumter sufficient space to display its inventory.
9. Jones Nissan, Inc. promised THAG/Nissan of Sumter that it would be allowed to rent the building on the premises, but instead used that building for Jones' detailing business.
10. Jones Nissan, Inc. owned and operating a competing car dealership next to THAG/Nissan of Sumter.

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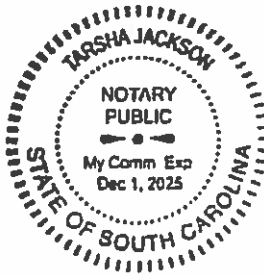
FURTHER AFFIANT SAYETH NOT

Terry Holmes

Terry Holmes

State of South Carolina
County of Florence
SWORN to before me this
11th day of July, 2023 by Terry Holmes

Tarsha Jackson
Notary Public for South Carolina
My Commission Expires: 12-01-2025



IN THE STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Jones Nissan, Inc.,

Plaintiff,

vs.

THAG, LLC; Nissan of Sumter, LLC; Terry L.
Holmes, and Merrill Lynch, Pierce, Fenner &
Smith, Inc.

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-22-00373

Defendants' Motion for Reconsideration

NOW COME Defendants, pursuant to SCRCP 59(e), and submit their Motion for Reconsideration of the Court's Order filed on September 19, 2023 as follows:

1. On May 12, 2023, Plaintiff moved for summary judgment as to some of its claims.
2. In their Memo, Defendants submitted evidence that, at the time of the hearing, Plaintiff had not responded to Defendants' discovery requests, and that a Motion to Compel was still pending.
3. In response, Plaintiff admitted that it had not responded to discovery but contended this made no difference to the disposition of its Motion for Summary Judgment.
4. In their Memo, Defendants also pointed out that the Plaintiff had entered into a settlement with co-Defendant Merrill Lynch and that it was believed that Plaintiff had received \$125,000 from Merrill Lynch in exchange for a dismissal of its claims.
5. At the hearing on this motion on July 13, 2023, Plaintiff's counsel admitted that Plaintiff received \$125,000 from Merrill Lynch in exchange for dismissing its claims against Merrill Lynch. Nevertheless, Plaintiff contended that Defendants were not entitled to a set-off for this settlement.

6. On September 13, 2023, with a Motion to Compel hearing set for the next day, Plaintiff provided partial responses to Defendants' discovery. Plaintiff declined to produce documents related to its settlement with Merrill Lynch because it claimed these documents were subject to a confidentiality agreement.
7. On the following day at the hearing, Plaintiff agreed to produce documents related to its settlement with Merrill Lynch if ordered to do so by the Court and if protected by a Confidentiality Order.
8. On September 19, 2023, the Court granted summary judgment in favor of Plaintiff and against Defendants THAG, LLC and Nissan of Sumter, LLC as to Plaintiff's claims for breach of contract and conversion, in the amount of \$389,555.98.
9. On September 25, 2023, the Court entered a Form 4 Order granting Defendants' Motion to Compel. As of the date of this filing, Plaintiff has not produced the Merrill Lynch settlement documents.
10. The contents of the Plaintiff's settlement with Merrill Lynch are relevant to the disposition of Plaintiff's breach of contract and conversion claims against these Defendants, because 1) the Merrill Lynch settlement documents may be so broad in scope to include a release as to Plaintiff's breach of contract and conversion claims against these Defendants; and 2) the amount of the settlement with Merrill Lynch (believed to be \$125,000) would form the basis for a set-off of any judgment obtained against these Defendants.
11. The Court's Order granting partial summary judgment to Plaintiff does not address the Plaintiff's failure to cooperate with discovery or whether the discovery would provide information that may create a genuine issue of material fact.

12. The Court's Order granting partial summary judgment to Plaintiff does not address the settlement funds received from Merrill Lynch or what effect (if any) that settlement may have on the claims against these Defendants, whether by way of set-off or partial release.
13. At the time of its decision, the Court did not have complete information concerning the settlement agreement between Plaintiff and Merrill Lynch, because Plaintiff refused to produce it.
14. Defendants contend that summary judgment was premature because discovery had not been completed as to this critical issue surrounding the contents and effect of Plaintiff's settlement agreement with a co-Defendant.
15. Defendants respectfully submit that it would be error for the Court to enter a Judgment in the amount requested by Plaintiff (\$389,555.98) without addressing whether Defendants are entitled to a set-off of \$125,000, or taking the motion under advisement until such time as discovery can be completed on the contents of the settlement agreement.
16. Defendants reserve and incorporate all other arguments previously made in their Memo in Opposition, at oral argument, and by way of Terry Holmes' affidavit.
17. Pursuant to Rule 11, counsel certifies that consultation on this motion would serve no useful purpose, and furthermore that there is no duty of consultation on a motion for summary judgment, new trial, or judgment NOV.

THE BOSTIC LAW GROUP, P.A.

/s Christopher M. Ramsey
Christopher M. Ramsey
2236 Ashley Crossing Drive
Charleston, SC 29414
(843) 571-2525
Fax: (843) 571-7050
cramsey@bosticlaw.com
Attorneys for the Defendants

September 29, 2023