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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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The Honorable Jennifer B. McCoy, Circuit Court Judge

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C.A. No.: 2024-CP-10-00180
Appellate Case No: 2025-000526

Michael Bolmer ..... Respondent,

v.

Charleston ANUSA, LLC d/b/a AutoNation USA Charleston and Westlake Services, LLC d/b/a Westlake Financial Services ..... Appellants.

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# AMENDED RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP1000180

Michael Bolmer
PLAINTIFF(S)

Charleston Anusa 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:

Defendants' Motion to Stay and Compel Arbitration, filed 9/4/2024, was heard by this court on 2/13/2025. Upon careful consideration of the submissions and arguments by counsel, Defendants' motion is hereby DENIED.

**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 02/14/2025 .

A Scott Waddell for Michael Bolmer

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**



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## Court Reporter:

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

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Charleston Common Pleas

**Case Caption:** Michael Bolmer VS Charleston Anusa Llc , defendant, et al

**Case Number:** 2024CP1000180

**Type:** Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

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| | |
|---|---|
| STATE OF SOUTH CAROLINA )<br>)<br>COUNTY OF CHARLESTON )<br>)<br>MICHAEL BOLMER, )<br>)<br>Plaintiff, )<br>)<br>v. )<br>)<br>CHARLESTON ANUSA, LLC )<br>D/B/A AUTONATION USA )<br>CHARLESTON AND WESTLAKE )<br>SERVICES, LLC D/B/A )<br>WESTLAKE FINANCIAL )<br>SERVICES, )<br>)<br>Defendants. ) | IN THE COURT OF COMMON PLEAS<br>NINTH JUDICIAL CIRCUIT<br>CASE No.: _____<br><br>**PLAINTIFF'S COMPLAINT** |

COMES NOW PLAINTIFF Michael Bolmer, by and through counsel, and for his Complaint against Defendants AutoNation LLC d/b/a AutoNation USA Charleston and Westlake Services, LLC d/b/a Westlake Financial Services, state and allege as follows:

**INTRODUCTION**

1. This case surrounds Plaintiff's purchase of a 2021 Ford Focus from Defendant Charleston ANUSA, LLC d/b/a AutoNation USA Charleston and financed through Defendant Westlake Services, LLC d/b/a Westlake Financial Services.

2. Due to oil leaks in the 2021 Ford Focus, Plaintiff returned the vehicle per the five day/250 mile return policy and purchased another vehicle.

3. Despite returning the subject vehicle as described above, Defendant Westlake Services, LLC d/b/a Westlake Financial Services continued to demand payment for the same.

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4. When Plaintiff filed an arbitration with the American Arbitration Association, Defendants Charleston ANUSA, LLC d/b/a AutoNation USA Charleston and Westlake Services, LLC d/b/a Westlake Financial Services refused to engage in the same, necessitating this lawsuit.

**PARTIES**

5. Plaintiff Michael Bolmer is a resident of 3961A Appletree Avenue, Charleston, South Carolina.

6. Defendant Charleston ANUSA, LLC d/b/a AutoNation USA Charleston ("AutoNation") is a South Carolina limited liability company selling used vehicles.

7. Defendant AutoNation can be served by serving it at its retail location of 2250 Savannah Highway, Charleston, South Carolina 29414.

8. Defendant Westlake Services, LLC d/b/a Westlake Financial Services ("Westlake") is a California based limited liability company in the business of motor vehicle finance.

9. Defendant Westlake can be served by serving its registered agent Corporate Creations Network Inc., 6650 Rivers Avenue, North Charleston, South Carolina 29406.

**JURISDICTION AND VENUE**

10. Jurisdiction and venue are proper in Charleston County, South Carolina because Plaintiff is a resident of Charleston County, South Carolina and purchased the subject vehicle within Charleston County, South Carolina.

**GENERAL FACTS**

11. Plaintiff purchased a 2021 Ford Focus ("the subject vehicle") from Defendant AutoNation on or about March 14, 2023.

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12. Plaintiff financed the transaction Defendant Westlake Services, LLC d/b/a Westlake Financial Services.

13. Due to oil leaks in the subject vehicle, Plaintiff timely returned the vehicle per Defendant AutoNation's five day/250 mile return policy and purchased another vehicle.

14. Despite returning the subject vehicle as described above, Defendant Westlake Services, LLC d/b/a Westlake Financial Services continued to demand payment for the same.

15. Due to the erroneous and negligent credit reporting surrounding the prior loan on the subject vehicle, Plaintiff's credit was damaged and Plaintiff suffered from the inability to obtain credit, including a personal loan for a new baby.

**PLAINTIFFS' FAILED ATTEMPTS TO ARBITRATE AND DEFENDANTS' WAIVER OF SAME**

16. On or about June 21, 2023, Plaintiff, through his counsel below, filed for arbitration with the American Arbitration Association ("AAA") pursuant to AutoNation's Retail Installment Sale Contract and paid AAA a $232.87 filing fee for same.

17. That same day, AAA assigned the arbitration "AAA Case Number 01-23-0002-7781"

18. On August 16, 2023, AAA sent correspondence to the parties as follows:

August 16, 2023

A. Scott Waddell, Esq.
Waddell Law Firm, LLC
9200 Indian Creek Parkway, Suite 430 Overland Park, KS 66210
Via Email to: scott@aswlawfirm.com

AutoNation USA Charleston 2250 Savannah Highway Charleston, SC 29414
Via Mail

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Westlake Services, LLC
4751 Wilshire Boulevard, Suite 100
Los Angeles, CA 90010
Via Email to: Westlake_LegalDepartment@westlakefinancial.com

**Case Number: 01-23-0002-7781**

**Michael Bolmer**
**-vs-**
**AutoNation USA Charleston**
**-vs-**
**Westlake Services, LLC dba Westlake Financial Services**

Dear Parties:

The Claimant has filed with us a Demand for Arbitration. The American Arbitration Association ("AAA") has determined that this arbitration arises out of a consumer agreement and, as such, the Consumer Arbitration Rules ("Consumer Rules") apply to this dispute. The Consumer Rules may be found on our website at www.adr.org.

Under R-12 of the Consumer Rules, businesses that provide for AAA arbitration in a consumer contract are obligated to submit their current or proposed consumer agreements to the AAA for review and inclusion on the Consumer Clause Registry ("Registry"). The AAA reviews the agreement for material compliance with the due process standards of the Consumer Due Process Protocol ("Protocol") and the Consumer Rules. The AAA's review is administrative; it is not an opinion on whether the arbitration agreement, the contract, or any part of the contract is legally enforceable, nor is it a determination regarding the arbitrability of the dispute.

This business has not previously submitted its consumer arbitration clause for review. As such, the AAA will review the clause for this matter on an expedited basis. The additional fee for this expedited review is $300, payable by the business.

**The business is also directed to submit its current consumer arbitration clause for inclusion on the Registry at** https://www.adr.org/Consumer at which time the business will also incur a $600 Registry fee. Once the business' clause is registered, it will no longer be assessed the $300 additional expedited review fee on each consumer case filed.

Under the Consumer Rules, the consumer pays a filing fee of $225 and the business pays a filing fee of $375. We received the consumer's $225 portion of the filing fee. So that the filing requirements are complete, **the business is requested to submit filing fees of $375 and the expedited consumer clause review fee of $300, totaling $675.**

**Please note payment should be submitted by credit card or electronic check. Please confirm the email address AAA may send a secured Paylink with instructions to submit payment via either method.** In the event, a check is the only method that you can provide payment, please make the check payable to the American Arbitration Association and include a reference to the case number. Checks should be mailed to 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. In the event that payment is being made by a third party, such as an insurance company, please request that payment be sent directly to the business' representative. The business' representative should then forward payment to the AAA in accordance with the foregoing instructions.

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**The requested payment should be received no later than August 30th, 2023** or the AAA may decline to administer this dispute if the business does not timely respond.

It should be noted that the consumer's satisfaction of the filing requirements triggers the business' obligation to promptly pay its share of the filing fees under the rules and the business may owe all or a portion of the filing fees even if the matter is settled or withdrawn. The AAA will refund any overpayments received from the consumer with the filing.

No answering statement or counterclaim is due at this time. The parties will be notified of the applicable deadlines upon satisfaction of all the filing requirements.

Thank you for your attention to this matter. If you have any questions, please contact us.
Sincerely,

Consumer Filing
Email: ConsumerFiling@adr.org Fax: (877)304-8457

19. After not receiving any of the requested and demanded filing fees from Defendants, on September 8, 2023, AAA sent additional correspondence to the Defendants stating:

September 8, 2023

A. Scott Waddell, Esq.
Waddell Law Firm, LLC
9200 Indian Creek Parkway Suite 430
Overland Park, KS 66210
Via Email to: scott@aswlawfirm.com

AutoNation USA Charleston
2250 Savannah Highway
Charleston, SC 29414
Via Mail

Westlake Services, LLC
4751 Wilshire Boulevard
Suite 100
Los Angeles, CA 90010
Via Email to: Westlake_LegalDepartment@westlakefinancial.com

Case Number: 01-23-0002-7781

Michael Bolmer
-vs-

ELECTRONICALLY FILED - 2024 Jan 12 11:31 AM - CHARLESTON - COMMON PLEAS - CASE#2024CP1000180

AutoNation USA Charleston
-vs-
Westlake Services, LLC dba Westlake Financial Services

Dear Parties:

We have not received the administrative fees from respondent as requested in our previous correspondence. Respondent is requested to remit payment in the amount of $675 to the AAA to be received by September 22, 2023. As the claimant has met the filing requirements, respondent's fee is due regardless of whether the case settles or is withdrawn.

If payment was already sent, please send an email with the payment details so that payment is properly allocated. If this non-payment is simply an oversight on respondent's behalf, we trust payment will be made without delay.

At this time, we are inquiring as to whether the consumer is willing to pay this outstanding amount, minus the expedited review fee of $300, and seek recovery of these fees through the arbitrator's award. Claimant is not obligated to pay respondent's fee. Should claimant decide to advance the business' portion of the fee, please email me before the business' response deadline.

If we do not timely receive the business' portion of the filing fees, we will notify the parties that we have administratively closed this case and refund any payment received from claimant. Please note payment should be submitted by credit card or electronic check. Please confirm the email address AAA may send a secured Paylink with instructions to submit payment via either method. In the event that payment is being made by a third party,

such as an insurance company, please request that payment be sent directly to the business' representative. The business' representative should then forward payment to the AAA in accordance with the foregoing instructions.

Thank you for your attention to this matter. If for any reason respondent will not be able to comply with our request by the noted response date, please send an email requesting an extension prior to the deadline. Please email consumerfiling@adr.org if you have any questions.

Sincerely,

Consumer Filing Team
Email: ConsumerFiling@adr.org Fax: (877)304-8457

19. After not receiving any of the requested and demanded filing fees from Respondents, on September 27 2023, AAA sent additional correspondence to the Defendants stating:

September 27, 2023

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A. Scott Waddell, Esq. Waddell Law Firm, LLC 9200 Indian Creek Parkway Suite 430

Overland Park, KS 66210
Via Email to: scott@aswlawfirm.com

AutoNation USA Charleston 2250 Savannah Highway Charleston, SC 29414
Via Mail

Westlake Services, LLC
4751 Wilshire Boulevard
Suite 100
Los Angeles, CA 90010
Via Email to: Westlake_LegalDepartment@westlakefinancial.com

**Case Number: 01-23-0002-7781**

Michael Bolmer
-vs-
AutoNation USA Charleston
-vs-
Westlake Services, LLC dba Westlake Financial Services

Dear Parties:

**As of this date we have not received the required fees from AutoNation USA Charleston in this matter. Accordingly, we must decline to administer this case and have closed our file. According to R-1(d) of the Consumer Arbitration Rules, should the AAA decline to administer an arbitration, either party may choose to submit its dispute to the appropriate court for resolution.**

Any payment submitted by a party will be refunded shortly.

**Additionally, and because AutoNation USA Charleston failure to remit the foregoing constitutes a failure to adhere to our policies regarding consumer claims, we may decline to administer future consumer arbitrations involving AutoNation USA Charleston.** The AAA's consumer policies can be found on the AAA's website, www.adr.org. We request that AutoNation USA Charleston remove the AAA name from its consumer arbitration clause so that there is no confusion to the public regarding our decision.

If AutoNation USA Charleston advises the AAA in the future of its intention to comply with the AAA's Consumer Arbitration Rules and if applicable, resolves any outstanding payment obligations, the AAA may consider at its sole discretion, accepting newly filed consumer cases going forward.

Pursuant to the AAA's current policy, in the normal course of our administration, the AAA may maintain certain electronic case documents in our electronic records system. Such electronic documents may not constitute a complete case file. Other than certain types of electronic case documents that the AAA maintains indefinitely, electronic case documents will be destroyed 18 months after the date of this letter.

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If you have any questions, please email ConsumerFiling@adr.org. Sincerely,

Consumer Filing Team
Email: ConsumerFiling@adr.org Fax: (877)304-8457

20. Defendants' failure to engage in the AAA arbitration proceedings and pay their share of the arbitration fees constitutes a waiver of their right to arbitrate under both AAA's rules and South Carolina case law, necessitating the filing of this lawsuit.

21. Plaintiff suffered and continues to suffer damages caused by the conduct of the Defendants as alleged above, including but not limited to the loss of the AAA filing fees, damage to his credit worthiness and lost credit opportunities and increased cost of credit, inconvenience, aggravation, embarrassment, frustration, humiliation, and garden variety emotional distress in an amount to be adjudicated.

FOR A FIRST CAUSE OF ACTION
VIOLATION OF S.C. CODE §39-5-10, et. seq., UNFAIR TRADE PRACTICES ACT

22. Plaintiff incorporates each and every previous allegation herein as if set forth verbatim, to the extent not inconsistent with the allegations of this cause of action.

23. The activities of the Defendants constitute "trade or commerce" as defined by South Carolina Code Section 39-5-10, et. seq., (as amended).

24. The actions of the Defendants, above-described, constitute oppressive, unfair and deceptive acts and practices in the conduct of trade and commerce, as prohibited by the South Carolina Unfair Trade Practices Act, 39-5-10, et. seq., and are willful violations thereof.

25. The actions of the Defendants have a real and substantial potential for repetition and affect the public interest and have been repeated numerous times by Defendants against Plaintiffs.

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26. Plaintiff has suffered an ascertainable financial loss due to the unlawful actions of the Defendants, including but not limited to out of pocket expenses, entitling Plaintiff to recover actual damages in an amount to be proven at trial, treble said actual damages, and an award of attorney's fees and costs.

27. Further, Plaintiff requests this Court for a permanent injunction precluding Defendants' further use of any arbitration agreement within South Carolina in the future and finding that any existing arbitration agreements within Defendants' contracts with South Carolina consumers to be void and unenforceable.

WHEREFORE, the prayer of the Plaintiff is for judgment in an amount sufficient to compensate Plaintiff for his actual damages, together with punitive damages, statutory damages, such interest as is allowable by law, costs, attorney's fees, and such other relief as is just and proper.

FOR A SECOND CAUSE OF ACTION – NEGLIGENCE

28. Plaintiff incorporates each and every previous allegation herein as if set forth verbatim, to the extent not inconsistent with the allegations of this cause of action.

29. Defendants owed Plaintiff a legal duty to handle his consumer transaction in a competent manner.

30. Defendants were negligent in discharging this duty owed to Plaintiff in failing to credit and/or close out his account on the subject vehicle contemporaneously with the subject vehicle return, or shortly thereafter.

31. The actions of the Defendants have a real and substantial potential for repetition and affect the public interest and have been repeated numerous times by Defendants against Plaintiffs.

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32. Plaintiff has suffered an ascertainable financial loss as a proximate result of the unlawful actions of the Defendants, including but not limited to out of pocket expenses, entitling Plaintiff to recover actual damages in an amount to be proven at trial, treble said actual damages, and an award of attorney's fees and costs.

WHEREFORE, Plaintiff prays for judgment against each Defendant in such amount as is allowable by law and to be determined at trial, including actual damages as well as such penalties and reasonable attorneys' fees that are authorized by statute, and such other and further relief as may be just and proper under the circumstances.

Respectfully submitted:

MILLER|CONWAY

s/ David P. Conway
David P. Conway, Bar No.: 80204
124C S. Goose Creek Blvd – PO Box 938
Goose Creek, SC 29445
dconway@millerconwaylaw.com
T: (843) 764-3334
F: (843) 764-3335

**AND**

*/s/ A. Scott Waddell*
A. Scott Waddell
Waddell Law Firm LLC
9200 Indian Creek Parkway, Suite 430
Overland Park, Kansas 66210
scott@aswlawfirm.com
Telephone: 816-914-5365
***Pro Hac Vice application forthcoming***
**Attorneys for Plaintiff**

January 12, 2024
Goose Creek, South Carolina

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| | |
|---|---|
| STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS |
| COUNTY OF CHARLESTON | Case No. 2024-CP-10-00180 |
| Michael Bolmer,<br><br>Plaintiff,<br><br>v.<br><br>Charleston ANUSA, LLC d/b/a AutoNation USA Charleston, and Westlake Services, LLC d/b/a Westlake Financial Services,<br><br>Defendants. | **ANSWER OF CHARLESTON ANUSA, LLC D/B/A AUTONATION USA CHARLESTON** |

Defendant Charleston ANUSA, LLC d/b/a AutoNation USA Charleston ("AutoNation"), by and through its undersigned counsel, answers the Complaint of Plaintiff Michael Bolmer ("Plaintiff") as follows:

**FOR A FIRST DEFENSE**

Except as specifically admitted herein, each and every allegation of the Complaint is expressly denied, including Plaintiff's prayer for relief.

**INTRODUCTION**

1. AutoNation admits the allegations of paragraph 1 of the Complaint.

2. Answering the allegations of paragraph 2 of the Complaint, AutoNation admits only that Plaintiff returned a 2012 Ford Focus, VIN #1FAHP3K2XCL273616 due to oil leaks.

3. AutoNation lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Complaint.

4. Answering paragraph 4 of the Complaint, AutoNation admits only that Plaintiff previously filed an arbitration demand with the AAA, but denies the remaining allegations of paragraph 4 of the Complaint.

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**PARTIES**

5. AutoNation lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Complaint.

6. Answering the allegations of paragraph 6 of the Complaint, AutoNation admits only that it is a limited liability company organized under the laws of the Delaware, is authorized to do business in South Carolina, and sells new and used motor vehicles.

7. Answering the allegations of paragraph 7 of the Complaint, AutoNation admits only that it can be served by serving its registered agent.

8. Answering the allegations of paragraph 8 of the Complaint, AutoNation admits that Defendant Westlake provides motor vehicle financing to consumers, but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 8 of the Complaint.

9. AutoNation lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Complaint.

**JURISDICTION AND VENUE**

10. AutoNation admits the allegations of paragraph 10 of the Complaint.

**GENERAL FACTS**

11. Answering the allegations of paragraph 11 of the Complaint, AutoNation admits only that Plaintiff purchased a 2012 Ford Focus, VIN #1FAHP3K2XCL273616 on March 14, 2023.

12. AutoNation admits the allegations of paragraph 12 of the Complaint.

13. AutoNation admits the allegations of paragraph 13 of the Complaint.

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14. AutoNation lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14 of the Complaint.

15. AutoNation lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Complaint.

**PLAINTIFF'S FAILED ATTEMPTS TO ARBITRATE**

16. Answering the allegations of paragraph 16 of the Complaint, AutoNation admits only that Plaintiff submitted a demand for arbitration to the AAA, but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 14 of the Complaint.

17. AutoNation lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Complaint.

18. Answering the allegations of paragraph 18 of the Complaint, AutoNation admits only that the excerpt indicates that the AAA sent correspondence on August 16, 2023, but denies any allegations inconsistent therewith.

19. Answering the allegations of paragraph 19 of the Complaint, AutoNation admits only that the excerpt indicates that the AAA sent correspondence on September 8, 2023, but denies any allegations inconsistent therewith.

20. Answering the allegations of paragraph 19(2) of the Complaint, AutoNation admits only that the excerpt indicates that the AAA sent correspondence on September 27, 2023, but denies any allegations inconsistent therewith.

21. AutoNation denies the allegations of paragraph 20 of the Complaint.

22. AutoNation denies the allegations of paragraph 21 of the Complaint.

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**FIRST CAUSE OF ACTION**
**(Unfair Trade Practices Act)**

23. Answering the allegations of paragraph 22 of the Complaint, AutoNation incorporates the proceeding responses as if set forth herein verbatim.

24. AutoNation denies the allegations of paragraph 23 of the Complaint.

25. AutoNation denies the allegations of paragraph 24 of the Complaint.

26. AutoNation denies the allegations of paragraph 25 of the Complaint.

27. AutoNation denies the allegations of paragraph 26 of the Complaint.

28. AutoNation denies the allegations of paragraph 27 of the Complaint.

29. AutoNation denies that Plaintiff is entitled to the relief requested in his prayer for relief.

**SECOND CAUSE OF ACTION**
**(Negligence)**

30. Answering the allegations of paragraph 28 of the Complaint, AutoNation incorporates the proceeding responses as if set forth herein verbatim.

31. AutoNation denies the allegations of paragraph 29 of the Complaint.

32. AutoNation denies the allegations of paragraph 30 of the Complaint.

33. AutoNation denies the allegations of paragraph 31 of the Complaint.

34. AutoNation denies the allegations of paragraph 32 of the Complaint.

35. AutoNation denies that Plaintiff is entitled to the relief requested in his prayer for relief.

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**FOR A SECOND DEFENSE**
**(Failure to State a Claim)**

36. Plaintiff has failed to state facts sufficient to constitute a cause of action against AutoNation, and Plaintiff's Complaint should be dismissed with prejudice pursuant to SCRCP, Rule 12(b)(6).

**FOR A THIRD DEFENSE**
**(Agreement to Arbitrate Claims)**

37. Plaintiff is precluded from proceeding with the Complaint in a judicial forum because Plaintiff agreed to arbitrate the claims asserted in the Complaint pursuant to the Arbitration Agreements signed by Plaintiff.

38. Plaintiff's Complaint should be stayed, and Plaintiff should be compelled to submit the Complaint to Arbitration.

**FOR A FOURTH DEFENSE**
**(Equitable Defenses)**

39. Plaintiff's claims are barred in whole or in part by all equitable defenses available to AutoNation, including, but not limited to, the doctrines of laches, waiver, consent, estoppel, unjust enrichment, and unclean hands.

**FOR A FIFTH DEFENSE**
**(Acts of Third Parties)**

40. Plaintiff's damages, if any, were not proximately caused by AutoNation. Plaintiff's damages, if any, are the sole and proximate result of the actions or omissions of another person or entity.

**FOR A SIXTH DEFENSE**
**(Failure to Mitigation Damages)**

41. Plaintiff's claims are barred in whole or in part for failing to mitigate their damages.

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**FOR A SEVENTH DEFENSE**
**(Statute of Limitations)**

42. Plaintiff's claims are barred by all applicable statute of limitations, if any.

**FOR AN EIGHTH DEFENSE**
**(Limitation on Punitive Damages)**

43. Plaintiff's award, if any, for punitive damages is subject to the limitations set forth in S.C. Code Ann. § 15-32-530, *et. seq.*

44. An award of punitive damages would violate the constitutional safeguards provided to AutoNation by the United States and South Carolina Constitutions.

**FOR A NINTH DEFENSE**
**(Federal Preemption)**

45. Plaintiff's claims for negligence and violation of the South Carolina Unfair Trade Practices Act are preempted by the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*

**FOR A TENTH DEFENSE**
**(Failure to Exhaust Administrative Remedies)**

46. Plaintiff failed to comply with the conditions precedent set forth by the Fair Credit Reporting Act prior to commencing this action and therefore Plaintiff's claims should be dismissed.

**FOR AN ELEVENTH DEFENSE**
**(Comparative Negligence)**

47. The doctrine of comparative negligence bars Plaintiff from any recovery, or in the alternative, requires that any recovery by Plaintiff be reduced in proportion to the amount of her own negligence.

WHEREFORE, having answered the Complaint, AutoNation requests that the Complaint be dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

**HAYNSWORTH SINKLER BOYD, P.A.**

*s/ James Y. Becker*

James Y. Becker, SC Bar No. 64991
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*Attorneys for Defendant Charleston ANUSA, LLC d/b/a AutoNation USA Charleston*

February 12, 2024

Columbia, South Carolina

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| | |
|---|---|
| STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS |
| COUNTY OF CHARLESTON | C/A No.: 2024-CP-10-00180 |
| Michael Bolmer,<br><br>Plaintiff,<br><br>v.<br><br>Charleston ANUSA, LLC d/b/a AutoNation USA Charleston and Westlake Services, LLC d/b/a Westlake Financial Services,<br><br>Defendants. | **MOTION TO STAY AND COMPEL ARBITRATION** |

Pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et. seq.* ("FAA"), Defendants Charleston ANUSA, LLC d/b/a AutoNation USA Charleston ("AutoNation") and Westlake Services, LLC d/b/a Westlake Financial Services ("Westlake") move for an order staying these proceedings and compelling the parties to arbitration. The grounds of this Motion are based on the following:

1. On March 14, 2023, Plaintiff Michael Bolmer ("Bolmer") and AutoNation entered into a Retail Purchase Agreement ("Purchase Agreement") for the purchase of a 2012 Ford Focus, VIN: 1FAHP3K2XCL273616 (the "Vehicle").

2. The Purchase Agreement contains an Arbitration Provision, a copy of which is attached hereto as **Exhibit A** (the "Purchase Agreement"). The Arbitration Provision provides, in part:

> **You and Dealer Parties** agree that **neutral and binding arbitration** on an individual basis only between You and Dealer Parties will be the **sole method of resolving any claim, dispute or controversy (collectively, "Claims")** that either party has arising out of or relating to Purchaser/Dealer Party Interactions . . . **Claims include, but are not limited to the following: Claims in contract, tort, regulatory, statutory, equitable, or otherwise; Claims**

> **relating to any representations, promises, undertakings, warranties, covenants or service; Claims regarding the interpretation, scope, or validity of this Agreement, or arbitrabiltiy of any issue; Claims between You and Dealer Parties; and Claims arising out of or relating to Your application for credit, this Agreement, and/or any and all documents executed, presented or negotiated during Purchaser/Dealer Party Interactions, or any resulting transaction, service, or relationship, including that with Dealer Parties, or any relationship with third parties who do not sign this Agreement that arises out of the Purchaser/Dealer Party Interactions**. . . . Any Arbitration hereunder shall be governed by the Federal Arbitration Act.

(emphasis added)).

3. The allegations and claims in Bolmer's complaint arise out of and relate to the sale and purchase transaction, and the financing contract for the Vehicle. Bolmer's claims are for unfair trade practices and negligence.

4. Therefore, the arbitration provisions in the Purchase Agreement covers this dispute. *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 81–82, 749 S.E.2d 139, 146 (Ct. App. 2013) (finding that where an arbitration provision of the agreement relates to all disputes, the agreement indicates an "unambiguous, mutual intent to arbitrate."); *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 6, 791 S.E.2d 128, 131 (2016) (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 590, 553 S.E.2d 110, 115 (2001)) (stating that the policy of the United States and of South Carolina is to favor arbitration of disputes); *Carolina Care Plan, Inc. v. United HealthCare Servs.*, Inc., 361 S.C. 544, 550, 606 S.E.2d 752, 755 (2004) (quoting *Stokes v. Metropolitan Life Ins. Co.*, 351 S.C. 606, 610, 571 S.E.2d 711, 714 (Ct. App. 2002)) ("In interpreting agreements within the scope of the FAA, 'due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor of arbitration.'"); *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014) (quoting *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 91 (2000))



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("[T]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.").

5. AutoNation therefore demands that Bolmer abide by the arbitration provision and requests that the Court stay this action and compel the parties to submit to binding arbitration pursuant to the Purchase Agreement.

6. This motion may be further supported by a memorandum of law to be filed prior to a hearing on the motion.

Respectfully submitted,

**HAYNSWORTH SINKLER BOYD, P.A.**

*s/ James Y. Becker*

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*Attorneys for Defendant Charleston ANUSA, LLC d/b/a AutoNation USA Charleston*

September 4, 2024

Columbia, South Carolina



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# EXHIBIT A

Retail Purchase Agreement

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SM: MICHAEL MONGE
SA: KIONNO NELSON
CFS: JOVAN ROSEBORO

# RETAIL PURCHASE AGREEMENT

FORM# 92505
STORE# 980
DEAL# 31129
STK# CL273616
CUST# 4438219

**AUTONATION USA CHARLESTON**
**2250 SAVANNAH HWY**
**CHARLESTON, SC 29414**
**(854) 222-6500**

03/14/2023

| | |
|---|---|
| PURCHASER | MICHAEL BOLMER |
| ADDRESS | 3961A APPLETREE AVE<br>CHARLESTON, SC 29418<br>arenotyoumi33@gmail.com |
| H: (843) 964-3549 | C: (843) 964-3549 |

**PURCHASE VEHICLE CLASSIFICATION**

☐ NEW ☒ USED ☐ DEMO

| | |
|---|---|
| YEAR / MAKE | 2012 FORD |
| MODEL / COLOR | FOCUS WHITE |
| VIN | 1FAHP3K2XCL273616 |
| MILEAGE | 135238 |
| CYL / ENGINE / TRANS | 4 2.0L 4 CYL A |

| | |
|---|---|
| **TRADE-IN VEHICLE 1** | |
| YEAR / MAKE / MODEL | 1998 NISSAN MAXIMA |
| VIN | JN1CA21A9WM805366 |
| MILEAGE | 222179 |
| **TRADE-IN VEHICLE 2** | |
| YEAR / MAKE / MODEL | N/A |
| VIN | N/A |
| MILEAGE | N/A |

Separate Trade Vehicle Payoff Authorization forms, incorporated by reference and made a part of this Agreement, contain representations and information about each Trade-In Vehicle, including the amount of the payoff and the lienholder.

**DISCLOSURES RELATED TO ITEMIZED FEES AND COSTS** (line items marked by an asterisk *)

**OPTIONAL ACCESSORIES / PRODUCTS / SERVICES:** You have elected to purchase optional items that are listed. We do not require You to purchase any of these items. The amount of these items represents cost and profit to Us.

**TOTAL SELLING PRICE:** The total selling price includes listed accessories, products, and services, and is the final contract price to which You and We have agreed.

**TRADE-IN ALLOWANCE:** The Trade-In Allowance(s) may not equate to the actual cash value of the Trade-In Vehicle(s). In fact, the amount allowed may exceed the actual cash value of Your Trade-In Vehicle(s).

**CLOSING FEE:** This charge represents a fee charged for all administrative and financial work needed to transfer the Vehicle to You including, but not limited to, compliance with all state, federal, and lender requirements, preparation and retrieval of documents, protection of Your private personal information, records retention and storage costs.

Purchaser: [signature] Co-Purchaser: N/A

**WARRANTY STATEMENT**

WE EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, UNLESS OTHERWISE INDICATED BELOW. ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN US ARE THEIRS, NOT OURS, AND ONLY SUCH MANUFACTURER OR SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. WE NEITHER ASSUME NOR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR US ANY LIABILITY IN CONNECTION WITH THE SALE OF THE VEHICLE AND THE RELATED GOODS AND SERVICES. IF WE SELL A SERVICE CONTRACT ON OUR OWN BEHALF, ANY IMPLIED WARRANTIES WILL APPLY ONLY WITH RESPECT TO THE ITEMS COVERED IN THE SERVICE CONTRACT. THIS WARRANTY STATEMENT DOES NOT LIMIT ANY WARRANTIES SET FORTH IN A SEPARATE WRITING GIVEN TO YOU IN CONNECTION WITH YOUR PURCHASE OF THE VEHICLE.

CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY): THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

DECLARACIÓN DE DIVULGACIÓN CONTRACTUAL (VEHÍCULOS USADOS SOLAMENTE): LA INFORMACION QUE APARECE EN LA VENTANILLA DE ESTE VEHICULO FORMA PARTE DE ESTE CONTRATO. LA INFORMACION CONTENIDA EN EL FORMULARIO DE LA VENTANILLA ANULA CUALQUIER PREVISION QUE ESTABLEZCA LO CONTRARIO Y QUE APAREZCA EN EL CONTRATO DE VENTA.

| | | |
|---|---|---|
| CO-PURCHASER | | |
| ADDRESS | N/A | |

**ITEMIZATION OF COSTS**

| | | |
|---|---|---|
| BASE SELLING PRICE | $ | 5991.00 |
| OPTIONAL ACCESSORIES / PRODUCTS / SERVICES* | | |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| TOTAL SELLING PRICE* | = | 5991.00 |
| LESS DISCOUNT | - | 500.00 |
| TRADE-IN 1 ALLOWANCE* | - | 500.00 |
| TRADE-IN 2 ALLOWANCE* | - | N/A |
| CASH DIFFERENCE | = | 5491.00 |
| Dealer Doc* | + | 494.50 |
| Plate Transfer Fee | + | 10.00 |
| N/A | + | N/A |
| SALES TAX / IMF | + | 299.28 |
| License | + | 40.00 |
| Title Fee | + | 15.00 |
| Electronic Filing Fee | + | 2.50 |
| N/A | | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| SUBTOTAL | = | 6352.28 |
| BALANCE OWED ON TRADE-IN(S) | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| TOTAL DUE | = | 6352.28 |
| FACTORY CASH / REBATE ASSIGNED TO DEALER | - | N/A |
| DOWN PAYMENT | - | 600.00 |
| UNPAID BALANCE DUE | = | 5752.28 |

**THIS AGREEMENT CONTAINS AN ARBITRATION PROVISION. AN AGREEMENT THAT DOES NOT INCLUDE AN ARBITRATION PROVISION IS AVAILABLE UPON YOUR REQUEST.**



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## TERMS AND CONDITIONS

### 1. DEFINITION OF TERMS

This Retail Purchase Agreement contains the following words and phrases that appear throughout and have particular meaning:

**Agreement** - Means this Retail Purchase Agreement together with any documents incorporated into this Retail Purchase Agreement by operation of law or by express reference, whether such reference is made in this Retail Purchase Agreement or the document itself.

**Retail Installment Sales Contract, RISC** – Means the separate sales contract that You will be required to sign if You are financing the Vehicle purchase and that will be assigned to a third-party financial institution.

**You, Your, Purchaser** - Means the Purchaser and Co-Purchaser identified on the first page of this Agreement.

**We, Us, Our, Dealer** - Means the Seller or Dealer identified on the first page of this Agreement and its authorized manager.

**Manufacturer** - Means the company that manufactured and/or distributed the Vehicle.

**Vehicle** - Means the vehicle described on the front of this Agreement that You are purchasing from Us.

**Trade-In Vehicle** - Means the vehicle that You are delivering to Us as part of this transaction to be applied against the Selling Price of the Vehicle that You are purchasing.

**After-Market** - Means not manufactured, produced, distributed, or warrantied by the Manufacturer of the Vehicle.

### 2. PURCHASED VEHICLES

a. **Additional Equipment, Accessories, Repairs or Services Owed:** You acknowledge that You have inspected the Vehicle and confirmed that, except as specifically listed in a We Owe form signed by You and Us, all equipment, accessories, repairs or services purchased by You or due to You are on the Vehicle or have been provided to You. You further acknowledge that the Vehicle does not have any visible damage that We are obligated to repair, except as specifically identified on a We Owe form. If the We Owe form is blank or otherwise indicates that nothing further is to be done to the Vehicle, You acknowledge that no equipment, accessories, services, or repairs are due to You. Any equipment, accessories, repairs, or services listed on a We Owe form shall be installed or performed within 30 days from the date of delivery of the Vehicle pursuant to an advanced appointment with Our Service Department initiated by You. If You fail or refuse to provide the Vehicle to Us for such installation, repairs, or services, any items or services requested shall remain the property of Dealer and We may keep any cash deposit You have provided, to the extent not prohibited by law.

b. **Manufacturer Changes in Design or Price:** In the event You have placed an order for the Vehicle and the Manufacturer changes or modifies the design of any part or accessory of the Vehicle after Your order has been entered by Us, You will not have any claim or right against Us if the Vehicle does not contain such changes or modifications, nor shall We be required to affect such changes or modifications to the Vehicle. If You have placed an order for the Vehicle and the selling price of the Vehicle is increased prior to delivery to You due to price changes imposed by the Manufacturer, You may cancel this Agreement prior to accepting delivery of the Vehicle.

c. **After-Market Products, Services, Parts and Accessories: We offer many value-added protection products, services, parts, and accessories for sale that are not products of the Vehicle's Manufacturer. Coverage, product guarantees and/or warranties on these After-Market products and services are not provided by the Manufacturer or its affiliates, but instead by the maker of the product, a service administrator, and/or an insurer. If You have purchased any AutoNation or other After-Market products, refer to the specific product agreement for terms, conditions, specific coverage details, product guarantees, and service contract and/or warranty information. If You are purchasing a used vehicle, We may have used quality After-Market parts to make repairs or perform maintenance, or We may have installed After-Market equipment or accessories. Any warranty on these parts, equipment and accessories is not provided by the Manufacturer.**

d. **Financing:** If this Agreement is part of a credit purchase, You may secure financing through any financing entity You choose. In addition, at Your request We may assist You in obtaining financing with a third-party financing entity. If We assist You in obtaining financing, We are not acting as an agent for You in obtaining such financing and We may retain a portion of the finance charge that You pay or other compensation. Interest rates may be negotiable. The purchase of protection products is not required to obtain financing or a lower interest rate.

e. **Recall Disclosure:** We have provided You with a printout containing the Vehicle's recall status. We use electronic and/or automated resources to check for recalls and ensure open safety recall repairs are completed or disclosed before a vehicle is sold. We may not check for or be aware of non-safety recalls, including EPA emissions recalls. Moreover, due to data errors or delays We may not have complete and accurate information regarding all recalls at the time of sale. We do not warranty, guarantee or make any assurances about the information provided by third parties regarding recall status. We are not obligated to advise You of recalls that may be announced after this sale. You may obtain recall information related to the Vehicle at any time by: completing a VIN look-up at the National Highway Traffic Safety Administration (NHTSA) website, www.safercar.gov; accessing resources provided by the Vehicle Manufacturer; or by contacting a dealership that represents the Manufacturer of the Vehicle.

f. **Used Vehicle History Disclosure:** Our pre-sale used vehicle reconditioning inspections are limited in scope and are not a warranty or guarantee of the mechanical components, equipment, systems, condition, prior use, title history, or accident history of the Vehicle (unless otherwise expressly provided pursuant to Manufacturer's Certified Pre-Owned program rules and guidelines or Dealer's Used Vehicle Limited Warranty). You may obtain an independent third-party inspection of the Vehicle prior to purchase. We are not affiliated with CARFAX, have not verified the information in the CARFAX Vehicle History Report, and are not responsible for any inaccuracies therein.

g. **5 Day / 250 Mile Money-Back Guarantee (eligible used/demo vehicles only):** We are providing a Money-Back Guarantee for eligible vehicles. The Money-Back Guarantee shall not apply to vehicles designated as New on this Agreement, to vehicles with a selling price of $200,000 or more, to vehicles You decide to purchase at lease end (lease buyouts), to vehicles to which special equipment was added at the time of sale at Your request, or to vehicles delivered to You out of state. You are limited to one Money-Back Guarantee vehicle return during any twelve-month period at any AutoNation owned store. For eligible vehicles, the following terms and conditions apply:

   i. You must return the Vehicle to the same Dealer location from which the Vehicle was purchased within five (5) business days ("Expiration Date").

   ii. The Vehicle must have less than 250 miles over the odometer reading at sale as set forth in this Agreement and must be in the same condition (excepting allowable mileage) in which it was delivered to You. You will not be reimbursed for any money spent on the Vehicle while in Your possession.

   iii. You must return the Vehicle, together with all Vehicle purchase, finance, and/or lease transaction documents to a manager of Dealer no later than the Dealer closing time on the Expiration Date.

   iv. If You financed any portion of the purchase price of the returned Vehicle, We will pay the financed amount directly to the party providing such financing. Any down payment paid by You shall be refunded to You, subject to subsection v. below.

   v. If You traded in a vehicle in connection with the purchase, You shall receive one of the following remedies: Trade-In Vehicle Not Available – If Your Trade-In Vehicle has been sold by Us, We shall only be obligated to return the value (in cash) of the Trade-In Vehicle as appraised by Us at the time of the sale, less any amounts due to Us or paid by Us to satisfy any liens or encumbrances thereon. You agree that payment under this section shall be deemed to be full restoration of the consideration provided by Us for the Trade-In Vehicle. If the Trade-In Vehicle's appraised value is less than the total amount paid by Us to satisfy liens or encumbrances thereon, You must pay the difference to Us before the Vehicle will be accepted for return; Trade-In Vehicle Available – In the event that the Trade-In Vehicle is still in Our possession, We shall return Your Trade-In Vehicle to You so long as You concurrently pay to Us any amounts due to Us or paid by Us to satisfy any liens or encumbrances thereon. In all cases, regardless of whether the Trade-In Vehicle is available, if You are unable or unwilling to pay Us any amounts due to Us or paid by Us on Your behalf, We may deduct such amounts from any refunds due to You in addition to availing ourselves of any other remedies available to Us at law or in equity.

## 5. TRADE-IN VEHICLES, cont.

b. **Purchaser Obligations with Respect to Trade-In Vehicles:** Any Trade-In Vehicle delivered by You to Us in connection with this transaction shall be accompanied by a title or documents sufficient to enable Us to obtain a title to the Trade-In Vehicle in accordance with applicable state law. You agree to sign any and all documents necessary to comply with Your obligations under this section. You further agree that Your failure to comply with this section will result in Your obligation to pay Us the value of the Trade-In Vehicle in cash.

c. **Permission to Contact Lienholder:** You acknowledge and agree that You have given Us permission to contact the lienholder on Your Trade-In Vehicle(s) in order to obtain payoff information regarding the Trade-In Vehicle(s) described in this Agreement. You understand that information about Your account(s) is private and that the lienholder may be asked to reveal nonpublic personal information about You to Us. In accordance with federal and state privacy laws, You hereby authorize the lienholder to release Your payoff information to Us and answer any questions that We have with respect to Your account(s). This information will be used only in connection with the transaction that You have initiated and only for the purposes for which it has been provided.

d. **Damage to Trade-In Vehicle:** If You are delivering a Trade-In Vehicle to Us in connection with this transaction and the delivery of the Trade-In Vehicle to Us will not occur until We deliver the Vehicle to You, the Trade-In Vehicle allowance set forth in this Agreement may be reduced if the value of the Trade-In Vehicle has been materially diminished as a result of physical damage, alteration or deterioration in mechanical condition other than normal wear and tear. If You are dissatisfied with the reduced Trade-In Vehicle allowance, You may cancel this Agreement and We will refund to You any deposit or partial payment, provided that the cancellation occurs prior to You taking delivery of the purchased Vehicle.

## 6. ADDITIONAL TERMS

a. **No Oral Promises: YOU ACKNOWLEDGE AND AGREE THAT YOU ARE NOT RELYING UPON ANY STATEMENT OR PROMISE BY ANY SALESPERSON, SALES MANAGER, OR ANY OTHER EMPLOYEE OF OURS THAT IS NOT CONTAINED IN A WRITTEN DOCUMENT EXECUTED BY US AND YOU.**

b. **Limitation of Liability: TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU SHALL NOT BE ENTITLED TO RECOVER FROM US ANY CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF USE, LOSS OF TIME, AND LOSS OF PROFITS OR INCOME), OR ANY OTHER INDIRECT OR INCIDENTAL DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM THIS AGREEMENT OR TRANSACTION.**

c. **Purchaser's Rights Due to Dealer's Failure to Deliver Vehicle:** If the Vehicle is not delivered to You as specified in accordance with this Agreement and the failure to deliver is not attributed to You, You have the right to cancel this Agreement and to receive a full refund of Your deposit. If you have delivered a Trade-In Vehicle to Us, the Trade-In Vehicle shall be returned to You, or if the Trade-In Vehicle is not available We shall refund to You the actual value of the Trade-In Vehicle.

d. **Purchaser's Obligation to Pay:** You grant to Us and We retain a security interest in the Vehicle and any Trade-In Vehicle until such time as You have met Your obligation under this Agreement. If this is a cash sale, payment is demanded and due upon delivery of the Vehicle. If any payment to Us, whether as a deposit or full or partial payment, is made by check which is subsequently dishonored, You agree that, within 24 hours following written or oral notice from Us that the check has been dishonored, You will (a) pay Us the amount of the returned check along with any applicable bank charges, in cash or certified funds, or (b) return the Vehicle to Us. If You fail to timely pay the amount of the returned check and applicable charges in good funds or return the Vehicle to Us, We may, at Our sole option, pursue all available legal remedies that We may have, including reaffirming this Agreement and holding You contractually liable for the Unpaid Balance Due, as shown on the front of this Agreement, or canceling the sale and retaking immediate possession of the Vehicle and collecting from You all reasonable expenses incurred by Us in connection with retaking the Vehicle. Upon return or retaking of the Vehicle, You also agree to pay for any damages to the Vehicle that occurred while the Vehicle was in Your possession or under Your control and a daily rental charge of $99 for each day that the Vehicle remained in Your possession or under Your control. In the event that Your check is dishonored, We may also retain title to the Vehicle until full payment is received for the dishonored check and applicable bank charges.

e. **Purchaser's Obligation to Assist with Registration and Titling:** You agree to cooperate and sign all documents and take all necessary steps We may require to enable Us to complete the title application, have a title issued, complete the registration, record any financing entity lien and effectuate the intent of the parties and consummate the transaction as agreed to herein or in the associated Retail Installment Sales Contract.

f. **Dealer's Rights Upon Default by Purchaser:** In the event of any failure by You to perform Your obligations under this Agreement including, but not limited to, any failure to take delivery of or to pay the agreed upon price for the Vehicle, We shall be permitted to collect or retain an amount equal to any damages and reasonable expenses We incur due to Your default. If You have delivered a Trade-In Vehicle to Us as part of this transaction, We may return any Trade-In Vehicle to You if We have not already sold it so long as You concurrently pay to Us any amounts due to Us or paid by Us to satisfy any liens or encumbrances thereon. If We have already sold the Trade-In Vehicle(s), We will refund to You the actual cash value of the Trade-In Vehicle(s) less any amounts due or paid by Us to satisfy any liens or encumbrances thereon, but if the amounts paid by Us to satisfy any liens or encumbrances exceed the actual cash value of the Trade-In Vehicle(s), You must pay the difference to us. Moreover, in all instances, We may deduct all damages, reasonable expenses and amounts owed to Us from any refunds due to You, in addition to availing ourselves of any other remedies available to Us at law or in equity.

g. **Jury Trial Waiver: BY ENTERING INTO THIS AGREEMENT YOU AGREE TO WAIVE YOUR RIGHT TO A JURY TRIAL.**

h. **Jurisdiction/Venue:** All proceedings described in the Arbitration Provision section of this Agreement shall take place in the county where Dealer is located, unless agreed otherwise by the parties. If a dispute arising under or concerning this Agreement proceeds in court, including by agreement of the parties or by court order, such dispute shall be filed and adjudicated in the courts located in and for the county in which Dealer is located. This Agreement shall be construed and governed by the laws of the state in which Dealer is located.

i. **Personal Information:** You have provided certain personal and identifying information to Us in connection with this transaction. You expressly consent to Us obtaining such information from Your driver's license or other identifying documents by means of photocopy, scan, swipe, accessing machine-readable information, or otherwise, and copying, retaining and using such information for the purposes of identity verification, fraud prevention, and/or processing of this transaction.

j. **Electronic Records:** You agree that We may maintain documents and records related to the Vehicle and this Agreement electronically, including, but not limited to, documents and records images, and that We may dispose of original documents. You agree that a copy of any such electronic records may be used and shall be deemed to be the same as an original in any arbitration, judicial, non-judicial or regulatory proceeding related to the Vehicle.

k. **Communications:** You agree that We may monitor and record telephone calls between You and Us. You expressly consent that We may contact You (by calls, emails, text messages, or other electronic messages) by any means, including but not limited to the use of prerecorded/artificial voice messages or automatic telephone dialing devices. Your express consent applies to any email addresses or telephone numbers We obtain from You or that You provide in any manner and at any time, including email addresses and residential or cellular telephone numbers for which You may incur voice, data, or other charges.

l. **General Provisions:**
   i. You agree to sign any and all documents necessary to compete the terms of the sale.
   ii. All pages of this Agreement and any documents incorporated by reference or operation of law comprise the entire Agreement affecting this sale.
   iii. If any provision of this Agreement is determined to be unenforceable, such provision shall be considered severed from the remaining provisions of this Agreement and such remaining provisions shall be and remain in full force and effect unless otherwise expressly stated.
   iv. The provisions of this Agreement shall survive the execution of a Retail Installment Sales Contract and/or consummation of Your purchase of the Vehicle. This Agreement shall not become binding upon Us until signed by Our authorized manager, and if a credit purchase, (i) appropriate financing disclosures are made and (ii) a Retail Installment Sales Contract is executed by You and Us.



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## 3. VEHICLE DISCLOSURES AND RECALL STATUS ACKNOWLEDGMENT (USED/DEMO VEHICLES)

You certify and acknowledge as follows:

a. Prior to You signing this Agreement, We provided You with each of the following documents:
- **Recall Status from the Manufacturer, NHTSA, CARFAX, or other source listing any open recalls**
- **Manufacturer Certified Pre-Owned (CPO) Vehicle Inspection Report or AutoNation Pre-Owned Vehicle Inspection Report**
- **CARFAX Vehicle History Report**
- **Used Vehicle Buyer's Guide**

b. Where possible, We gave You the opportunity to schedule or complete recall repairs prior to delivery.

c. You have reviewed and understand the above terms of the 5 Day/ 250 Mile Money-Back Guarantee, including that it does not apply to vehicles priced at $200,000 or higher, to lease buyouts, to vehicles with special equipment added at Your request, or to vehicles delivered out of state.

d. You have not relied upon any oral statement or promise by any sales associate, sales manager, or other employee of Dealer regarding the prior use, condition, title history, or accident history of the Vehicle. You understand and agree that Dealer has not verified the information in the CARFAX Vehicle History Report and is not responsible for any inaccuracies therein. Purchaser: _____ Co-Purchaser: N/A

## 4. VEHICLE FINANCING CONTINGENCY - CONDITIONAL SALE AND DELIVERY PROVISION

**WE ARE NOT A LENDER OR FINANCE COMPANY. YOUR PURCHASE OF THE VEHICLE IS CONDITIONED UPON FINAL APPROVAL (WITH NO CONDITIONS OR STIPULATIONS) BY A THIRD-PARTY FINANCE COMPANY. IF YOU ARE NOT FINALLY APPROVED FOR FINANCING BY A THIRD-PARTY FINANCE COMPANY, THEN THE TRANSACTION IS CANCELED AND YOU AGREE TO RETURN THE VEHICLE TO US. THIS PROVISION DOES NOT APPLY TO CASH SALES.**

Your purchase of the Vehicle is conditioned upon an agreement by a third-party finance company ("Finance Company") to purchase the Retail Installment Sales Contract ("RISC") entered into between You and Us. If We cannot assign or sell the RISC to a Finance Company for any reason including, but not limited to, that You have furnished incomplete, inaccurate or false information, We may cancel the RISC and You agree to return the Vehicle to Us within 48 hours after You receive notice of cancellation from Us. If You fail to return the Vehicle within 48 hours, You agree that We may, solely at Our option, and as may be permitted by applicable law, immediately retake possession of the Vehicle with right of entry wherever the Vehicle may be found and collect from You all reasonable expenses incurred by Us in connection with retaking the Vehicle. Upon return or retaking the Vehicle You also agree to pay for any damages to the Vehicle incurred while the Vehicle is in Your possession or under Your control and to pay the lesser of (i) $99.00 per day and 99 cents per mile in excess of the Permitted Mileage rental charge or (ii) the maximum amount allowed by law for vehicle usage/rental charges, for each day following the 48 hour return period. For each day the Vehicle is in Your possession up to and including the 48 hour period following the notice of cancellation from Us, You are allowed to place up to 100 miles per day on the Vehicle ("Permitted Mileage"). The usage/rental fee (if any) may be deducted from any down payment made by You on the Vehicle. You will be entitled to a refund of any monies paid by You, less any expenses and/or charges as described above.

While the Vehicle is in Your possession, all terms of this sale, as set forth in this Agreement and in the RISC, including those relating to the use of the Vehicle and insurance for the Vehicle (comprehensive/collision, personal injury and any other state required insurance coverage) will be in full force. You acknowledge and agree that until the Vehicle has been returned to Us, You assume all risk of loss or destruction of and all risk of damage to the Vehicle and all liability for any damage or injury to people or property (including the Vehicle) from the use or operation of the Vehicle. You will maintain insurance on the Vehicle to cover such risks, and the insurance that You provide shall be primary. You hereby assign to Us the right to receive proceeds payable to You under all insurance policies covering said accident and You hereby authorize and direct the carriers of all such insurance policies to pay said proceeds directly to Us by check or draft payable to the order of You alone. We are hereby irrevocably appointed Your attorney in fact to endorse Your name to any checks or drafts issued by such insurance carriers by reason of such accident. Any such proceeds received by Us shall be applied toward payment of Your obligation hereunder and any excess of such proceeds over said obligation shall be remitted to You. You agree to defend, indemnify and hold Us harmless along with Our shareholders, officers, employees, agents, successors, assigns and insurers from and against any and all claims, demands, suits, actions, settlements, damages, costs and/or expenses (including attorney's fees and expenses) relating to or arising out of or in connection with the use or operation of the Vehicle until the Vehicle has been returned to Us.

This Conditional Sale and Delivery Provision is entered into contemporaneously with Your RISC, if any. In the event of a conflict between the terms of this Conditional Sale and Delivery Provision and those of the RISC, the terms shall be construed together to the extent possible and only the terms of this Conditional Sale and Delivery Provision that are in direct conflict with those of the RISC shall be disregarded. If there is an irreconcilable difference between this Conditional Sale and Delivery Provision and the RISC, such that the two cannot be read together and which renders enforcement of this Conditional Sale and Delivery Provision impossible or impractical, then the terms of the RISC shall govern.

**IF YOU ARE UNSURE ABOUT THE STATUS OF YOUR TRANSACTION, WITHIN SEVEN (7) DAYS FROM THE DATE OF THIS AGREEMENT YOU SHOULD CONTACT US TO CONFIRM THAT YOU HAVE BEEN APPROVED FOR FINANCING.**

Purchaser: _____ Co-Purchaser: N/A

## 5. TRADE-IN VEHICLES

a. Purchaser Representations and Warranties Regarding Trade-In Vehicles: With respect to each Trade-In Vehicle, You represent and warrant that: (i) the Trade-In Vehicle is properly titled to You, You have the right to sell or otherwise convey such Trade-In Vehicle, and it is free and clear of liens or encumbrances except as may be noted on the first page of this Agreement and/or on a separate Trade Vehicle Payoff Authorization form; (ii) the Trade-In Vehicle has not had its vehicle identification number ("VIN") altered or changed and the VIN appearing on the Trade-In Vehicle corresponds to the VIN which appears on the certificate of title; and (iii) the Trade-In Vehicle has all required air pollution control equipment properly connected and undamaged. In addition, unless You specifically advise Us otherwise in writing, with respect to each Trade-In Vehicle You represent and warrant that the Trade-In Vehicle has never been titled a salvage, junk, rebuilt or lemon law buyback vehicle; is not a gray market vehicle; has never been used in police or taxi service; has not suffered any damage whatsoever to the frame, structural damage, cracks to the engine block, or flood or water penetration damage; You have not removed equipment from the Trade-In Vehicle; and the odometer reading shown is accurate. If any of the foregoing representations and warranties are untrue or incorrect, We may, at Our sole option, retain the Trade-In Vehicle as security and collect damages or We may rescind the purchase of the Trade-In Vehicle and/or Your purchase of the Vehicle.



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## 7. ARBITRATION PROVISION

This section applies to Your: (a) purchase of the Vehicle, and purchase or lease of any other vehicle(s), including any negotiations or application(s) for credit or other dealings or interactions with Dealer and/or Dealer's parents, subsidiaries, affiliates, predecessors, successors, and assigns, and each of their respective owners, directors, officers, managers, employees, vendors and agents (hereinafter Dealer and all other parties listed in this subsection (a) collectively referred to as "Dealer Parties"); (b) servicing the Vehicle or any other vehicle(s) with any of the Dealer Parties; and (c) reviewing, negotiating or executing any documents or agreements during the course of interactions with any of the Dealer Parties (collectively, including all subparts listed above, "Purchaser/Dealer Party Interactions").

You and Dealer Parties agree that neutral and binding arbitration on an individual basis only between You and Dealer Parties will be the sole method of resolving any claim, dispute or controversy (collectively, "Claims") that either party has arising out of or relating to Purchaser/Dealer Party Interactions, with the sole exception that either party may file and adjudicate Claims in a small claims court as an alternative to proceeding with arbitration, provided the total amount sought in small claims court, inclusive of attorney's fees and costs, if applicable, is less than the statutory dollar amount of that court's civil jurisdiction. Claims include, but are not limited to the following: Claims in contract, tort, regulatory, statutory, equitable, or otherwise; Claims relating to any representations, promises, undertakings, warranties, covenants or service; Claims regarding the interpretation, scope, or validity of this Agreement, or arbitrability of any issue; Claims between You and Dealer Parties; and Claims arising out of or relating to Your application for credit, this Agreement and/or any and all documents executed, presented or negotiated during Purchaser/Dealer Party Interactions, or any resulting transaction, service, or relationship, including that with Dealer Parties, or any relationship with third parties who do not sign this Agreement that arises out of the Purchaser/Dealer Party Interactions.

**BY ENTERING INTO THIS AGREEMENT, YOU GIVE UP YOUR RIGHT TO HAVE DISPUTES DECIDED IN COURT (OTHER THAN SMALL CLAIMS COURT) OR BY A JURY. YOU UNDERSTAND THAT DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A COURT ACTION, AND OTHER RIGHTS THAT YOU MAY HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION. YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN AN ACTION AGAINST ANY DEALER PARTIES ON A CLASS, REPRESENTATIVE OR OTHER SIMILAR BASIS (COLLECTIVELY, "CLASS ACTION"), INCLUDING ANY RIGHT TO CLASS ARBITRATION OR CONSOLIDATION OF INDIVIDUAL ARBITRATIONS WITH OTHER CLAIMANTS.**

To demand arbitration, the party seeking arbitration must serve the opposing party with a written demand for arbitration which includes a detailed statement of the facts supporting the claim and the relief requested. Once a demand for arbitration has been made by either party, arbitration shall be the exclusive means of resolving the subject dispute or controversy. Failure to arbitrate as required herein may subject the party failing to arbitrate to liability for consequential damages sustained by the other party. Any arbitration hereunder shall be governed by the Federal Arbitration Act (9 U.S.C. § 1, et seq., hereinafter the "FAA") and not by any state law concerning arbitration. The parties shall agree in writing as to the arbitration forum and/or arbitration rules. The arbitration will be conducted by a single arbitrator ("Arbitrator") who shall be an attorney or retired judge selected by mutual agreement. If the parties cannot agree on the selection of an Arbitrator, either party may seek appointment of an Arbitrator pursuant 9 U.S.C. § 5. Your portion of the cost of the arbitration itself and/or the Arbitrator's fees shall be limited to the amount of the filing fee in effect for the Federal District Court in the District in which the arbitration takes places at the time the demand is filed. Dealer shall pay all arbitration costs and Arbitrator's fees in excess of that amount, unless the Arbitrator later shifts responsibility for fees under applicable law. Each party, however, shall be responsible for its own attorney or expert fees and litigation costs, unless otherwise awarded by the Arbitrator under applicable law.

The Arbitrator shall follow controlling law and issue a reasoned decision in writing with a supporting opinion based on applicable law. If there is no appeal as stated below, the Arbitrator's award shall be final, binding, and conclusive on the parties (except as otherwise provided for under the FAA) and any unpaid award may be confirmed or entered in any court of competent jurisdiction. At either party's election and within 30 days of receipt of the Arbitrator's award, such award may be appealed to another arbitrator ("Appellate Arbitrator"), who shall be a single person and who shall be chosen in the same manner as described above. The Appellate Arbitrator shall apply to the underlying decision and opinion the same standard of review applicable for review of the rulings from a bench trial of a civil case in the appellate court in the county in which the arbitration is proceeding and shall issue a reasoned decision in writing with a supporting opinion based on such review and applicable law. The Appellate Arbitrator's decision shall be final, binding, and conclusive on the parties (except as otherwise provided for under the FAA) and any unpaid award may be confirmed or entered in any court of competent jurisdiction. In the event either party files a Claim(s) against the other, resulting in a ruling that a portion of this Arbitration Provision is unenforceable, the portion of this Arbitration Provision that has been ruled to be unenforceable shall be severed, and the remaining terms shall be enforced. However, if the portion of the Arbitration Provision that was ruled to be unenforceable is or includes the above waiver of Class Action rights, then this Arbitration Provision shall be unenforceable in its entirety.

Purchaser: Michelle Boden  Co-Purchaser: N/A

## 8. FINAL SIGNATURE BLOCK

By signing below You represent that You are at least 18 years of age and have authority to enter into this Agreement. You have read all pages of this Agreement in their entirety (including the above Arbitration Provision) and hereby acknowledge that this Agreement is fully filled in and accurately reflects the negotiations and agreements between You and Dealer. If You did not understand any of the above, You have had Your own representative and agent read and explain in Your native language (or have had the opportunity but have elected not to do so) all of the above and foregoing. **NO REPRESENTATIONS HAVE BEEN MADE THAT ARE NOT SET FORTH HEREIN.**

Purchaser Signature: Michelle Boden

Co-Purchaser Signature: N/A

Dealer Signature

**MAKE SURE YOU RECEIVE A WRITTEN RECEIPT FOR ANY CASH TENDERED ON THIS TRANSACTION**

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| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF CHARLESTON<br><br>Michael Bolmer,<br><br>Plaintiff,<br><br>v.<br><br>Charleston ANUSA, LLC d/b/a AutoNation USA Charleston and Westlake Services, LLC d/b/a Westlake Financial Services,<br><br>Defendants. | IN THE COURT OF COMMON PLEAS<br><br>C/A NO: 2024-CP-10-00180 |

**DEFENDANTS MEMORADNUM IN SUPPORT**
**OF MOTION TO STAY AND COMPEL ARBITRATION**

Defendants Charleston ANUSA, LLC d/b/a AutoNation USA Charleston ("AutoNation") and Westlake Services, LLC d/b/a Westlake Financial Services ("Westlake") (collectively, "Defendants") submit this memorandum in support of their motion to stay and compel arbitration filed on September 4, 2024.

**BACKGROUND**

Plaintiff Michael Bolmer ("Bolmer") purchased a 2012 Ford Focus, VIN #1FAHP3K2XCL273616 (the "Ford Focus") from AutoNation in March 2023. (Compl. ¶ 11.) When Bolmer purchased the Ford Focus, he executed a Retail Purchase Agreement, which contained an Arbitration Provision. (*See* Exhibit A.) The purchase was financed through Westlake (the "Loan"). (*Id.* ¶ 12.) Bolmer later returned the Ford Focus under AutoNation's return policy and purchased a different vehicle instead. (*Id.* ¶ 13.) Despite returning the vehicle and rescinding the Loan, Bolmer alleges that Westlake continued to demand payment from Bolmer, which resulted in damages from negative credit reporting. (*Id.* ¶ 15.)

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Prior to filing this lawsuit, in June 2023, Bolmer filed a demand for arbitration with the American Arbitration Association (the "AAA") pursuant to the Retail Purchase Agreement. (*Id.* ¶ 16.) The AAA sent correspondence to AutoNation informing it of Bolmer's demand for arbitration in August 2023 (the "Demand") requesting the filing fee. (*Id.* ¶ 18.) Evidently, the AAA mailed the Demand and all subsequent notices directly to AutoNation's dealership location rather than its registered agent. (*Id.*) On September 8, 2023, the AAA notified AutoNation that the filing fees were due on September 22, 2023. (*Id.* ¶ 19.) Unfortunately, the appropriate AutoNation personnel – the employees who handle legal claims – did not timely receive the notice. AutoNation inadvertently missed the deadline to pay and mistakenly failed to remit payment. But AutoNation did not intentionally refuse to participate in the arbitration.

In fact, AutoNation reached out to the undersigned counsel on or about October 4, 2023, requesting that this law firm represent AutoNation in the arbitration demand filed by Bolmer. The next day, AutoNation's counsel contacted the AAA and filed a notice of appearance in the matter. Shortly after filing the notice of appearance, the AAA notified AutoNation's counsel that the case was closed on September 27, 2023. The AAA informed AutoNation that it could re-open the case with the consent of Bolmer. To that end, AutoNation's counsel requested Bolmer's cooperation in re-opening the file as directed by the AAA. Bolmer's counsel, however, would not cooperate in re-opening the case, arguing that AutoNation had waived its rights to arbitration. Bolmer subsequently filed this lawsuit.

**STANDARD OF REVIEW**

"The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). In determining whether "an arbitration agreement encompasses a dispute[,] a

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court must [decide] whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim." *S.C. Pub. Serv. Auth. v. Great W. Coal (Kentucky), Inc.*, 312 S.C. 559, 563, 437 S.E.2d 22, 25 (1993) (citing *Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.*, 473 U.S. 614, 626 (1985)). And "unless the court can say with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the dispute, arbitration should be ordered." *Id.*

"[T]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration." *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014) (citing *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 91 (2000)). "Any doubts concerning the scope of arbitration should be resolved in favor of arbitration." *Great W. Coal (Kentucky), Inc.*, 312 S.C. at 564, 437 S.E.2d at 25 (citing *Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 24–5 (1983)).

## ARGUMENT

### I. THIS ACTION IS SUBJECT TO MANDATORY ARBITRATION UNDER THE FEDERAL ARBITRATION ACT.

The policy of South Carolina and the United States is to favor the arbitration of disputes. *Tritech Elec., Inc. v. Frank M. Hall & Co.*, 343 S.C. 396, 399, 540 S.E.2d 864, 865 (Ct. App. 2000); *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984). The Arbitration Provision signed by Bolmer clearly states that any arbitration "shall be governed by the Federal Arbitration Act" (the "FAA"). *See* Exhibit A. Both South Carolina courts and the Fourth Circuit compel arbitration under the FAA when a litigant can demonstrate:

> (1) the existence of a dispute between the parties, (2) a written agreement that includes an arbitration provision which purports to cover the dispute, (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce, and (4) the failure, neglect or refusal of the [litigant] to arbitrate the dispute.

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*Adkins v. Lab. Ready, Inc.*, 303 F.3d 496, 500–01 (4th Cir. 2002); *see Episcopal Hous. Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 637, 239 S.E.2d 647, 650 (1977) (applying the same elements). Each element is met here.

**A. The Arbitration Provision covers the dispute between AutoNation and Bolmer.**

The first two elements outlined in *Adkins* are clearly met: (1) there is a dispute between AutoNation and Bolmer; and (2) there is a written agreement that includes an arbitration provision covering the dispute between the parties.

First, it is clear that there is a dispute between AutoNation and Bolmer. Bolmer filed this lawsuit alleging negligence and a violation of the unfair trade practices act relating to the sale and financing of the Ford Focus. Second, the Arbitration Provision covers the allegations and causes of action in the Complaint. *See Towles v. United HealthCare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999) ("An arbitration clause is a contractual term, and general rules of contract interpretation must be applied to determine a clause's applicability to a particular dispute.") The Arbitration Provision explicitly covers claims and disputes related to:

> **You and Dealer Parties** agree that **neutral and binding arbitration** on an individual basis only between You and Dealer Parties will be the **sole method of resolving any claim, dispute or controversy (collectively, "Claims")** that either party has arising out of or relating to Purchaser/Dealer Party Interactions . . . **Claims include, but are not limited to the following: Claims in contract, tort, regulatory, statutory, equitable, or otherwise; Claims relating to any representations, promises, undertakings, warranties, covenants or service; Claims regarding the interpretation, scope, or validity of this Agreement, or arbitrabiltiy of any issue; Claims between You and Dealer Parties; and Claims arising out of or relating to Your application for credit, this Agreement, and/or any and all documents executed, presented or negotiated during Purchaser/ Dealer Party Interactions, or any resulting transaction, service, or relationship, including that with Dealer Parties, or any relationship with third parties who do not sign this Agreement that arises out of the Purchaser/Dealer Party Interactions.**

*See* Exhibit A.

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Bolmer alleges that his credit was damaged after he received demand letters from Westlake for payments despite returning the Ford Focus and rescinding the Loan. Clearly, his complaint arises out of his application for credit and any resulting transaction with Dealer Parties, including Westlake.

**B. The Arbitration Agreement implicates interstate commerce.**

The Contract between Bolmer and AutoNation is for the purchase and financing of a vehicle. The South Carolina Supreme Court has held that vehicle contracts involve interstate commerce for the purpose of the FAA. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. at 22 n. 1, 644 S.E.2d at 667 n. 1; *see York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 79, 749 S.E.2d 139, 145 (Ct. App. 2013) (affirming that vehicle sales contracts involve interstate commerce); *see also Stout v. J.D. Byrider*, 228 F.3d 709, 715 (6th Cir.2000) (holding contracts for the purchase and financing of a vehicle involve interstate commerce); *Scott v. EFN Invs., LLC*, 312 F. App'x 254 (11th Cir. 2009).

To be sure, "[w]hen a case involves allegations of the use of the instrumentalities of interstate commerce, *or persons or things in interstate commerce*, a court need not reach the question whether the underlying transaction 'substantially affects' interstate commerce, because such persons and things, by definition, substantially affect—because they are components of—interstate commerce." *Thornton v. Trident Med. Ctr., L.L.C.*, 357 S.C. 91, 100, 592 S.E.2d 50, 54 (Ct. App. 2003) (emphasis added). The purchase and financing of a vehicle clearly involves a "thing" in interstate commerce. Consequently, the Retail Purchase Agreement between Bolmer and AutoNation involves interstate commerce as required by the FAA.

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**C. Bolmer has failed or refused to arbitrate the dispute.**

Bolmer refused to re-open the arbitration case, and instead initiated this lawsuit. Bolmer has continued to refuse requests to submit the complaint to binding arbitration arguing that AutoNation waived its rights to compel arbitration.

**III. Defendants did not waive their right to arbitration.**

In Bolmer's complaint, he alleges that AutoNation waived its right to arbitration by failing to participate in the original arbitration demand. Although "parties may waive their right to enforce an arbitration clause . . . , there is a presumption against finding a party has waived its right to compel arbitration." *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 387-88, 759 S.E.2d 727, 736 (2014). To that end, the "party seeking to prove a waiver of a right to arbitrate carries a heavy burden." *Id.* Under federal and South Carolina law, "[w]aiver is a voluntary and intentional abandonment or relinquishment of a known right." *Strickland v. Strickland*, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007).[1]

AutoNation did not voluntarily or intentionally relinquish its right to arbitration. AutoNation's failure to participate in the original demand for arbitration was inadvertent and based on mere delay. As mentioned, the notices from the AAA were mailed to AutoNation's dealership location. The personnel in charge of legal claims do not work locally at that dealership and the notices simply did not make it to the correct personnel in time to the meet the AAA's filing fees deadlines. After receiving the notice, however, AutoNation promptly retained its undersigned

[1] The Supreme Court of the United States determined that the prejudice element incorporated by courts was not required to show a waiver when analyzing motions to compel under the Federal Arbitration Act. *Morgan v. Sundance, Inc.*, 596 U.S. 411, 417 (2022). In so holding, the Supreme Court directed federal courts to focus on the traditional understanding of waive – the intentional relinquishment or abandonment of a known right – rather than creating an arbitration-specific prejudice requirement. *Id.*

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counsel. And once retained, AutoNation's counsel immediately reached out to the AAA to file a notice of appearance in the action and requested the correct amount for the filing fee. Unbeknownst to AutoNation and its counsel, the AAA closed the case only seven days prior. An inadvertent error and mere 7-day delay is not an *intentional* relinquishment of a known right. Importantly, the AAA informed AutoNation that it could re-open the case with the Bolmer's consent. AutoNation's counsel requested Bolmer's cooperation in re-opening the file as directed by the AAA. Bolmer declined to cooperate with AutoNation to re-open the case. With Bolmer's cooperation, the AAA would have simply re-opened the case and the arbitration would have proceeded without delay. Again, an inadvertent error and mere delay in paying filing fees that AutoNation attempted to quickly correct, is not a voluntarily or intentional relinquishment of a known right, constituting waiver. Nothing here evidences AutoNation's voluntary and intentional relinquishment of its right to arbitrate this dispute.

## CONCLUSION

Based on the foregoing, the Court should enter an order staying these proceedings and compelling the parties to arbitration.

Respectfully submitted,

**HAYNSWORTH SINKLER BOYD, P.A.**

*s/ James Y. Becker*
James Y. Becker, SC Bar No. 64991
Alexandra C. Glunt, SC Bar No. 105761
1201 Main Street, 22nd Floor (29201-3226)
Post Office Box 11889 (29211-1889)
Columbia, South Carolina
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aglunt@hsblawfirm.com

*Attorneys for Defendants*

February 6, 2025

Columbia, South Carolina

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# EXHIBIT A

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SM: MICHAEL MONGE
SA: KIONNO NELSON
CFS: JOVAN ROSEBORO

## RETAIL PURCHASE AGREEMENT

FORM# 92505
STORE# 980
DEAL# 31129
STK# CL273616
CUST# 4438219

AUTONATION USA CHARLESTON
2250 SAVANNAH HWY
CHARLESTON, SC 29414
(854) 222-6500

03/14/2023

| | |
|---|---|
| PURCHASER | MICHAEL BOLMER |
| ADDRESS | 3961A APPLETREE AVE<br>CHARLESTON, SC 29418<br>arenotyoumi33@gmail.com |
| H: (843) 964-3549 | C: (843) 964-3549 |

PURCHASE VEHICLE CLASSIFICATION

☐ NEW ☒ USED ☐ DEMO

| | | |
|---|---|---|
| YEAR / MAKE | 2012 FORD | |
| MODEL / COLOR | FOCUS WHITE | |
| VIN | 1FAHP3K2XCL273616 | MILEAGE 135238 |
| CYL / ENGINE / TRANS | 4 2.0L 4 CYL A | |

| | | |
|---|---|---|
| TRADE-IN VEHICLE 1 | | |
| YEAR / MAKE / MODEL | 1998 NISSAN MAXIMA | |
| VIN | JN1CA21A9WM805366 | MILEAGE 222179 |
| TRADE-IN VEHICLE 2 | | |
| YEAR / MAKE / MODEL | N/A | |
| VIN | N/A | MILEAGE N/A |

Separate Trade Vehicle Payoff Authorization forms, incorporated by reference and made a part of this Agreement, contain representations and information about each Trade-In Vehicle, including the amount of the payoff and the lienholder.

**DISCLOSURES RELATED TO ITEMIZED FEES AND COSTS** (line items marked by an astorisk *)

**OPTIONAL ACCESSORIES / PRODUCTS / SERVICES:** You have elected to purchase optional items that are listed. We do not require You to purchase any of these items. The amount of these items represents cost and profit to Us.

**TOTAL SELLING PRICE:** The total selling price includes listed accessories, products, and services, and is the final contract price to which You and We have agreed.

**TRADE-IN ALLOWANCE:** The Trade-In Allowance(s) may not equate to the actual cash value of the Trade-In Vehicle(s). In fact, the amount allowed may exceed the actual cash value of Your Trade-In Vehicle(s).

**CLOSING FEE:** This charge represents a fee charged for all administrative and financial work needed to transfer the Vehicle to You including, but not limited to, compliance with all state, federal, and lender requirements, preparation and retrieval of documents, protection of Your private personal information, records retention and storage costs.

Purchaser: [signature] Co-Purchaser: N/A

**WARRANTY STATEMENT**

WE EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, UNLESS OTHERWISE INDICATED BELOW. ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN US ARE THEIRS, NOT OURS, AND ONLY SUCH MANUFACTURER OR SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. WE NEITHER ASSUME NOR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR US ANY LIABILITY IN CONNECTION WITH THE SALE OF THE VEHICLE AND THE RELATED GOODS AND SERVICES. IF WE SELL A SERVICE CONTRACT ON OUR OWN BEHALF, ANY IMPLIED WARRANTIES WILL APPLY ONLY WITH RESPECT TO THE ITEMS COVERED IN THE SERVICE CONTRACT. THIS WARRANTY STATEMENT DOES NOT LIMIT ANY WARRANTIES SET FORTH IN A SEPARATE WRITING GIVEN TO YOU IN CONNECTION WITH YOUR PURCHASE OF THE VEHICLE.

CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY): THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

DECLARACIÓN DE DIVULGACIÓN CONTRACTUAL (VEHÍCULOS USADOS SOLAMENTE): LA INFORMACIÓN QUE APARECE EN LA VENTANILLA DE ESTE VEHICULO FORMA PARTE DE ESTE CONTRATO. LA INFORMACION CONTENIDA EN EL FORMULARIO DE LA VENTANILLA ANULA CUALQUIER PREVISION QUE ESTABLEZCA LO CONTRARIO Y QUE APAREZCA EN EL CONTRATO DE VENTA.

| | | |
|---|---|---|
| CO-PURCHASER | | |
| ADDRESS | N/A | |

| ITEMIZATION OF COSTS | | |
|---|---|---|
| BASE SELLING PRICE | $ | 5991.00 |
| OPTIONAL ACCESSORIES / PRODUCTS / SERVICES* | | |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| TOTAL SELLING PRICE* | = | 5991.00 |
| LESS DISCOUNT | - | 500.00 |
| TRADE-IN 1 ALLOWANCE* | - | 500.00 |
| TRADE-IN 2 ALLOWANCE* | - | N/A |
| CASH DIFFERENCE | = | 5491.00 |
| Dealer Doc* | + | 494.50 |
| Plate Transfer Fee | + | 10.00 |
| N/A | + | N/A |
| SALES TAX / IMF | + | 299.28 |
| License | + | 40.00 |
| Title Fee | + | 15.00 |
| Electronic Filing Fee | + | 2.50 |
| N/A | | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| SUBTOTAL | = | 6352.28 |
| BALANCE OWED ON TRADE-IN(S) | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| TOTAL DUE | = | 6352.28 |
| FACTORY CASH / REBATE ASSIGNED TO DEALER | - | N/A |
| DOWN PAYMENT | - | 600.00 |
| UNPAID BALANCE DUE | = | 5752.28 |

THIS AGREEMENT CONTAINS AN ARBITRATION PROVISION. AN AGREEMENT THAT DOES NOT INCLUDE AN ARBITRATION PROVISION IS AVAILABLE UPON YOUR REQUEST.

ANSC RPA.ARB REV 4/22 Purchaser: [signature] Co-Purchaser: N/A Dealer: [signature]

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## TERMS AND CONDITIONS

### 1. DEFINITION OF TERMS

This Retail Purchase Agreement contains the following words and phrases that appear throughout and have particular meaning:

**Agreement** - Means this Retail Purchase Agreement together with any documents incorporated into this Retail Purchase Agreement by operation of law or by express reference, whether such reference is made in this Retail Purchase Agreement or the document itself.

**Retail Installment Sales Contract, RISC** – Means the separate sales contract that You will be required to sign if You are financing the Vehicle purchase and that will be assigned to a third-party financial institution.

**You, Your, Purchaser** - Means the Purchaser and Co-Purchaser identified on the first page of this Agreement.

**We, Us, Our, Dealer** - Means the Seller or Dealer identified on the first page of this Agreement and its authorized manager.

**Manufacturer** - Means the company that manufactured and/or distributed the Vehicle.

**Vehicle** - Means the vehicle described on the front of this Agreement that You are purchasing from Us.

**Trade-In Vehicle** - Means the vehicle that You are delivering to Us as part of this transaction to be applied against the Selling Price of the Vehicle that You are purchasing.

**After-Market** - Means not manufactured, produced, distributed, or warranted by the Manufacturer of the Vehicle.

### 2. PURCHASED VEHICLES

a. **Additional Equipment, Accessories, Repairs or Services Owed:** You acknowledge that You have inspected the Vehicle and confirmed that, except as specifically listed in a We Owe form signed by You and Us, all equipment, accessories, repairs or services purchased by You or due to You are on the Vehicle or have been provided to You. You further acknowledge that the Vehicle does not have any visible damage that We are obligated to repair, except as specifically identified on a We Owe form. If the We Owe form is blank or otherwise indicates that nothing further is to be done to the Vehicle, You acknowledge that no equipment, accessories, services, or repairs are due to You. Any equipment, accessories, repairs, or services listed on a We Owe form shall be installed or performed within 30 days from the date of delivery of the Vehicle pursuant to an advanced appointment with Our Service Department initiated by You. If You fail or refuse to provide the Vehicle to Us for such installation, repairs, or services, any items or services requested shall remain the property of Dealer and We may keep any cash deposit You have provided, to the extent not prohibited by law.

b. **Manufacturer Changes in Design or Price:** In the event You have placed an order for the Vehicle and the Manufacturer changes or modifies the design of any part or accessory of the Vehicle after Your order has been entered by Us, You will not have any claim or right against Us if the Vehicle does not contain such changes or modifications, nor shall We be required to effect such changes or modifications to the Vehicle. If You have placed an order for the Vehicle and the selling price of the Vehicle is increased prior to delivery to You due to price changes imposed by the Manufacturer, You may cancel this Agreement prior to accepting delivery of the Vehicle.

c. **After-Market Products, Services, Parts and Accessories: We offer many value-added protection products, services, parts, and accessories for sale that are not products of the Vehicle's Manufacturer. Coverage, product guarantees and/or warranties on these After-Market products and services are not provided by the Manufacturer or its affiliates, but instead by the maker of the product, a service administrator, and/or an insurer. If You have purchased any AutoNation or other After-Market products, refer to the specific product agreement for terms, conditions, specific coverage details, product guarantees, and service contract and/or warranty information. If You are purchasing a used vehicle, We may have used quality After-Market parts to make repairs or perform maintenance, or We may have installed After-Market equipment or accessories. Any warranty on these parts, equipment and accessories is not provided by the Manufacturer.**

d. **Financing:** If this Agreement is part of a credit purchase, You may secure financing through any financing entity You choose. In addition, at Your request We may assist You in obtaining financing with a third-party financing entity. If We assist You in obtaining financing, We are not acting as an agent for You in obtaining such financing and We may retain a portion of the finance charge that You pay or other compensation. Interest rates may be negotiable. The purchase of protection products is not required to obtain financing or a lower interest rate.

e. **Recall Disclosure:** We have provided You with a printout containing the Vehicle's recall status. We use electronic and/or automated resources to check for recalls and ensure open safety recall repairs are completed or disclosed before a vehicle is sold. We may not check for or be aware of non-safety recalls, including EPA emissions recalls. Moreover, due to data errors or delays We may not have complete and accurate information regarding all recalls at the time of sale. We do not warranty, guarantee or make any assurances about the information provided by third parties regarding recall status. We are not obligated to advise You of recalls that may be announced after this sale. You may obtain recall information related to the Vehicle at any time by: completing a VIN look-up at the National Highway Traffic Safety Administration (NHTSA) website, www.safercar.gov; accessing resources provided by the Vehicle Manufacturer; or by contacting a dealership that represents the Manufacturer of the Vehicle.

f. **Used Vehicle History Disclosure:** Our pre-sale used vehicle reconditioning inspections are limited in scope and are not a warranty or guarantee of the mechanical components, equipment, systems, condition, prior use, title history, or accident history of the Vehicle (unless otherwise expressly provided pursuant to Manufacturer's Certified Pre-Owned program rules and guidelines or Dealer's Used Vehicle Limited Warranty). You may obtain an independent third-party inspection of the Vehicle prior to purchase. We are not affiliated with CARFAX, have not verified the information in the CARFAX Vehicle History Report, and are not responsible for any inaccuracies therein.

g. **5 Day / 250 Mile Money-Back Guarantee (eligible used/demo vehicles only):** We are providing a Money-Back Guarantee for eligible vehicles. The Money-Back Guarantee shall not apply to vehicles designated as New on this Agreement, to vehicles with a selling price of $200,000 or more, to vehicles You decide to purchase at lease end (lease buyouts), to vehicles to which special equipment was added at the time of sale at Your request, or to vehicles delivered to You out of state. You are limited to one Money-Back Guarantee vehicle return during any twelve-month period at any AutoNation owned store. For eligible vehicles, the following terms and conditions apply:

   i. You must return the Vehicle to the same Dealer location from which the Vehicle was purchased within five (5) business days ("Expiration Date").

   ii. The Vehicle must have less than 250 miles over the odometer reading at sale as set forth in this Agreement and must be in the same condition (excepting allowable mileage) in which it was delivered to You. You will not be reimbursed for any money spent on the Vehicle while in Your possession.

   iii. You must return the Vehicle, together with all Vehicle purchase, finance, and/or lease transaction documents to a manager of Dealer no later than the Dealer closing time on the Expiration Date.

   iv. If You financed any portion of the purchase price of the returned Vehicle, We will pay the financed amount directly to the party providing such financing. Any down payment paid by You shall be refunded to You, subject to subsection v. below.

   v. If You traded in a vehicle in connection with the purchase, You shall receive one of the following remedies: Trade-In Vehicle Not Available – If Your Trade-In Vehicle has been sold by Us, We shall only be obligated to return the value (in cash) of the Trade-In Vehicle as appraised by Us at the time of the sale, less any amounts due to Us or paid by Us to satisfy any liens or encumbrances thereon. You agree that payment under this section shall be deemed to be full restoration of the consideration provided by Us for the Trade-In Vehicle. If the Trade-In Vehicle's appraised value is less than the total amount paid by Us to satisfy liens or encumbrances thereon, You must pay the difference to Us before the Vehicle will be accepted for return; Trade-In Vehicle Available – In the event that the Trade-In Vehicle is still in Our possession, We shall return Your Trade-In Vehicle to You so long as You concurrently pay to Us any amounts due to Us or paid by Us to satisfy any liens or encumbrances thereon. In all cases, regardless of whether the Trade-In Vehicle is available, if You are unable or unwilling to pay Us any amounts due to Us or paid by Us on Your behalf, We may deduct such amounts from any refunds due to You in addition to availing ourselves of any other remedies available to Us at law or in equity.

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## 3. VEHICLE DISCLOSURES AND RECALL STATUS ACKNOWLEDGMENT (USED/DEMO VEHICLES)

You certify and acknowledge as follows:

a. Prior to You signing this Agreement, We provided You with each of the following documents:
- **Recall Status from the Manufacturer, NHTSA, CARFAX, or other source listing any open recalls**
- **Manufacturer Certified Pre-Owned (CPO) Vehicle Inspection Report or AutoNation Pre-Owned Vehicle Inspection Report**
- **CARFAX Vehicle History Report**
- **Used Vehicle Buyer's Guide**

b. Where possible, We gave You the opportunity to schedule or complete recall repairs prior to delivery.

c. You have reviewed and understand the above terms of the 5 Day/ 250 Mile Money-Back Guarantee, including that it does not apply to vehicles priced at $200,000 or higher, to lease buyouts, to vehicles with special equipment added at Your request, or to vehicles delivered out of state.

d. You have not relied upon any oral statement or promise by any sales associate, sales manager, or other employee of Dealer regarding the prior use, condition, title history, or accident history of the Vehicle. You understand and agree that Dealer has not verified the information in the CARFAX Vehicle History Report and is not responsible for any inaccuracies therein. Purchaser: _____ Co-Purchaser: N/A

## 4. VEHICLE FINANCING CONTINGENCY - CONDITIONAL SALE AND DELIVERY PROVISION

**WE ARE NOT A LENDER OR FINANCE COMPANY. YOUR PURCHASE OF THE VEHICLE IS CONDITIONED UPON FINAL APPROVAL (WITH NO CONDITIONS OR STIPULATIONS) BY A THIRD-PARTY FINANCE COMPANY. IF YOU ARE NOT FINALLY APPROVED FOR FINANCING BY A THIRD-PARTY FINANCE COMPANY, THEN THE TRANSACTION IS CANCELED AND YOU AGREE TO RETURN THE VEHICLE TO US. THIS PROVISION DOES NOT APPLY TO CASH SALES.**

Your purchase of the Vehicle is conditioned upon an agreement by a third-party finance company ("Finance Company") to purchase the Retail Installment Sales Contract ("RISC") entered into between You and Us. If We cannot assign or sell the RISC to a Finance Company for any reason including, but not limited to, that You have furnished incomplete, inaccurate or false information, We may cancel the RISC and You agree to return the Vehicle to Us within 48 hours after You receive notice of cancellation from Us. If You fail to return the Vehicle within 48 hours, You agree that We may, solely at Our option, and as may be permitted by applicable law, immediately retake possession of the Vehicle with right of entry wherever the Vehicle may be found and collect from You all reasonable expenses incurred by Us in connection with retaking the Vehicle. Upon return or retaking the Vehicle You also agree to pay for any damages to the Vehicle incurred while the Vehicle is in Your possession or under Your control and to pay the lesser of (i) $99.00 per day and 99 cents per mile in excess of the Permitted Mileage rental charge or (ii) the maximum amount allowed by law for vehicle usage/rental charges, for each day following the 48 hour return period. For each day the Vehicle is in Your possession up to and including the 48 hour period following the notice of cancellation from Us, You are allowed to place up to 100 miles per day on the Vehicle ("Permitted Mileage"). The usage/rental fee (if any) may be deducted from any down payment made by You on the Vehicle. You will be entitled to a refund of any monies paid by You, less any expenses and/or charges as described above.

While the Vehicle is in Your possession, all terms of this sale, as set forth in this Agreement and in the RISC, including those relating to the use of the Vehicle and insurance for the Vehicle (comprehensive/collision, personal injury and any other state required insurance coverage) will be in full force. You acknowledge and agree that until the Vehicle has been returned to Us, You assume all risk of loss or destruction of and all risk of damage to the Vehicle and all liability for any damage or injury to people or property (including the Vehicle) from the use or operation of the Vehicle. You will maintain insurance on the Vehicle to cover such risks, and the insurance that You provide shall be primary. You hereby assign to Us the right to receive proceeds payable to You under all insurance policies covering said accident and You hereby authorize and direct the carriers of all such insurance policies to pay said proceeds directly to Us by check or draft payable to the order of You alone. We are hereby irrevocably appointed Your attorney in fact to endorse Your name to any checks or drafts issued by such insurance carriers by reason of such accident. Any such proceeds received by Us shall be applied toward payment of Your obligation hereunder and any excess of such proceeds over said obligation shall be remitted to You. You agree to defend, indemnify and hold Us harmless along with Our shareholders, officers, employees, agents, successors, assigns and insurers from and against any and all claims, demands, suits, actions, settlements, damages, costs and/or expenses (including attorney's fees and expenses) relating to or arising out of or in connection with the use or operation of the Vehicle until the Vehicle has been returned to Us.

This Conditional Sale and Delivery Provision is entered into contemporaneously with Your RISC, if any. In the event of a conflict between the terms of this Conditional Sale and Delivery Provision and those of the RISC, the terms shall be construed together to the extent possible and only the terms of this Conditional Sale and Delivery Provision that are in direct conflict with those of the RISC shall be disregarded. If there is an irreconcilable difference between this Conditional Sale and Delivery Provision and the RISC, such that the two cannot be read together and which renders enforcement of this Conditional Sale and Delivery Provision impossible or impractical, then the terms of the RISC shall govern.

**IF YOU ARE UNSURE ABOUT THE STATUS OF YOUR TRANSACTION, WITHIN SEVEN (7) DAYS FROM THE DATE OF THIS AGREEMENT YOU SHOULD CONTACT US TO CONFIRM THAT YOU HAVE BEEN APPROVED FOR FINANCING.**

Purchaser: _____ Co-Purchaser: N/A

## 5. TRADE-IN VEHICLES

a. **Purchaser Representations and Warranties Regarding Trade-In Vehicles:** With respect to each Trade-In Vehicle, You represent and warrant that: (i) the Trade-In Vehicle is properly titled to You, You have the right to sell or otherwise convey such Trade-In Vehicle, and it is free and clear of liens or encumbrances except as may be noted on the first page of this Agreement and/or on a separate Trade Vehicle Payoff Authorization form; (ii) the Trade-In Vehicle has not had its vehicle identification number ("VIN") altered or changed and the VIN appearing on the Trade-In Vehicle corresponds to the VIN which appears on the certificate of title; and (iii) the Trade-In Vehicle has all required air pollution control equipment properly connected and undamaged. In addition, unless You specifically advise Us otherwise in writing, with respect to each Trade-In Vehicle You represent and warrant that the Trade-In Vehicle has never been titled a salvage, junk, rebuilt or lemon law buyback vehicle; is not a gray market vehicle; has never been used in police or taxi service; has not suffered any damage whatsoever to the frame, structural damage, cracks to the engine block, or flood or water penetration damage; You have not removed equipment from the Trade-In Vehicle; and the odometer reading shown is accurate. If any of the foregoing representations and warranties are untrue or incorrect, We may, at Our sole option, retain the Trade-In Vehicle as security and collect damages or We may rescind the purchase of the Trade-In Vehicle and/or Your purchase of the Vehicle.

## 5. TRADE-IN VEHICLES, cont.

b. **Purchaser Obligations with Respect to Trade-In Vehicles:** Any Trade-In Vehicle delivered by You to Us in connection with this transaction shall be accompanied by a title or documents sufficient to enable Us to obtain a title to the Trade-In Vehicle in accordance with applicable state law. You agree to sign any and all documents necessary to comply with Your obligations under this section. You further agree that Your failure to comply with this section will result in Your obligation to pay Us the value of the Trade-In Vehicle in cash.

c. **Permission to Contact Lienholder:** You acknowledge and agree that You have given Us permission to contact the lienholder on Your Trade-In Vehicle(s) in order to obtain payoff information regarding the Trade-In Vehicle(s) described in this Agreement. You understand that information about Your account(s) is private and that the lienholder may be asked to reveal nonpublic personal information about You to Us. In accordance with federal and state privacy laws, You hereby authorize the lienholder to release Your payoff information to Us and answer any questions that We have with respect to Your account(s). This information will be used only in connection with the transaction that You have initiated and only for the purposes for which it has been provided.

d. **Damage to Trade-In Vehicle:** If You are delivering a Trade-In Vehicle to Us in connection with this transaction and the delivery of the Trade-In Vehicle to Us will not occur until We deliver the Vehicle to You, the Trade-In Vehicle allowance set forth in this Agreement may be reduced if the value of the Trade-In Vehicle has been materially diminished as a result of physical damage, alteration or deterioration in mechanical condition other than normal wear and tear. If You are dissatisfied with the reduced Trade-In Vehicle allowance, You may cancel this Agreement and We will refund to You any deposit or partial payment, provided that the cancellation occurs prior to You taking delivery of the purchased Vehicle.

## 6. ADDITIONAL TERMS

a. **No Oral Promises: YOU ACKNOWLEDGE AND AGREE THAT YOU ARE NOT RELYING UPON ANY STATEMENT OR PROMISE BY ANY SALESPERSON, SALES MANAGER, OR ANY OTHER EMPLOYEE OF OURS THAT IS NOT CONTAINED IN A WRITTEN DOCUMENT EXECUTED BY US AND YOU.**

b. **Limitation of Liability: TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU SHALL NOT BE ENTITLED TO RECOVER FROM US ANY CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF USE, LOSS OF TIME, AND LOSS OF PROFITS OR INCOME), OR ANY OTHER INDIRECT OR INCIDENTAL DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM THIS AGREEMENT OR TRANSACTION.**

c. **Purchaser's Rights Due to Dealer's Failure to Deliver Vehicle:** If the Vehicle is not delivered to You as specified in accordance with this Agreement and the failure to deliver is not attributed to You, You have the right to cancel this Agreement and to receive a full refund of Your deposit. If you have delivered a Trade-In Vehicle to Us, the Trade-In Vehicle shall be returned to You, or if the Trade-In Vehicle is not available We shall refund to You the actual value of the Trade-In Vehicle.

d. **Purchaser's Obligation to Pay:** You grant to Us and We retain a security interest in the Vehicle and any Trade-In Vehicle until such time as You have met Your obligation under this Agreement. If this is a cash sale, payment is demanded and due upon delivery of the Vehicle. If any payment to Us, whether as a deposit or full or partial payment, is made by check which is subsequently dishonored, You agree that, within 24 hours following written or oral notice from Us that the check has been dishonored, You will (a) pay Us the amount of the returned check along with any applicable bank charges, in cash or certified funds, or (b) return the Vehicle to Us. If You fail to timely pay the amount of the returned check and applicable charges in good funds or return the Vehicle to Us, We may, at Our sole option, pursue all available legal remedies that We may have, including reaffirming this Agreement and holding You contractually liable for the Unpaid Balance Due, as shown on the front of this Agreement, or canceling the sale and retaking immediate possession of the Vehicle and collecting from You all reasonable expenses incurred by Us in connection with retaking the Vehicle. Upon return or retaking of the Vehicle, You also agree to pay for any damages to the Vehicle that occurred while the Vehicle was in Your possession or under Your control and a daily rental charge of $99 for each day that the Vehicle remained in Your possession or under Your control. In the event that Your check is dishonored, We may also retain title to the Vehicle until full payment is received for the dishonored check and applicable bank charges.

e. **Purchaser's Obligation to Assist with Registration and Titling:** You agree to cooperate and sign all documents and take all necessary steps We may require to enable Us to complete the title application, have a title issued, complete the registration, record any financing entity lien and effectuate the intent of the parties and consummate the transaction as agreed to herein or in the associated Retail Installment Sales Contract.

f. **Dealer's Rights Upon Default by Purchaser:** In the event of any failure by You to perform Your obligations under this Agreement including, but not limited to, any failure to take delivery of or to pay the agreed upon price for the Vehicle, We shall be permitted to collect or retain an amount equal to any damages and reasonable expenses We incur due to Your default. If You have delivered a Trade-In Vehicle to Us as part of this transaction, We may return any Trade-In Vehicle to You if We have not already sold it so long as You concurrently pay to Us any amounts due to Us or paid by Us to satisfy any liens or encumbrances thereon. If We have already sold the Trade-In Vehicle(s), We will refund to You the actual cash value of the Trade-In Vehicle(s) less any amounts due or paid by Us to satisfy any liens or encumbrances thereon, but if the amounts paid by Us to satisfy any liens or encumbrances exceed the actual cash value of the Trade-In Vehicle(s), You must pay the difference to us. Moreover, in all instances, We may deduct all damages, reasonable expenses and amounts owed to Us from any refunds due to You, in addition to availing ourselves of any other remedies available to Us at law or in equity.

g. **Jury Trial Waiver: BY ENTERING INTO THIS AGREEMENT YOU AGREE TO WAIVE YOUR RIGHT TO A JURY TRIAL.**

h. **Jurisdiction/Venue:** All proceedings described in the Arbitration Provision section of this Agreement shall take place in the county where Dealer is located, unless agreed otherwise by the parties. If a dispute arising under or concerning this Agreement proceeds in court, including by agreement of the parties or by court order, such dispute shall be filed and adjudicated in the courts located in and for the county in which Dealer is located. This Agreement shall be construed and governed by the laws of the state in which Dealer is located.

i. **Personal Information:** You have provided certain personal and identifying information to Us in connection with this transaction. You expressly consent to Us obtaining such information from Your driver's license or other identifying documents by means of photocopy, scan, swipe, accessing machine-readable information, or otherwise, and copying, retaining and using such information for the purposes of identity verification, fraud prevention, and/or processing of this transaction.

j. **Electronic Records:** You agree that We may maintain documents and records related to the Vehicle and this Agreement electronically, including, but not limited to, documents and records images, and that We may dispose of original documents. You agree that a copy of any such electronic records may be used and shall be deemed to be the same as an original in any arbitration, judicial, non-judicial or regulatory proceeding related to the Vehicle.

k. **Communications:** You agree that We may monitor and record telephone calls between You and Us. You expressly consent that We may contact You (by calls, emails, text messages, or other electronic messages) by any means, including but not limited to the use of prerecorded/artificial voice messages or automatic telephone dialing devices. Your express consent applies to any email addresses or telephone numbers We obtain from You or that You provide in any manner and at any time, including email addresses and residential or cellular telephone numbers for which You may incur voice, data, or other charges.

l. **General Provisions:**
   i. You agree to sign any and all documents necessary to complete the terms of the sale.
   ii. All pages of this Agreement and any documents incorporated by reference or operation of law comprise the entire Agreement affecting this sale.
   iii. If any provision of this Agreement is determined to be unenforceable, such provision shall be considered severed from the remaining provisions of this Agreement and such remaining provisions shall be and remain in full force and effect unless otherwise expressly stated.
   iv. The provisions of this Agreement shall survive the execution of a Retail Installment Sales Contract and/or consummation of Your purchase of the Vehicle. This Agreement shall not become binding upon Us until signed by Our authorized manager, and if a credit purchase, (i) appropriate financing disclosures are made and (ii) a Retail Installment Sales Contract is executed by You and Us.



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## 7. ARBITRATION PROVISION

This section applies to Your: (a) purchase of the Vehicle, and purchase or lease of any other vehicle(s), including any negotiations or application(s) for credit or other dealings or interactions with Dealer and/or Dealer's parents, subsidiaries, affiliates, predecessors, successors, and assigns, and each of their respective owners, directors, officers, managers, employees, vendors and agents (hereinafter Dealer and all other parties listed in this subsection (a) collectively referred to as "Dealer Parties"); (b) servicing the Vehicle or any other vehicle(s) with any of the Dealer Parties; and (c) reviewing, negotiating or executing any documents or agreements during the course of interactions with any of the Dealer Parties (collectively, including all subparts listed above, "Purchaser/Dealer Party Interactions").

You and Dealer Parties agree that neutral and binding arbitration on an individual basis only between You and Dealer Parties will be the sole method of resolving any claim, dispute or controversy (collectively, "Claims") that either party has arising out of or relating to Purchaser/Dealer Party Interactions, with the sole exception that either party may file and adjudicate Claims in a small claims court as an alternative to proceeding with arbitration, provided the total amount sought in small claims court, inclusive of attorney's fees and costs, if applicable, is less than the statutory dollar amount of that court's civil jurisdiction. Claims include, but are not limited to the following: Claims in contract, tort, regulatory, statutory, equitable, or otherwise; Claims relating to any representations, promises, undertakings, warranties, covenants or service; Claims regarding the interpretation, scope, or validity of this Agreement, or arbitrability of any issue; Claims between You and Dealer Parties; and Claims arising out of or relating to Your application for credit, this Agreement and/or any and all documents executed, presented or negotiated during Purchaser/Dealer Party Interactions, or any resulting transaction, service, or relationship, including that with Dealer Parties, or any relationship with third parties who do not sign this Agreement that arises out of the Purchaser/Dealer Party Interactions.

**BY ENTERING INTO THIS AGREEMENT, YOU GIVE UP YOUR RIGHT TO HAVE DISPUTES DECIDED IN COURT (OTHER THAN SMALL CLAIMS COURT) OR BY A JURY. YOU UNDERSTAND THAT DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A COURT ACTION, AND OTHER RIGHTS THAT YOU MAY HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION. YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN AN ACTION AGAINST ANY DEALER PARTIES ON A CLASS, REPRESENTATIVE OR OTHER SIMILAR BASIS (COLLECTIVELY, "CLASS ACTION"), INCLUDING ANY RIGHT TO CLASS ARBITRATION OR CONSOLIDATION OF INDIVIDUAL ARBITRATIONS WITH OTHER CLAIMANTS.**

To demand arbitration, the party seeking arbitration must serve the opposing party with a written demand for arbitration which includes a detailed statement of the facts supporting the claim and the relief requested. Once a demand for arbitration has been made by either party, arbitration shall be the exclusive means of resolving the subject dispute or controversy. Failure to arbitrate as required herein may subject the party failing to arbitrate to liability for consequential damages sustained by the other party. Any arbitration hereunder shall be governed by the Federal Arbitration Act (9 U.S.C. § 1, et seq., hereinafter the "FAA") and not by any state law concerning arbitration. The parties shall agree in writing as to the arbitration forum and/or arbitration rules. The arbitration will be conducted by a single arbitrator ("Arbitrator") who shall be an attorney or retired judge selected by mutual agreement. If the parties cannot agree on the selection of an Arbitrator, either party may seek appointment of an Arbitrator pursuant 9 U.S.C. § 5. Your portion of the cost of the arbitration itself and/or the Arbitrator's fees shall be limited to the amount of the filing fee in effect for the Federal District Court in the District in which the arbitration takes places at the time the demand is filed. Dealer shall pay all arbitration costs and Arbitrator's fees in excess of that amount, unless the Arbitrator later shifts responsibility for fees under applicable law. Each party, however, shall be responsible for its own attorney or expert fees and litigation costs, unless otherwise awarded by the Arbitrator under applicable law.

The Arbitrator shall follow controlling law and issue a reasoned decision in writing with a supporting opinion based on applicable law. If there is no appeal as stated below, the Arbitrator's award shall be final, binding, and conclusive on the parties (except as otherwise provided for under the FAA) and any unpaid award may be confirmed or entered in any court of competent jurisdiction. At either party's election and within 30 days of receipt of the Arbitrator's award, such award may be appealed to another arbitrator ("Appellate Arbitrator"), who shall be a single person and who shall be chosen in the same manner as described above. The Appellate Arbitrator shall apply to the underlying decision and opinion the same standard of review applicable for review of the rulings from a bench trial of a civil case in the appellate court in the county in which the arbitration is proceeding and shall issue a reasoned decision in writing with a supporting opinion based on such review and applicable law. The Appellate Arbitrator's decision shall be final, binding, and conclusive on the parties (except as otherwise provided for under the FAA) and any unpaid award may be confirmed or entered in any court of competent jurisdiction. In the event either party files a Claim(s) against the other, resulting in a ruling that a portion of this Arbitration Provision is unenforceable, the portion of this Arbitration Provision that has been ruled to be unenforceable shall be severed, and the remaining terms shall be enforced. However, if the portion of the Arbitration Provision that was ruled to be unenforceable is or includes the above waiver of Class Action rights, then this Arbitration Provision shall be unenforceable in its entirety.

Purchaser: Mirelle Badeau Co-Purchaser: N/A

## 8. FINAL SIGNATURE BLOCK

By signing below You represent that You are at least 18 years of age and have authority to enter into this Agreement. You have read all pages of this Agreement in their entirety (including the above Arbitration Provision) and hereby acknowledge that this Agreement is fully filled in and accurately reflects the negotiations and agreements between You and Dealer. If You did not understand any of the above, You have had Your own representative and agent read and explain in Your native language (or have had the opportunity but have elected not to do so) all of the above and foregoing. **NO REPRESENTATIONS HAVE BEEN MADE THAT ARE NOT SET FORTH HEREIN.**

Purchaser Signature: Mirelle Badeau

Co-Purchaser Signature: N/A

Dealer Signature:

**MAKE SURE YOU RECEIVE A WRITTEN RECEIPT FOR ANY CASH TENDERED ON THIS TRANSACTION**

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF CHARLESTON<br><br>MICHAEL BOLMER,<br><br>Plaintiff,<br><br>v.<br><br>CHARLESTON ANUSA, LLC D/B/A AUTONATION USA CHARLESTON AND WESTLAKE SERVICES, LLC D/B/A WESTLAKE FINANCIAL SERVICES,<br><br>Defendants. | IN THE COURT OF COMMON PLEAS<br>NINTH JUDICIAL CIRCUIT<br>CASE No.: 2023-CO-10-00180<br><br>**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL ARBITRATION** |

COMES NOW PLAINTIFF Michael Bolmer ("Bolmer"), by and through counsel, respectfully submits this Memorandum in Opposition to Defendants' Motion to Compel Arbitration against Defendants Charleston ANUSA, LLC d/b/a AutoNation USA Charleston ("AutoNation") and Westlake Services, LLC d/b/a Westlake Financial Services ("Westlake").

## INTRODUCTION

The American Arbitration Association has already determined that Defendants have waived their right to arbitrate and that Plaintiff could file this matter in this Court.[1] That determination aside, under South Carolina law, waiving a party's right to arbitrate is fact-determinative. The Court considers the actions of the party seeking arbitration. These actions include whether the party has been inconsistent with the right to arbitrate, such as participating

[1] **"As of this date we have not received the required fees from AutoNation USA Charleston in this matter. Accordingly, we must decline to administer this case and have closed our file. According to R-1(d) of the Consumer Arbitration Rules, should the AAA decline to administer an arbitration, either party may choose to submit its dispute to the appropriate court for resolution.**

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in litigation or delaying the arbitration request. In doing so, courts generally consider factors such as the length of time between the commencement of the action and a party's motion to compel arbitration, the extent of discovery conducted, and whether the delay has prejudiced the opposing party.

Applying this framework to the present case, Bolmer submits his opposition to the motion to compel arbitration filed by Defendants AutoNation and Westlake. This Court will find that because of Defendants' multiple failed attempts in engaging in the American Arbitration Association ("AAA") arbitration proceeding filed by Plaintiff, Bolmer has been prejudiced by Defendants' delay. Therefore, the Court should deny Defendants' Motion to Compel Arbitration.

## STATEMENT OF FACTS

On or about March 14, 2023, Bolmer and AutoNation entered a Purchase Agreement for a 2012 Ford Focus ("subject vehicle") financed through Westlake with the remaining balance after a trade-in for $5,752.28. Due to oil leaks found in the subject vehicle, Bolmer returned the vehicle to AutoNation per their five-day/250-mile return policy and purchased another vehicle. Despite returning the subject vehicle, Westlake continued to demand payment for the same.

On or about June 21, 2023, Bolmer filed an arbitration with the American Arbitration Association ("AAA") under AutoNation's Retail Installment Sale Contract and paid AAA a $232.87 filing fee for the same. The same day, AAA assigned the arbitration "AAA Case Number 01-23-0002-7781." On August 16, 2023, AAA sent correspondence to the parties about the Demand for Arbitration proceeding. Further, AAA requested AutoNation to submit filing fees of $675.00, and such payment should be received no later than August 30, 2023. It was also stated in the correspondence that "AAA may decline to administer this dispute if the business does not timely respond."

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On September 8, 2023, AAA sent additional correspondence to Defendants stating that AAA had not received the administrative fees from Respondents as requested. AAA stated that Defendants must pay the fee by September 22, 2023, and that Bolmer had already met the requirements. AAA also stated that the awaited fee was due regardless of whether the case was settled or was withdrawn. Further, AAA notified the Parties that if AAA does not receive the Respondents' portion of the filing fees in a timely manner, it will notify the parties that AAA will closed the case and refund the payments made by Claimant Bolmer.

Again, after not receiving any of the requested and demanded filing fees from Respondents, on September 27, 2023, AAA sent additional correspondence to Defendants stating it had not received the required fees from Defendants, and, therefore, "we must decline to administer this case and have closed our file." Further, "because [AutoNation's] failure to remit the foregoing constitutes a failure to adhere to our policies regarding consumer claims, we may decline to administer future consumer arbitrations involving [AutoNation]."

Defendants' repeated failures to engage in the AAA arbitration proceeding, a forum they chose in a contract of adhesion and imposed upon Bolmer, and pay their required arbitration fees, despite multiple requests from AAA, has prejudiced Bolmer. Bolmer suffered and has continued to suffer damages by the conduct of the Defendants, including but not limited to the loss of the AAA filing fees, several months of time wasted while this matter proceeded before AAA, resulting in continued damage to his creditworthiness and lost credit opportunities and increased cost of credit, inconvenience, aggravation, embarrassment, frustration, humiliation, and garden variety emotional distress in an amount to be adjudicated by this Court.

## LEGAL ARGUMENTS

### I. AAA MAY WAIVE A PARTY'S RIGHT TO ARBITRATE IF IT FAILS TO COMPLY WITH AAA'S RULES, INCLUDING THE FAILURE TO TIMELY PAY THE REQUIRED FEES.

AAA's rules are not mere formalities, rather they are crucial guidelines that parties must uphold and follow. Failure to engage in these rules can lead to serious consequences, including

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the refusal to participate in future arbitration proceedings through the AAA. Further, under South Carolina case law, a party's motion to compel a matter to arbitration proceeding may be denied if the party does not adhere to the AAA's rules. This precedent was established in the case of *Reynolds v. Wyndham Vacation Resorts*, where Defendant's motion to compel Plaintiffs' lawsuit to arbitration was denied. *Reynolds v. Wyndham Vacation Resorts*, No. 2020-CP-26-07441, 2021 S.C. C.P. LEXIS 2288, at *2 (S.C. Ct. Common Pleas 2021). That case arose from a Plaintiffs' purchase of timeshare interest from the Defendant. *Id.* Plaintiff signed a contract that included an arbitration clause. Pursuant to the agreement, Plaintiff filed with the AAA. *Id.* at *4. However, it was found that "Prior to the filing of this arbitration, the business [Defendant] failed to comply with the AAA's policies regarding consumer claims. Accordingly, we must decline to administer this claim and any other claims between [Defendant] and its consumers at this time." *Id.*

In deciding *Wyndham Vacation Resorts*, the Court used the law in *Dillards, Inc.*, which stated that because Defendant failed to comply with the AAA's requirements as well as failing to pay their arbitration fees, the AAA dismissed the case for Defendant's failure to participate and abide by the AAA's Rules and Procedures. *Id.* at *6. See *Brown v. Dillard's, Inc.*, 430 F.3d 1004 (9th Cir. 2005). "The Eleventh Circuit held that [Defendant's] failure to arbitrate and abide by the AAA's Rules and Procedures was a breach of contract." *Id.* at *6-7. Further, because Defendant breached, the Court could not compel Plaintiff to arbitrate *Id.* Additionally, the same outcome would be reached under the doctrine of waiver. "The Court found that [Defendant] had knowledge of the arbitration clause, that [Defendant] had acted inconsistently with that right of arbitration and that [Defendant's] action prejudiced the employee." Meeting those requirements under the doctrine, Defendants waived their right to arbitrate. "We have no trouble concluding that the delay and costs incurred by [Plaintiff] are prejudicial for the purpose

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of wavier analysis." *Reynolds*, 2021 S.C. C.P. LEXIS 2288, at *7 (quoting *Brown*, 430 F.3d 1004 at 1013).

Undeniably, the Court in *Wyndham Vacation Resorts* came to the same conclusion in *Dillards, Inc.* and denied Defendants' motion to dismiss and compel arbitration. The Court's decision was a clear affirmation of fundamental fairness, stating, "[Defendant cannot mandate arbitration pursuant to the AAA, refuse to comply with AAA's requirements, and then compel Plaintiffs to arbitrate pursuant to the rules it has cherry picked." *Id.* at *8.

This Court should apply the same rule of law in the present case. Bolmer filed a suit through the AAA on or about June 21, 2023, pursuant to the adhesion arbitration agreement both parties signed during the transaction of the subject vehicle. The agreement stated,

> "Once a demand for arbitration has been made by either party, arbitration shall be the exclusive means of resolving the subject dispute or controversy. **Failure to arbitrate as required herein may subject the party failing to arbitrate to liability for consequential damages sustained by the other party.** Any arbitration hereunder shall be governed by the Federal Arbitration Act (9 U.S.C. §1, et seq., hereinafter the "FAA") and not by any state law concerning arbitration. **The parties shall agree in writing as to the arbitration forum and/or arbitration rules."**
> *(Emphasis Added)* (Exhibit A).

The AAA sent three correspondences on August 16, 2023, September 8, 2023, and September 27, 2023, notifying the parties that Defendants' arbitration fees needed to be paid to AAA to further the arbitration proceeding. The last correspondence sent by the AAA on September 27, 2023, to both parties stated,

> **"As of this date we have not received the required fees from AutoNation USA Charleston in this matter. Accordingly, we must decline to administer this case and have closed our file. According to R-1(d) of the Consumer Arbitration Rules, should the AAA decline to administer an arbitration, either party may choose to submit its dispute to the appropriate court for resolution.**
>
> Any payment submitted by a party will be refunded shortly.
>
> **Additionally, and because AutoNation USA Charleston failure to remit the foregoing constitutes a failure to adhere to our policies regarding consumer claims, we may decline to administer future consumer arbitrations involving AutoNation**

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**USA Charleston.** The AAA's consumer policies can be found on the AAA's website, www.adr.org. We request that AutoNation USA Charleston remove the AAA name from its consumer arbitration clause so that there is no confusion to the public regarding our decision.

If AutoNation USA Charleston advises the AAA in the future of its intention to comply with the AAA's Consumer Arbitration Rules and if applicable, resolves any outstanding payment obligations, the AAA may consider at its sole discretion, accepting newly filed consumer cases going forward."

*See* Exhibit B.

Defendants received multiple notices for their required arbitration filing fees and opportunities to arbitrate this dispute with the AAA and failed to engage and comply with the rules and procedures of the AAA that they forced upon Plaintiff. These failures resulted in waiving Defendants' right to arbitrate. The AAA has explicitly stated that Defendant failed to adhere to their policies and, therefore, can decline future consumer arbitrations involving Defendant. This means that the Defendants' actions could have a lasting impact on their ability to arbitrate future disputes with the AAA. Furthermore, in applying the above law and framework used in *Wyndham Vacation Resorts*, Defendants breached their contract by not abiding by the AAA Rules and Procedures. Defendants had knowledge of the arbitration clause but acted inconsistently with that right of arbitration by not paying the fees to arbitrate, and their actions prejudiced Bolmer. **Moreover, AAA has already declared that Plaintiff Bolmer "<u>may choose to submit its dispute to the appropriate court for resolution</u>." Id.**

Allowing Defendants to proceed back into arbitration would very well relinquish the rules and procedures put into place to protect consumers against businesses that try to "cherry pick" the rules they want to enforce and follow. As the Court in *Wyndham Vacation Resorts* stated, a Defendant cannot ignore and choose not to oblige by the AAA requirements and then compel a Plaintiff into an arbitration proceeding they decided not to participate in. *Id.*

## II. SOUTH CAROLINA LAW CONSIDERS CERTAIN FACTORS IN DETERMINING WHETHER A PARTY HAS WAIVED THEIR RIGHT TO ARBITRATE.

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While no definitive South Carolina cases explicitly state what constitutes a party's right to waive arbitration, courts consider these cases fact-by-fact. "There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of each case." *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665 (Ct. App. 1999). South Carolina, along with other jurisdictions, generally applies three factors to determine whether a party waived their right to compel arbitration: "(1) whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay in seeking arbitration." *Carlson v. S.C. State Plastering, LLC*, 404 S.C. 250, 257 (Ct. App. 2013) (quoting *Davis v. KB Home of S.C., Inc.*, 394 S.C. 116 at 131 (Ct. App. 2011)).

Further, "The party seeking to establish wavier has the burden of showing prejudice through an undue burden caused by a delay in the demand for arbitration." *General Equip. & Supply Co. v. Keller Rigging & Constr., SC. Inc.* 344 S.C. 553, 556 (Ct. App. 2001). See *Sentry Eng'r & Constr.*, 287 S.C. 346, 351 (1985). "Determining whether a party waived its right to arbitrate is a legal conclusion subject to de novo review; nevertheless, the circuit judge's factual findings underlying that conclusion will not be overruled if there is any evidence reasonably supporting them." *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665-666 (Ct. App. 1999).

In *Horton*, Appellant contracted to build a house for the Respondents. *Id.* at 661. An arbitration clause was included in the contract. *Id.* Disputes arose after changes were made without Respondent's approval, failing to pay for those changes. *Id.* Appellant filed for a mechanics lien, which started a lawsuit with the Respondent that lasted over the course of two and one-half years before Appellant moved to arbitrate the case. *Id.* The Circuit Court Judge applied the three factors to the case and found that because of Appellants delay, which prejudiced the Respondents, waived their right to arbitrate. *Id.* The Court stated, "[Appellants]

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decision to file suit, participate in pretrial discovery, and engage in procedural maneuvering for two and one-half years is sufficient to support the trial court's finding of waiver." *Liberty Builders, Inc.*, 336 S.C. 658 at 667. See *Worldsource Coil Coating, Inc., v. McGraw Constr. Co.*, 946 F.2d 473, 477 (6th Cir. 1991) ("We conclude [Defendant's] action in state court seeking preliminary and permanent injunction and compensatory and punitive damages indicates an abandonment of the right to compel arbitration and that [Defendant's] right to arbitrate is not saved by the terms of the contract or by the rules of the arbitration agency."). That Court relied on a reasoning from the California appellate court, which stated that:

> "Among the difficulties we have with [the argument that this rule preserves the right to arbitrate notwithstanding extensive discovery and litigation] is the fact that no other court has accepted such an expansive interpretation of the AAA rule. At most, the courts which have addressed the issue have held that AAA's "no waiver" rule means that participation in a judicial proceeding, will not by itself give rise to a waiver. Indeed, one court has expressly held that a "no waiver" rule does not prevent a waiver where participation in a judicial proceeding has caused prejudice to an adversary."
> *Id.* at 666 (quoting *McMillin Dev., Inc. v. Home Buyers Warranty*, 68 Cal. App. 4th 896, 908 (4th Dist. Ct. App. 1998).

Even in the face of a no-waiver provision, the Court in *Horton* agreed with the interpretation of the AAA and held that the right to arbitrate could be waived. *Id.* Therefore, because Appellant brought suit against Respondents and then waited two and one-half years to compel the case to arbitration, it was enough to waive their right to arbitrate. *Id.* at 668.

In applying the three factors to determine whether a party waived their right to arbitrate to the present case, this Court will see that Defendants indeed waived any right to arbitrate. Defendants are currently deciding they want to cooperate in an arbitration proceeding after a substantial time transpired, leading to Bolmer being prejudiced. Bolmer filed a Demand for Arbitration on or about June 21, 2023. Defendants filed a Motion to Stay and Compel Arbitration on September 4, 2024, about a year and three months later. As stated, Defendants were given multiple correspondences by the AAA and chose not to pay the required fees and engage in the proceeding. This resulted in the AAA closing the case

and declaring that Bolmer "**may choose to submit its dispute to the appropriate court for resolution**". Defendants' actions have prejudiced Bolmer by causing unnecessary delays and additional costs associated with pursuing litigation instead of arbitration. In addition, within that year and three months, Bolmer suffered significant financial loss.

**CONCLUSION**

AAA has already decided and declared that Plaintiff **may choose to submit its dispute to the appropriate court for resolution.** Thus, Plaintiff has chosen to pursue this matter in this Court.

WHEREFORE, PLAINTIFF prays that this Court deny Defendants' Motion to Compel Arbitration, and for such and other relief as this Court deems just and proper.

MILLER|CONWAY

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***Pro Hac Vice***
**Attorneys for Plaintiff**

February 6, 2025
Goose Creek, South Carolina



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SM: MICHAEL MONGE
SA: KIONNO NELSON
CFS: JOVAN ROSEBORO

# RETAIL PURCHASE AGREEMENT

FORM# 92505
STORE# 980
DEAL# 31129
STK# CL273616
CUST# 4438219

AUTONATION USA CHARLESTON
2250 SAVANNAH HWY
CHARLESTON, SC 29414
(854) 222-6500

03/14/2023

| | |
|---|---|
| PURCHASER | MICHAEL BOLMER |
| ADDRESS | 3961A APPLETREE AVE<br>CHARLESTON, SC 29418<br>arenotyouml33@gmail.com |
| H: (843) 964-3549 | C: (843) 964-3549 |

| PURCHASE VEHICLE CLASSIFICATION | | |
|---|---|---|
| ☐ NEW ☒ USED ☐ DEMO | | |
| YEAR / MAKE | 2012 FORD | |
| MODEL / COLOR | FOCUS WHITE | |
| VIN 1FAHP3K2XCL273616 | MILEAGE | 135238 |
| CYL / ENGINE / TRANS | 4 2.0L 4 CYL A | |

| TRADE-IN VEHICLE 1 | | |
|---|---|---|
| YEAR / MAKE / MODEL | 1998 NISSAN MAXIMA | |
| VIN JN1CA21A9WM805366 | MILEAGE | 222179 |
| TRADE-IN VEHICLE 2 | | |
| YEAR / MAKE / MODEL | N/A | |
| VIN N/A | MILEAGE | N/A |

Separate Trade Vehicle Payoff Authorization forms, incorporated by reference and made a part of this Agreement, contain representations and information about each Trade-In Vehicle, including the amount of the payoff and the lienholder.

**DISCLOSURES RELATED TO ITEMIZED FEES AND COSTS** (line items marked by an asterisk *)

**OPTIONAL ACCESSORIES / PRODUCTS / SERVICES:** You have elected to purchase optional items that are listed. We do not require You to purchase any of these items. The amount of these items represents cost and profit to Us.

**TOTAL SELLING PRICE:** The total selling price includes listed accessories, products, and services, and is the final contract price to which You and We have agreed.

**TRADE-IN ALLOWANCE:** The Trade-In Allowance(s) may not equate to the actual cash value of the Trade-In Vehicle(s). In fact, the amount allowed may exceed the actual cash value of Your Trade-In Vehicle(s).

**CLOSING FEE:** This charge represents a fee charged for all administrative and financial work needed to transfer the Vehicle to You including, but not limited to, compliance with all state, federal, and lender requirements, preparation and retrieval of documents, protection of Your private personal information, records retention and storage costs.

Purchaser: Michael Bolmer Co-Purchaser: N/A

**WARRANTY STATEMENT**

WE EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, UNLESS OTHERWISE INDICATED BELOW. ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN US ARE THEIRS, NOT OURS, AND ONLY SUCH MANUFACTURER OR SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. WE NEITHER ASSUME NOR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR US ANY LIABILITY IN CONNECTION WITH THE SALE OF THE VEHICLE AND THE RELATED GOODS AND SERVICES. IF WE SELL A SERVICE CONTRACT ON OUR OWN BEHALF, ANY IMPLIED WARRANTIES WILL APPLY ONLY WITH RESPECT TO THE ITEMS COVERED IN THE SERVICE CONTRACT. THIS WARRANTY STATEMENT DOES NOT LIMIT ANY WARRANTIES SET FORTH IN A SEPARATE WRITING GIVEN TO YOU IN CONNECTION WITH YOUR PURCHASE OF THE VEHICLE.

CONTRACTUAL DISCLOSURE STATEMENT (USED VEHICLES ONLY): THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

DECLARACIÓN DE DIVULGACIÓN CONTRACTUAL (VEHÍCULOS USADOS SOLAMENTE): LA INFORMACION QUE APARECE EN LA VENTANILLA DE ESTE VEHICULO FORMA PARTE DE ESTE CONTRATO. LA INFORMACION CONTENIDA EN EL FORMULARIO DE LA VENTANILLA ANULA CUALQUIER PREVISION QUE ESTABLEZCA LO CONTRARIO Y QUE APAREZCA EN EL CONTRATO DE VENTA.

| CO-PURCHASER | |
|---|---|
| ADDRESS | N/A |

| ITEMIZATION OF COSTS | | |
|---|---|---|
| BASE SELLING PRICE | $ | 5991.00 |
| OPTIONAL ACCESSORIES / PRODUCTS / SERVICES* | | |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| TOTAL SELLING PRICE* | = | 5991.00 |
| LESS DISCOUNT | - | 500.00 |
| TRADE-IN 1 ALLOWANCE* | - | 500.00 |
| TRADE-IN 2 ALLOWANCE* | - | N/A |
| CASH DIFFERENCE | = | 5491.00 |
| Dealer Doc* | + | 494.50 |
| Plate Transfer Fee | + | 10.00 |
| N/A | + | N/A |
| SALES TAX / IMF | + | 299.28 |
| License | + | 40.00 |
| Title Fee | + | 15.00 |
| Electronic Filing Fee | + | 2.50 |
| N/A | | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| SUBTOTAL | = | 6352.28 |
| BALANCE OWED ON TRADE-IN(S) | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| N/A | + | N/A |
| TOTAL DUE | = | 6352.28 |
| FACTORY CASH / REBATE ASSIGNED TO DEALER | - | N/A |
| DOWN PAYMENT | - | 600.00 |
| UNPAID BALANCE DUE | = | 5752.28 |

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EXHIBIT A

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**THIS AGREEMENT CONTAINS AN ARBITRATION PROVISION. AN AGREEMENT THAT DOES NOT INCLUDE AN ARBITRATION PROVISION IS AVAILABLE UPON YOUR REQUEST.**

## TERMS AND CONDITIONS

### 1. DEFINITION OF TERMS

This Retail Purchase Agreement contains the following words and phrases that appear throughout and have particular meaning:

**Agreement** - Means this Retail Purchase Agreement together with any documents incorporated into this Retail Purchase Agreement by operation of law or by express reference, whether such reference is made in this Retail Purchase Agreement or the document itself.

**Retail Installment Sales Contract, RISC** – Means the separate sales contract that You will be required to sign if You are financing the Vehicle purchase and that will be assigned to a third-party financial institution.

**You, Your, Purchaser** - Means the Purchaser and Co-Purchaser identified on the first page of this Agreement.

**We, Us, Our, Dealer** - Means the Seller or Dealer identified on the first page of this Agreement and its authorized manager.

**Manufacturer** - Means the company that manufactured and/or distributed the Vehicle.

**Vehicle** - Means the vehicle described on the front of this Agreement that You are purchasing from Us.

**Trade-In Vehicle** - Means the vehicle that You are delivering to Us as part of this transaction to be applied against the Selling Price of the Vehicle that You are purchasing.

**After-Market** - Means not manufactured, produced, distributed, or warranted by the Manufacturer of the Vehicle.

### 2. PURCHASED VEHICLES

a. Additional Equipment, Accessories, Repairs or Services Owed: You acknowledge that You have inspected the Vehicle and confirmed that, except as specifically listed in a We Owe form signed by You and Us, all equipment, accessories, repairs or services purchased by You or due to You are on the Vehicle or have been provided to You. You further acknowledge that the Vehicle does not have any visible damage that We are obligated to repair, except as specifically identified on a We Owe form. If the We Owe form is blank or otherwise indicates that nothing further is to be done to the Vehicle, You acknowledge that no equipment, accessories, services, or repairs are due to You. Any equipment, accessories, repairs, or services listed on a We Owe form shall be installed or performed within 30 days from the date of delivery of the Vehicle pursuant to an advanced appointment with Our Service Department initiated by You. If You fail or refuse to provide the Vehicle to Us for such installation, repairs, or services, any items or services requested shall remain the property of Dealer and We may keep any cash deposit You have provided, to the extent not prohibited by law.

b. Manufacturer Changes In Design or Price: In the event You have placed an order for the Vehicle and the Manufacturer changes or modifies the design of any part or accessory of the Vehicle after Your order has been entered by Us, You will not have any claim or right against Us if the Vehicle does not contain such changes or modifications, nor shall We be required to effect such changes or modifications to the Vehicle. If You have placed an order for the Vehicle and the selling price of the Vehicle is increased prior to delivery to You due to price changes imposed by the Manufacturer, You may cancel this Agreement prior to accepting delivery of the Vehicle.

c. After-Market Products, Services, Parts and Accessories: **We offer many value-added protection products, services, parts, and accessories for sale that are not products of the Vehicle's Manufacturer. Coverage, product guarantees and/or warranties on these After-Market products and services are not provided by the Manufacturer or its affiliates, but instead by the maker of the product, a service administrator, and/or an insurer. If You have purchased any AutoNation or other After-Market products, refer to the specific product agreement for terms, conditions, specific coverage details, product guarantees, and service contract and/or warranty information. If You are purchasing a used vehicle, We may have used quality After-Market parts to make repairs or perform maintenance, or We may have installed After-Market equipment or accessories. Any warranty on these parts, equipment and accessories is not provided by the Manufacturer.**

d. Financing: If this Agreement is part of a credit purchase, You may secure financing through any financing entity You choose. In addition, at Your request We may assist You in obtaining financing with a third-party financing entity. If We assist You in obtaining financing, We are not acting as an agent for You in obtaining such financing and We may retain a portion of the finance charge that You pay or other compensation. Interest rates may be negotiable. The purchase of protection products is not required to obtain financing or a lower interest rate.

e. Recall Disclosure: We have provided You with a printout containing the Vehicle's recall status. We use electronic and/or automated resources to check for recalls and ensure open safety recall repairs are completed or disclosed before a vehicle is sold. We may not check for or be aware of non-safety recalls, including EPA emissions recalls. Moreover, due to data errors or delays We may not have complete and accurate information regarding all recalls at the time of sale. We do not warranty, guarantee or make any assurances about the information provided by third parties regarding recall status. We are not obligated to advise You of recalls that may be announced after this sale. You may obtain recall information related to the Vehicle at any time by: completing a VIN look-up at the National Highway Traffic Safety Administration (NHTSA) website, www.safercar.gov; accessing resources provided by the Vehicle Manufacturer; or by contacting a dealership that represents the Manufacturer of the Vehicle.

f. Used Vehicle History Disclosure: Our pre-sale used vehicle reconditioning inspections are limited in scope and are not a warranty or guarantee of the mechanical components, equipment, systems, condition, prior use, title history, or accident history of the Vehicle (unless otherwise expressly provided pursuant to Manufacturer's Certified Pre-Owned program rules and guidelines or Dealer's Used Vehicle Limited Warranty). You may obtain an independent third-party inspection of the Vehicle prior to purchase. We are not affiliated with CARFAX, have not verified the information in the CARFAX Vehicle History Report, and are not responsible for any inaccuracies therein.

g. 5 Day / 250 Mile Money-Back Guarantee (eligible used/demo vehicles only): We are providing a Money-Back Guarantee for eligible vehicles. The Money-Back Guarantee shall not apply to vehicles designated as New on this Agreement, to vehicles with a selling price of $200,000 or more, to vehicles You decide to purchase at lease end (lease buyouts), to vehicles to which special equipment was added at the time of sale at Your request, or to vehicles delivered to You out of state. You are limited to one Money-Back Guarantee vehicle return during any twelve-month period at any AutoNation owned store. For eligible vehicles, the following terms and conditions apply:

   i. You must return the Vehicle to the same Dealer location from which the Vehicle was purchased within five (5) business days ("Expiration Date").

   ii. The Vehicle must have less than 250 miles over the odometer reading at sale as set forth in this Agreement and must be in the same condition (excepting allowable mileage) in which it was delivered to You. You will not be reimbursed for any money spent on the Vehicle while in Your possession.

   iii. You must return the Vehicle, together with all Vehicle purchase, finance, and/or lease transaction documents to a manager of Dealer no later than the Dealer closing time on the Expiration Date.

   iv. If You financed any portion of the purchase price of the returned Vehicle, We will pay the financed amount directly to the party providing such financing. Any down payment paid by You shall be refunded to You, subject to subsection v. below.

   v. If You traded in a vehicle in connection with the purchase, You shall receive one of the following remedies: Trade-In Vehicle Not Available – If Your Trade-In Vehicle has been sold by Us, We shall only be obligated to return the value (in cash) of the Trade-In Vehicle as appraised by Us at the time of the sale, less any amounts due to Us or paid by Us to satisfy any liens or encumbrances thereon. You agree that payment under this section shall be deemed to be full restoration of the consideration provided by Us for the Trade-In Vehicle. If the Trade-In Vehicle's appraised value is less than the total amount paid by Us to satisfy liens or encumbrances thereon, You must pay the difference to Us before the Vehicle will be accepted for return; Trade-In Vehicle Available – In the event that the Trade-In Vehicle is still in Our possession, We shall return Your Trade-In Vehicle to You so long as You concurrently pay to Us any amounts due to Us or paid by Us to satisfy any liens or encumbrances thereon. In all cases, regardless of whether the Trade-In Vehicle is available, if You are unable or unwilling to pay Us any amounts due to Us or paid by Us on Your behalf, We may deduct such amounts from any refunds due to You in addition to availing ourselves of any other remedies available to Us at law or in equity.



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## 5. TRADE-IN VEHICLES, cont.

b. Purchaser Obligations with Respect to Trade-In Vehicles: Any Trade-In Vehicle delivered by You to Us in connection with this transaction shall be accompanied by a title or documents sufficient to enable Us to obtain a title to the Trade-In Vehicle in accordance with applicable state law. You agree to sign any and all documents necessary to comply with Your obligations under this section. You further agree that Your failure to comply with this section will result in Your obligation to pay Us the value of the Trade-In Vehicle in cash.

c. Permission to Contact Lienholder: You acknowledge and agree that You have given Us permission to contact the lienholder on Your Trade-In Vehicle(s) in order to obtain payoff information regarding the Trade-In Vehicle(s) described in this Agreement. You understand that information about Your account(s) is private and that the lienholder may be asked to reveal nonpublic personal information about You to Us. In accordance with federal and state privacy laws, You hereby authorize the lienholder to release Your payoff information to Us and answer any questions that We have with respect to Your account(s). This information will be used only in connection with the transaction that You have initiated and only for the purposes for which it has been provided.

d. Damage to Trade-In Vehicle: If You are delivering a Trade-In Vehicle to Us in connection with this transaction and the delivery of the Trade-In Vehicle to Us will not occur until We deliver the Vehicle to You, the Trade-In Vehicle allowance set forth in this Agreement may be reduced if the value of the Trade-In Vehicle has been materially diminished as a result of physical damage, alteration or deterioration in mechanical condition other than normal wear and tear. If You are dissatisfied with the reduced Trade-In Vehide allowance, You may cancel this Agreement and We will refund to You any deposit or partial payment, provided that the cancellation occurs prior to You taking delivery of the purchased Vehicle.

## 6. ADDITIONAL TERMS

a. No Oral Promises: **YOU ACKNOWLEDGE AND AGREE THAT YOU ARE NOT RELYING UPON ANY STATEMENT OR PROMISE BY ANY SALESPERSON, SALES MANAGER, OR ANY OTHER EMPLOYEE OF OURS THAT IS NOT CONTAINED IN A WRITTEN DOCUMENT EXECUTED BY US AND YOU.**

b. Limitation of Liability: **TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU SHALL NOT BE ENTITLED TO RECOVER FROM US ANY CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF USE, LOSS OF TIME, AND LOSS OF PROFITS OR INCOME), OR ANY OTHER INDIRECT OR INCIDENTAL DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM THIS AGREEMENT OR TRANSACTION.**

c. Purchaser's Rights Due to Dealer's Failure to Deliver Vehicle: If the Vehicle is not delivered to You as specified in accordance with this Agreement and the failure to deliver is not attributed to You, You have the right to cancel this Agreement and to receive a full refund of Your deposit. If you have delivered a Trade-In Vehicle to Us, the Trade-In Vehicle shall be returned to You, or if the Trade-In Vehicle is not available We shall refund to You the actual value of the Trade-In Vehicle.

d. Purchaser's Obligation to Pay: You grant to Us and We retain a security interest in the Vehicle and any Trade-In Vehicle until such time as You have met Your obligation under this Agreement. If this is a cash sale, payment is demanded and due upon delivery of the Vehicle. If any payment to Us, whether as a deposit or full or partial payment, is made by check which is subsequently dishonored, You agree that, within 24 hours following written or oral notice from Us that the check has been dishonored, You will (a) pay Us the amount of the returned check along with any applicable bank charges, in cash or certified funds, or (b) return the Vehicle to Us. If You fail to timely pay the amount of the returned check and applicable charges in good funds or return the Vehicle to Us, We may, at Our sole option, pursue all available legal remedies that We may have, including reaffirming this Agreement and holding You contractually liable for the Unpaid Balance Due, as shown on the front of this Agreement, or canceling the sale and retaking immediate possession of the Vehicle and collecting from You all reasonable expenses incurred by Us in connection with retaking the Vehicle. Upon return or retaking of the Vehicle, You also agree to pay for any damages to the Vehicle that occurred while the Vehicle was in Your possession or under Your control and a daily rental charge of $99 for each day that the Vehicle remained in Your possession or under Your control. In the event that Your check is dishonored, We may also retain title to the Vehicle until full payment is received for the dishonored check and applicable bank charges.

e. Purchaser's Obligation to Assist with Registration and Titling: You agree to cooperate and sign all documents and take all necessary steps We may require to enable Us to complete the title application, have a title issued, complete the registration, record any financing entity lien and effectuate the intent of the parties and consummate the transaction as agreed to herein or in the associated Retail Installment Sales Contract.

f. Dealer's Rights Upon Default by Purchaser: In the event of any failure by You to perform Your obligations under this Agreement including, but not limited to, any failure to take delivery of or to pay the agreed upon price for the Vehicle, We shall be permitted to collect or retain an amount equal to any damages and reasonable expenses We incur due to Your default. If You have delivered a Trade-In Vehicle to Us as part of this transaction, We may return any Trade-In Vehicle to You if We have not already sold it so long as You concurrently pay to Us any amounts due to Us or paid by Us to satisfy any liens or encumbrances thereon. If We have already sold the Trade-In Vehicle(s), We will refund to You the actual cash value of the Trade-In Vehicle(s) less any amounts due or paid by Us to satisfy any liens or encumbrances thereon, but if the amounts paid by Us to satisfy any liens or encumbrances exceed the actual cash value of the Trade-In Vehicle(s), You must pay the difference to us. Moreover, in all instances, We may deduct all damages, reasonable expenses and amounts owed to Us from any refunds due to You, in addition to availing ourselves of any other remedies available to Us at law or in equity.

g. Jury Trial Waiver: **BY ENTERING INTO THIS AGREEMENT YOU AGREE TO WAIVE YOUR RIGHT TO A JURY TRIAL.**

h. Jurisdiction/Venue: All proceedings described in the Arbitration Provision section of this Agreement shall take place in the county where Dealer is located, unless agreed otherwise by the parties. If a dispute arising under or concerning this Agreement proceeds in court, including by agreement of the parties or by court order, such dispute shall be filed and adjudicated in the courts located in and for the county in which Dealer is located. This Agreement shall be construed and governed by the laws of the state in which Dealer is located.

i. Personal Information: You have provided certain personal and identifying information to Us in connecton with this transaction. You expressly consent to Us obtaining such information from Your driver's license or other identifying documents by means of photocopy, scan, swipe, accessing machine-readable information, or otherwise, and copying, retaining and using such information for the purposes of identity verification, fraud prevention, and/or processing of this transaction.

j. Electronic Records: You agree that We may maintain documents and records related to the Vehicle and this Agreement electronically, including, but not limited to, documents and records images, and that We may dispose of original documents. You agree that a copy of any such electronic records may be used and shall be deemed to be the same as an original in any arbitration, judicial, non-judicial or regulatory proceeding related to the Vehicle.

k. Communications: You agree that We may monitor and record telephone calls between You and Us. You expressly consent that We may contact You (by calls, emails, text messages, or other electronic messages) by any means, including but not limited to the use of prerecorded/artificial voice messages or automatic telephone dialing devices. Your express consent applies to any email addresses or telephone numbers We obtain from You or that You provide in any manner and at any time, including email addresses and residential or cellular telephone numbers for which You may incur voice, data, or other charges.

l. General Provisions:
   i. You agree to sign any and all documents necessary to compete the terms of the sale.
   ii. All pages of this Agreement and any documents incorporated by reference or operation of law comprise the entire Agreement affecting this sale.
   iii. If any provision of this Agreement is determined to be unenforceable, such provision shall be considered severed from the remaining provisions of this Agreement and such remaining provisions shall be and remain in full force and effect unless otherwise expressly stated.
   iv. The provisions of this Agreement shall survive the execution of a Retail Installment Sales Contract and/or consummation of Your purchase of the Vehicle. This Agreement shall not become binding upon Us until signed by Our authorized manager, and if a credit purchase, (i) appropriate financing disclosures are made and (ii) a Retail Installment Sales Contract is executed by You and Us.

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## 3. VEHICLE DISCLOSURES AND RECALL STATUS ACKNOWLEDGMENT (USED/DEMO VEHICLES)

You certify and acknowledge as follows:

a. Prior to You signing this Agreement, We provided You with each of the following documents:
- **Recall Status from the Manufacturer, NHTSA, CARFAX, or other source listing any open recalls**
- **Manufacturer Certified Pre-Owned (CPO) Vehicle Inspection Report or AutoNation Pre-Owned Vehicle Inspection Report**
- **CARFAX Vehicle History Report**
- **Used Vehicle Buyer's Guide**

b. Where possible, We gave You the opportunity to schedule or complete recall repairs prior to delivery.

c. You have reviewed and understand the above terms of the 5 Day/ 250 Mile Money-Back Guarantee, including that it does not apply to vehicles priced at $200,000 or higher, to lease buyouts, to vehicles with special equipment added at Your request, or to vehicles delivered out of state.

d. You have not relied upon any oral statement or promise by any sales associate, sales manager, or other employee of Dealer regarding the prior use, condition, title history, or accident history of the Vehicle. You understand and agree that Dealer has not verified the information in the CARFAX Vehicle History Report and is not responsible for any inaccuracies therein.

Purchaser: _____ Co-Purchaser: N/A

## 4. VEHICLE FINANCING CONTINGENCY - CONDITIONAL SALE AND DELIVERY PROVISION

**WE ARE NOT A LENDER OR FINANCE COMPANY. YOUR PURCHASE OF THE VEHICLE IS CONDITIONED UPON FINAL APPROVAL (WITH NO CONDITIONS OR STIPULATIONS) BY A THIRD-PARTY FINANCE COMPANY. IF YOU ARE NOT FINALLY APPROVED FOR FINANCING BY A THIRD-PARTY FINANCE COMPANY, THEN THE TRANSACTION IS CANCELED AND YOU AGREE TO RETURN THE VEHICLE TO US. THIS PROVISION DOES NOT APPLY TO CASH SALES.**

Your purchase of the Vehicle is conditioned upon an agreement by a third-party finance company ("Finance Company") to purchase the Retail Installment Sales Contract ("RISC") entered into between You and Us. If We cannot assign or sell the RISC to a Finance Company for any reason including, but not limited to, that You have furnished incomplete, inaccurate or false information, We may cancel the RISC and You agree to return the Vehicle to Us within 48 hours after You receive notice of cancellation from Us. If You fail to return the Vehicle within 48 hours, You agree that We may, solely at Our option, and as may be permitted by applicable law, immediately retake possession of the Vehicle with right of entry wherever the Vehicle may be found and collect from You all reasonable expenses incurred by Us in connection with retaking the Vehicle. Upon return or retaking the Vehicle You also agree to pay for any damages to the Vehicle incurred while the Vehicle is in Your possession or under Your control and to pay the lesser of (i) $99.00 per day and 99 cents per mile in excess of the Permitted Mileage rental charge or (ii) the maximum amount allowed by law for vehicle usage/rental charges, for each day following the 48 hour return period. For each day the Vehicle is in Your possession up to and including the 48 hour period following the notice of cancellation from Us, You are allowed to place up to 100 miles per day on the Vehicle ("Permitted Mileage"). The usage/rental fee (if any) may be deducted from any down payment made by You on the Vehicle. You will be entitled to a refund of any monies paid by You, less any expenses and/or charges as described above.

While the Vehicle is in Your possession, all terms of this sale, as set forth in this Agreement and in the RISC, including those relating to the use of the Vehicle and insurance for the Vehicle (comprehensive/collision, personal injury and any other state required insurance coverage) will be in full force. You acknowledge and agree that until the Vehicle has been returned to Us, You assume all risk of loss or destruction of and all risk of damage to the Vehicle and all liability for any damage or injury to people or property (including the Vehicle) from the use or operation of the Vehicle. You will maintain insurance on the Vehicle to cover such risks, and the insurance that You provide shall be primary. You hereby assign to Us the right to receive proceeds payable to You under all insurance policies covering said accident and You hereby authorize and direct the carriers of all such insurance policies to pay said proceeds directly to Us by check or draft payable to the order of You alone. We are hereby irrevocably appointed Your attorney in fact to endorse Your name to any checks or drafts issued by such insurance carriers by reason of such accident. Any such proceeds received by Us shall be applied toward payment of Your obligation hereunder and any excess of such proceeds over said obligation shall be remitted to You. You agree to defend, indemnify and hold Us harmless along with Our shareholders, officers, employees, agents, successors, assigns and insurers from and against any and all claims, demands, suits, actions, settlements, damages, costs and/or expenses (including attorney's fees and expenses) relating to or arising out of or in connection with the use or operation of the Vehicle until the Vehicle has been returned to Us.

This Conditional Sale and Delivery Provision is entered into contemporaneously with Your RISC, if any. In the event of a conflict between the terms of this Conditional Sale and Delivery Provision and those of the RISC, the terms shall be construed together to the extent possible and only the terms of this Conditional Sale and Delivery Provision that are in direct conflict with those of the RISC shall be disregarded. If there is an irreconcilable difference between this Conditional Sale and Delivery Provision and the RISC, such that the two cannot be read together and which renders enforcement of this Conditional Sale and Delivery Provision impossible or impractical, then the terms of the RISC shall govern.

**IF YOU ARE UNSURE ABOUT THE STATUS OF YOUR TRANSACTION, WITHIN SEVEN (7) DAYS FROM THE DATE OF THIS AGREEMENT YOU SHOULD CONTACT US TO CONFIRM THAT YOU HAVE BEEN APPROVED FOR FINANCING.**

Purchaser: _____ Co-Purchaser: N/A

## 5. TRADE-IN VEHICLES

a. Purchaser Representations and Warranties Regarding Trade-In Vehicles: With respect to each Trade-In Vehicle, You represent and warrant that: (i) the Trade-In Vehicle is properly titled to You, You have the right to sell or otherwise convey such Trade-In Vehicle, and it is free and clear of liens or encumbrances except as may be noted on the first page of this Agreement and/or on a separate Trade Vehicle Payoff Authorization form; (ii) the Trade-In Vehicle has not had its vehicle identification number ("VIN") altered or changed and the VIN appearing on the Trade-In Vehicle corresponds to the VIN which appears on the certificate of title; and (iii) the Trade-In Vehicle has all required air pollution control equipment properly connected and undamaged. In addition, unless You specifically advise Us otherwise in writing, with respect to each Trade-In Vehicle You represent and warrant that the Trade-In Vehicle has never been titled a salvage, junk, rebuilt or lemon law buyback vehicle; is not a gray market vehicle; has never been used in police or taxi service; has not suffered any damage whatsoever to the frame, structural damage, cracks to the engine block, or flood or water penetration damage; You have not removed equipment from the Trade-In Vehicle; and the odometer reading shown is accurate. If any of the foregoing representations and warranties are untrue or incorrect, We may, at Our sole option, retain the Trade-In Vehicle as security and collect damages or We may rescind the purchase of the Trade-In Vehicle and/or Your purchase of the Vehicle.

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## 7. ARBITRATION PROVISION

This section applies to Your: (a) purchase of the Vehicle, and purchase or lease of any other vehicle(s), including any negotiations or application(s) for credit or other dealings or interactions with Dealer and/or Dealer's parents, subsidiaries, affiliates, predecessors, successors, and assigns, and each of their respective owners, directors, officers, managers, employees, vendors and agents (hereinafter Dealer and all other parties listed in this subsection (a) collectively referred to as "Dealer Parties"); (b) servicing the Vehicle or any other vehicle(s) with any of the Dealer Parties; and (c) reviewing, negotiating or executing any documents or agreements during the course of interactions with any of the Dealer Parties (collectively, including all subparts listed above, "Purchaser/Dealer Party Interactions").

You and Dealer Parties agree that neutral and binding arbitration on an individual basis only between You and Dealer Parties will be the sole method of resolving any claim, dispute or controversy (collectively, "Claims") that either party has arising out of or relating to Purchaser/Dealer Party Interactions, with the sole exception that either party may file and adjudicate Claims in a small claims court as an alternative to proceeding with arbitration, provided the total amount sought in small claims court, inclusive of attorney's fees and costs, if applicable, is less than the statutory dollar amount of that court's civil jurisdiction. Claims include, but are not limited to the following: Claims in contract, tort, regulatory, statutory, equitable, or otherwise; Claims relating to any representations, promises, undertakings, warranties, covenants or service; Claims regarding the interpretation, scope, or validity of this Agreement, or arbitrability of any issue; Claims between You and Dealer Parties; and Claims arising out of or relating to Your application for credit, this Agreement and/or any and all documents executed, presented or negotiated during Purchaser/Dealer Party Interactions, or any resulting transaction, service, or relationship, including that with Dealer Parties, or any relationship with third parties who do not sign this Agreement that arises out of the Purchaser/Dealer Party Interactions.

**BY ENTERING INTO THIS AGREEMENT, YOU GIVE UP YOUR RIGHT TO HAVE DISPUTES DECIDED IN COURT (OTHER THAN SMALL CLAIMS COURT) OR BY A JURY. YOU UNDERSTAND THAT DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A COURT ACTION, AND OTHER RIGHTS THAT YOU MAY HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION. YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN AN ACTION AGAINST ANY DEALER PARTIES ON A CLASS, REPRESENTATIVE OR OTHER SIMILAR BASIS (COLLECTIVELY, "CLASS ACTION"), INCLUDING ANY RIGHT TO CLASS ARBITRATION OR CONSOLIDATION OF INDIVIDUAL ARBITRATIONS WITH OTHER CLAIMANTS.**

To demand arbitration, the party seeking arbitration must serve the opposing party with a written demand for arbitration which includes a detailed statement of the facts supporting the claim and the relief requested. Once a demand for arbitration has been made by either party, arbitration shall be the exclusive means of resolving the subject dispute or controversy. Failure to arbitrate as required herein may subject the party failing to arbitrate to liability for consequential damages sustained by the other party. Any arbitration hereunder shall be governed by the Federal Arbitration Act (9 U.S.C. § 1, et seq., hereinafter the "FAA") and not by any state law concerning arbitration. The parties shall agree in writing as to the arbitration forum and/or arbitration rules. The arbitration will be conducted by a single arbitrator ("Arbitrator") who shall be an attorney or retired judge selected by mutual agreement. If the parties cannot agree on the selection of an Arbitrator, either party may seek appointment of an Arbitrator pursuant 9 U.S.C. § 5. Your portion of the cost of the arbitration itself and/or the Arbitrator's fees shall be limited to the amount of the filing fee in effect for the Federal District Court in the District in which the arbitration takes places at the time the demand is filed. Dealer shall pay all arbitration costs and Arbitrator's fees in excess of that amount, unless the Arbitrator later shifts responsibility for fees under applicable law. Each party, however, shall be responsible for its own attorney or expert fees and litigation costs, unless otherwise awarded by the Arbitrator under applicable law.

The Arbitrator shall follow controlling law and issue a reasoned decision in writing with a supporting opinion based on applicable law. If there is no appeal as stated below, the Arbitrator's award shall be final, binding, and conclusive on the parties (except as otherwise provided for under the FAA) and any unpaid award may be confirmed or entered in any court of competent jurisdiction. At either party's election and within 30 days of receipt of the Arbitrator's award, such award may be appealed to another arbitrator ("Appellate Arbitrator"), who shall be a single person and who shall be chosen in the same manner as described above. The Appellate Arbitrator shall apply to the underlying decision and opinion the same standard of review applicable for review of the rulings from a bench trial of a civil case in the appellate court in the county in which the arbitration is proceeding and shall issue a reasoned decision in writing with a supporting opinion based on such review and applicable law. The Appellate Arbitrator's decision shall be final, binding, and conclusive on the parties (except as otherwise provided for under the FAA) and any unpaid award may be confirmed or entered in any court of competent jurisdiction. In the event either party files a Claim(s) against the other, resulting in a ruling that a portion of this Arbitration Provision is unenforceable, the portion of this Arbitration Provision that has been ruled to be unenforceable shall be severed, and the remaining terms shall be enforced. However, if the portion of the Arbitration Provision that was ruled to be unenforceable is or includes the above waiver of Class Action rights, then this Arbitration Provision shall be unenforceable in its entirety.

Purchaser: Michelle Bodine Co-Purchaser: N/A

## 8. FINAL SIGNATURE BLOCK

By signing below You represent that You are at least 18 years of age and have authority to enter into this Agreement. You have read all pages of this Agreement in their entirety (including the above Arbitration Provision) and hereby acknowledge that this Agreement is fully filled in and accurately reflects the negotiations and agreements between You and Dealer. If You did not understand any of the above, You have had Your own representative and agent read and explain in Your native language (or have had the opportunity but have elected not to do so) all of the above and foregoing. **NO REPRESENTATIONS HAVE BEEN MADE THAT ARE NOT SET FORTH HEREIN.**

Purchaser Signature: Michelle Bodine

Co-Purchaser Signature: N/A

Dealer Signature:

**MAKE SURE YOU RECEIVE A WRITTEN RECEIPT FOR ANY CASH TENDERED ON THIS TRANSACTION**

AMERICAN ARBITRATION ASSOCIATION® | INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION®

1101 Laurel Oak Road
Voorhees, NJ 08043

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September 27, 2023

A. Scott Waddell, Esq.
Waddell Law Firm, LLC
9200 Indian Creek Parkway
Suite 430
Overland Park, KS 66210
Via Email to: scott@aswlawfirm.com

AutoNation USA Charleston
2250 Savannah Highway
Charleston, SC 29414
Via Mail

Westlake Services, LLC
4751 Wilshire Boulevard
Suite 100
Los Angeles, CA 90010
Via Email to: Westlake_LegalDepartment@westlakefinancial.com

**Case Number: 01-23-0002-7781**

Michael Bolmer
-vs-
AutoNation USA Charleston
-vs-
Westlake Services, LLC dba Westlake Financial Services

Dear Parties:

As of this date we have not received the required fees from AutoNation USA Charleston in this matter. Accordingly, we must decline to administer this case and have closed our file. According to R-1(d) of the Consumer Arbitration Rules, should the AAA decline to administer an arbitration, either party may choose to submit its dispute to the appropriate court for resolution.

Any payment submitted by a party will be refunded shortly.

Additionally, and because AutoNation USA Charleston failure to remit the foregoing constitutes a failure to adhere to our policies regarding consumer claims, we may decline to administer future consumer arbitrations involving AutoNation USA Charleston. The AAA's consumer policies can be found on the AAA's website, www.adr.org. We request that AutoNation USA Charleston remove the AAA name from its consumer arbitration clause so that there is no confusion to the public regarding our decision.

If AutoNation USA Charleston advises the AAA in the future of its intention to comply with the AAA's Consumer Arbitration Rules and if applicable, resolves any outstanding payment obligations, the AAA may consider at its sole discretion, accepting newly filed consumer cases going forward.



Pursuant to the AAA's current policy, in the normal course of our administration, the AAA may maintain certain electronic case documents in our electronic records system. Such electronic documents may not constitute a complete case file. Other than certain types of electronic case documents that the AAA maintains indefinitely, electronic case documents will be destroyed 18 months after the date of this letter.

If you have any questions, please email ConsumerFiling@adr.org.

Sincerely,

Consumer Filing Team
Email: ConsumerFiling@adr.org
Fax: (877)304-8457

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# LAW 553-SC-ARB-eps 8/22

## RETAIL INSTALLMENT SALE CONTRACT – SIMPLE FINANCE CHARGE (WITH ARBITRATION PROVISION)

016581

FORM# 98833 DEAL# 31129 STORE# 980 STK# CL273616 CUST# 4438210

| Buyer Name and Address (Including County and Zip Code) | Co-Buyer Name and Address (Including County and Zip Code) | Seller-Creditor (Name and Address) |
|---|---|---|
| MICHAEL BOLMER<br>3961A APPLETREE AVE<br>CHARLESTON SC 29418<br>CHARLESTON<br>Cell: 843-864-3549<br>Email: arenatyoumi33@gmail.com | N/A<br><br><br>Cell: N/A<br>Email: | AUTONATION USA CHARLESTON<br>2250 SAVANNAH HWY<br>CHARLESTON SC 29414 |

You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements in this contract. You agree to pay the Seller - Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-In-Lending Disclosures below are part of this contract.

| New/Used | Year | Make and Model | Vehicle Identification Number | Primary Use For Which Purchased |
|---|---|---|---|---|
| USED | 2012 | FORD<br>FOCUS | 1FAHP3K2XCL273616 | Personal, family, or household unless otherwise indicated below<br>☐ business<br>☐ agricultural ☐ N/A |

### FEDERAL TRUTH-IN-LENDING DISCLOSURES

| ANNUAL PERCENTAGE RATE<br>The cost of your credit as a yearly rate. | FINANCE CHARGE<br>The dollar amount the credit will cost you. | Amount Financed<br>The amount of credit provided to you or on your behalf. | Total of Payments<br>The amount you will have paid after you have made all payments as scheduled. | Total Sale Price<br>The total cost of your purchase on credit, including your down payment of $ 1100.00 is |
|---|---|---|---|---|
| 17.90 % | $ 1778.92 | $ 5752.28 | $ 7531.20 | $ 8631.20 |

**Your Payment Schedule Will Be:** (e) means an estimate

| Number of Payments | Amount of Payments | When Payments Are Due |
|---|---|---|
| 36 | $ 209.20 | Monthly beginning 04/28/2023 |
| N/A | $ N/A | N/A |
| N/A | | |

Late Charge. If a payment is not received in full within 10 days after it is due, you will pay a late charge of 5% of the part of the payment that is late, with a minimum charge of $ 9.20. The charge will not exceed $ 23.00 If you bought the vehicle primarily for personal, family, or household use. We may charge the maximum and minimum late charge dollar amounts as allowed by S.C. Code Ann. 37-1-109 of the South Carolina Consumer Protection Code.

Prepayment. If you pay early, you will not have to pay a penalty.

Security Interest. You are giving a security interest in the vehicle being purchased.

Additional Information: See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date and security interest.

**Returned Check Charge:** You agree to pay a charge of $30.00 if any check you give us is dishonored.

☐ If this box is checked, the following late charge applies to vehicles purchased primarily for business or agricultural use.
If a payment is not received in full within N/A days after it is due, you will pay a late charge of $ N/A or N/A % of the part of the payment that is late, whichever is less.
If this box is not checked, the late charge in the "Federal Truth-In-Lending Disclosures" still applies.

OPTIONAL GAP CONTRACT. A gap contract (debt cancellation contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in Item 4D of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term 36 Mos.
N/A
Name of Gap Contract

I want to buy a gap contract.

Buyer Signs X N/A

Agreement to Arbitrate: By signing below, you agree that, pursuant to the Arbitration Provision on page 4 of this contract, you or we may elect to resolve any dispute by neutral, binding arbitration and not by a court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate.

Buyer Signs X [signature] Co-Buyer Signs X N/A

**NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.**

The preceding NOTICE applies only to goods or services obtained primarily for personal, family, or household use. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

Buyer Signs [signature] Co-Buyer Signs X N/A

EXHIBIT C tabbies

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## ITEMIZATION OF AMOUNT FINANCED

1 Cash Price
(including $ N/A sales tax and $ 494.50 closing fee) $ 6485.50 (1)

2 Total Downpayment =
Trade-In 1995 (Year) NISSAN (Make) MAXIMA (Model)

| | | |
|---|---|---|
| Gross Trade-In Allowance | | $ 500.00 |
| Less Pay Off Made By Seller to N/A | | $ N/A |
| Equals Net Trade In | | $ 500.00 |
| + Cash | | $ 600.00 |
| + Other N/A | | $ N/A |
| + Other N/A | | $ N/A |
| + Other N/A | | $ N/A |
| (If total downpayment is negative, enter "0" and see 4J below) | | $ 1100.00 (2) |
| 3 Unpaid Balance of Cash Price (1 minus 2) | | $ 5385.50 (3) |
| 4 Other Charges Including Amounts Paid to Others on Your Behalf (Seller may keep part of these amounts): | | |
| A Cost of Optional Credit Insurance Paid to Insurance Company or Companies. | | |
| Life N/A | $ N/A | |
| Disability N/A | $ N/A | $ N/A |
| B Vendor's Single Interest Insurance Paid to Insurance Company | | $ N/A |
| C Other Optional Insurance Paid to Insurance Company or Companies | | $ N/A |
| D Optional Gap Contract | | $ N/A |
| E Official Fees Paid to Government Agencies | | |
| to N/A for N/A | | $ N/A |
| to N/A for N/A | | $ N/A |
| to N/A for N/A | | $ N/A |
| F Government Taxes Not Included in Cash Price | | $ N/A |
| G Government License and/or Registration Fees | | |
| License | | $ 40.00 |
| H Government Certificate of Title Fees | | $ 15.00 |
| I Infrastructure Maintenance Fee | | $ 299.28 |
| J Other Charges (Seller must identify who is paid and describe purpose) | | |
| to N/A for Prior Credit or Lease Balance | | $ N/A |
| to N/A for N/A | | $ N/A |
| to N/A for N/A | | $ N/A |
| to N/A for N/A | | $ N/A |
| to N/A for N/A | | $ N/A |
| to N/A for N/A | | $ N/A |
| to N/A for N/A | | $ N/A |
| to N/A for N/A | | $ N/A |
| to N/A for N/A | | $ N/A |
| to N/A for N/A | | $ N/A |
| to ANUSA CHARLESTON for Plate Transfer Fee | | $ 10.00 |
| to ANUSA CHARLESTON for Electronic Filing Fee | | $ 2.50 |
| to N/A for N/A | | $ N/A |
| Total Other Charges and Amounts Paid to Others on Your Behalf | | $ 366.78 (4) |
| 5 Amount Financed (3 + 4) | | $ 5752.28 (5) |

OPTION: ☐ You pay no finance charge if the Amount Financed, item 5, is paid in full on or before N/A, Year N/A. SELLER'S INITIALS N/A

☐ VENDOR'S SINGLE INTEREST INSURANCE (VSI Insurance): If the preceding box is checked, the Creditor requires VSI insurance for the initial term of the contract to protect the Creditor for loss or damage to the vehicle (collision, fire, theft, concealment, skip). VSI insurance is for the Creditor's sole protection. This insurance does not protect your interest in the vehicle. You may choose the insurance company through which the VSI insurance is obtained. If you elect to purchase VSI insurance through the Creditor, the cost of this insurance is $ N/A and is also shown in item 4B of the Itemization of Amount Financed. The coverage is for the initial term of the contract.

Buyer Signs X [signature] Co-Buyer Signs X N/A

3112V

Insurance. You may buy the physical damage insurance this contract requires from anyone you choose who is acceptable to us. You may also provide the physical damage insurance through an existing policy owned or controlled by you that is acceptable to us. You are not required to buy any other insurance to obtain credit unless the box indicating Vendor's Single Interest Insurance is required is checked below.
If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

Check the insurance you want and sign below:

### Optional Credit Insurance

☐ Credit Life: ☐ Buyer ☐ Co-Buyer ☐ Both
☐ Credit Disability: ☐ Buyer ☐ Co-Buyer ☐ Both
Premium:
Credit Life $ N/A
Credit Disability $ N/A
Insurance Company Name N/A
N/A
Home Office Address N/A
N/A

CONSUMER CREDIT INSURANCE IS NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COST. Your decision to buy or not buy credit life insurance and credit disability insurance will not be a factor in the credit approval process. If you choose this insurance, the cost is shown in item 4A of the Itemization of Amount Financed. Credit life insurance is based on your original payment schedule. This insurance may not pay all you owe on this contract if you make late payments. Credit disability insurance does not cover any increase in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown below.

### Other Optional Insurance

☐ N/A (Type of Insurance) N/A (Term)
Premium $ N/A
Insurance Company Name N/A
N/A
Home Office Address N/A
N/A

☐ N/A (Type of Insurance) N/A (Term)
Premium $ N/A
Insurance Company Name N/A
N/A
Home Office Address N/A
N/A

Other optional insurance is not required to obtain credit. Your decision to buy or not buy other optional insurance will not be a factor in the credit approval process. It will not be provided unless you sign and agree to pay the extra cost.

I want the optional credit insurance and other insurance checked above.

X N/A (Buyer Signature) N/A (Date)
X N/A (Co-Buyer Signature) N/A (Date)

☐ IF CHECKED, THE TERM OF OPTIONAL CREDIT INSURANCE IS LESS THAN THE TERM OF THIS CONTRACT, AS DESCRIBED ABOVE.

X N/A (Buyer Signature) N/A (Date)

THIS INSURANCE DOES NOT INCLUDE INSURANCE ON YOUR LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE CAUSED TO OTHERS.

g. **What we may do about optional insurance, maintenance, service, or other contracts.** This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, you agree that we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

4. **WARRANTIES SELLER DISCLAIMS**
**Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose.**
This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide.

5. **Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.**
**Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.**

6. **SERVICING AND COLLECTION CONTACTS**
In consideration of our extension of credit to you, you agree to provide us your contact information for our servicing and collection purposes. You agree that we may use this information to contact you in writing, by e-mail, or using prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you. You agree to allow our agents and service providers to contact you as agreed above.
You agree that you will, within a reasonable time, notify us of any change in your contact information.

7. **APPLICABLE LAW**
Federal law and the law of the state of South Carolina apply to this contract.

8. **NEGATIVE CREDIT REPORT NOTICE**
**We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.**

## ARBITRATION PROVISION
### PLEASE REVIEW - IMPORTANT - AFFECTS YOUR LEGAL RIGHTS

1. **EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN YOU AND US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.**
2. **IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.**
3. **DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.**

Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Provision, any allegation of waiver of rights under this Arbitration Provision, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this Vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Provision shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator only on an individual basis and not as a plaintiff in a collective or representative action, or a class representative or member of a class on any class claim. The arbitrator may not preside over a consolidated, representative, class, collective, injunctive, or private attorney general action. You expressly waive any right you may have to arbitrate a consolidated, representative, class, collective, injunctive, or private attorney general action. You or we may choose the American Arbitration Association (www.adr.org) or National Arbitration and Mediation (www.namadr.com) as the arbitration organization to conduct the arbitration. If you and we agree, you or we may choose a different arbitration organization. You may get a copy of the rules of an arbitration organization by contacting the organization or visiting its website.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law and the applicable statute of limitations. The arbitration hearing shall be conducted in the federal district in which you reside unless the Seller-Creditor is a party to the claim or dispute, in which case the hearing will be held in the federal district where this transaction was originated. We will pay the filing, administration, service, or case management fee and the arbitrator or hearing fee up to a maximum of $5,000, unless the law or the rules of the chosen arbitration organization require us to pay more. You and we will pay the filing, administration, service, or case management fee and the arbitrator or hearing fee over $5,000 in accordance with the rules and procedures of the chosen arbitration organization. The amount we pay may be reimbursed in whole or in part by decision of the arbitrator if the arbitrator finds that any of your claims is frivolous under applicable law. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. If the chosen arbitration organization's rules conflict with this Arbitration Provision, then the provisions of this Arbitration Provision shall control. Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.) and not by any state law concerning arbitration. Any award by the arbitrator shall be in writing and will be final and binding on all parties, subject to any limited right to appeal under the Federal Arbitration Act.

You and we retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Neither you nor we waive the right to arbitrate any related or unrelated claims by filing any action in small claims court, or by using self-help remedies, such as repossession, or by filing an action to recover the vehicle, to recover a deficiency balance, or for individual or statutory public injunctive relief. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Provision shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Provision, other than waivers of class rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. You agree that you expressly waive any right you may have for a claim or dispute to be resolved on a class basis in court or in arbitration. If a court or arbitrator finds that this class arbitration waiver is unenforceable for any reason with respect to a claim or dispute in which class allegations have been made, the rest of this Arbitration Provision shall also be unenforceable.

Buyer Signs X [signature] Co-Buyer Signs X N/A



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## OTHER IMPORTANT AGREEMENTS

1. **FINANCE CHARGE AND PAYMENTS**
   a. **How we will figure Finance Charge.** We will figure the Finance Charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed.
   b. **How we will apply payments.** We may apply each payment to the earned and unpaid part of the Finance Charge, to the Amount Financed, and to other amounts you owe under this contract in any order we choose as the law allows.
   c. **How late payments or early payments change what you must pay.** We based the Finance Charge, Total of Payments, and Total Sale Price shown on page 1 of this contract on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
   d. **You may prepay.** You may prepay all or part of the unpaid part of the Amount Financed at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.
   e. **You may refinance a balloon payment.** A balloon payment is a scheduled payment that is more than twice as large as the average of your earlier scheduled payments. If you are buying the vehicle primarily for personal, family, or household use, you may refinance the balloon payment when due without penalty. The terms of the refinancing will be no less favorable to you than the terms of this contract. This provision does not apply if we adjusted your payment schedule to your seasonal or irregular income.

2. **YOUR OTHER PROMISES TO US**
   a. **If the vehicle is damaged, destroyed, or missing.** You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
   b. **Using the vehicle.** You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
   c. **Security interest.**
   You give us a security interest in:
   - The vehicle and all parts or goods put on it;
   - All money or goods received (proceeds) for the vehicle;
   - All insurance, maintenance, service, or other contracts we finance for you; and
   - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.

   This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle. You will not allow any other security interest to be placed on the title without our written permission.
   d. **Insurance you must have on the vehicle.**
   You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. You agree to name us on your insurance policy as loss payee. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the premium for the insurance and a finance charge computed at the Annual Percentage Rate shown on page 1 of this contract.
   If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.
   e. **What happens to returned insurance, maintenance, service, or other contract charges.** If we get a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

3. **IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES**
   a. **You may owe late charges.** You will pay a late charge on each late payment as shown on page 1 of this contract. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.
   If you pay late, we may also take the steps described below.
   b. **You may have to pay all you owe at once.** If you break your promises (default) we may demand that you pay all you owe at once after we give you any notice the law requires. Default means:
   - You do not make any payment when due; or
   - You start a proceeding in bankruptcy or one is started against you or your property; you give false, incomplete, or misleading information during credit application; or you break any agreements in this contract; except that if you bought the vehicle primarily for personal, family, or household use, we will only treat these events as defaults if they significantly impair the prospect of payment, performance, or realization of the collateral.

   The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.
   c. **You may have to pay collection costs.** If we hire an attorney who is not our salaried employee to collect what you owe, you will pay the attorney's reasonable fee and court costs as the law allows. The maximum attorney's fee you will pay will be 15% of the amount you owe. You will also pay the reasonable expenses we incur in realizing on our security interest as the law allows.
   d. **We may take the vehicle from you.** If you default, we may take (repossess) the vehicle from you after we give you any notice the law requires. We may only take the vehicle if we do so peacefully without entering into a dwelling used as a current residence. If your vehicle has an electronic tracking device (such as GPS), you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you. If you do not ask for these items back, we may dispose of them as the law allows.
   e. **How you can get the vehicle back if we take it.** If we repossess the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. Your right to redeem ends when we sell the vehicle.
   f. **We will sell the vehicle if you do not get it back.** If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle.
   We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney's fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us, unless the law provides otherwise. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest rate permitted by applicable law.



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***The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.***

**HOW THIS CONTRACT CAN BE CHANGED.** This contract contains the entire agreement between you and us relating to this contract. Any change to this contract must be in writing and we must sign it. No oral changes are binding. Buyer Signs X _____ Co-Buyer Signs X N/A
If any part of this contract is not valid, all other parts stay valid. We may delay or refrain from enforcing any of our rights under this contract without losing them. For example, we may extend the time for making some payments without extending the time for making others.
**See the rest of this contract for other important agreements.**

**NOTICE TO RETAIL BUYER: Do not sign this contract in blank. You are entitled to a copy of the contract at the time you sign. Keep it to protect your legal rights.**

**You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You acknowledge that you have read all pages of this contract, including the arbitration provision on page 4, before signing below. You confirm that you received a completely filled-in copy when you signed it.**

Buyer Signs X _____ Date 03/14/2023 Co-Buyer Signs X N/A Date N/A
Buyer Printed Name MICHAEL BOLMER Co-Buyer Printed Name N/A
If the "business" use box is checked in "Primary Use for Which Purchased": Print Name N/A Title N/A

Co-Buyers and Other Owners — A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

Other owner signs here X N/A Address N/A
Seller signs AUTONATION USA CHARLESTON Date 03/14/2023 By X _____ Title _____

Seller assigns its interest in this contract to WESTLAKE FINANCIAL SERVICES (Assignee) under the terms of Seller's agreement(s) with Assignee.

☐ Assigned with recourse ☒ Assigned without recourse ☐ Assigned with limited recourse

Seller AUTONATION USA CHARLESTON
By X _____ Title _____

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03/14/2023 05:49 pm

N/A

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STATE OF SOUTH CAROLINA

GENERAL SESSIONS

COUNTY OF CHARLESTON

DOCKET NUMBER
2024-CP-10-00180

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MICHAEL BOLMER,

Plaintiff,

vs.

CHARLESTON ANUSA LLC,

Defendant.

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February 13, 2025

Motions Hearing

B E F O R E:

The Honorable Jennifer McCoy, Presiding Judge.

C O U R T:

South Carolina Circuit Court 9

T R A N S C R I B E D B Y:

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Attorney for the Defendant

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P R O C E E D I N G S

(Whereupon, the following proceedings started at 2:33:19)

THE COURT: Michael Bolmer versus Charleston ANUSA LLC.

MR. WADDELL: Good morning, Your Honor. Scott Waddell for the plaintiff.

THE COURT: Good morning.

MS. GLUNT: Good morning, Your Honor. Alexandra Glunt, on behalf of the defendants Auto Nation and Westlake.

THE COURT: Okay.

All right. Is this your Motion for -- to Stay and to Compel Arbitration?

MS. GLUNT: Yes, Your Honor.

It is my client's Motion to Compel Arbitration and Stay this case. And, may it please the Court, Your Honor.

I'll just briefly say, Your Honor, this cause of action arises out of Plaintiff Michael Bolmer's purchase of a vehicle from Auto Nation in March of 2023. At the time of purchasing the vehicle, he executed a retail purchase agreement which contained a mandatory arbitration provision.

Your Honor, neither party today is challenging the arbitration provision itself or that it governs this dispute. The main dispute here is that Bolmer contends that Auto Nation waived its right to arbitrate this dispute by failing to pay the AAA filing fees. So I'll turn to the facts that are pertinent to that argument.

Prior to filing this lawsuit, Your Honor, in June of 2023, Bolmer filed a demand for arbitration with the AAA. In August of 2023, the AAA sent correspondence to Auto Nation and the other parties informing of Bolmer's demand for arbitration. It -- the AAA did mail out the demand directly to Auto Nation's dealership. Admittedly, several additional notices were sent to Auto Nation at that the dealership. On September 8th, specifically, of 2023, Your Honor, the AAA notified Auto Nation that the filing fees were due on September 22nd of 2023.

Unfortunately, the appropriate personnel at Auto Nation did not receive the information in time to pay the filing fees, so Auto Nation inadvertently missed that required payment deadline. However, Auto Nation did not act inconsistent with its right to arbitrate, which is key to the analysis here.

Auto Nation reached out to our firm on October 4, 2023, roughly a week after the deadline, seeking representation in the AAA demand filed by Bolmer. The very next day, Auto Nation's counsel in this firm, Your Honor, reached out to the AAA to file a notice of appearance in the action. At that time, the AAA accepted the notice of appearance but then shortly after, the AAA reached back out to our firm indicating that the matter had been closed on September 27th of 2023.

At the same time, however, this firm asked the AAA how it

could reopen the case. The AAA informed us that the case could be reopened with the consent of Bolmer. When we reached out to Bolmer for the request to reopen the case, Bolmer denied that, claiming that Auto Nation waived its right to arbitrate.

Again, Your Honor, the sole issue here is whether Auto Nation waived its right to arbitrate. First, I'll just address in Morgan V. Sundance, Your Honor, the Supreme Court directed that courts, when interpreting waiver under the FAA, that they remove the element of prejudice and it should not be included. Instead, court should focus on waiver as it understand in breech of contract cases, which in South Carolina and under federal law is the "Voluntary and intentional abandonment or relinquishment of a known right."

Here, Auto Nation did not voluntarily or intentionally relinquish its right to arbitrate. It was simply an inadvertent error that the filing fees were not paid by the deadline. In fact, after Auto Nation took steps to file a notice of appearance and sought Bolmer's consent to reopen the case. But Bolmer refused to reopen the case, not Auto Nation.

I'll address some arguments made in Bolmer's Memo in Opposition, Your Honor, which claims that -- essentially, Bolmer argues that the failure to follow the AAA rules results in a waiver. In doing so, Bolmer relies on two cases. The first case is Reynolds V. Wyndham Vacation Resorts, and the

second is Brown V. Dillard's.

Candidly, Your Honor, I was not able to locate the Reynolds case as cited, but when I pulled the quotes from Bolmer's memo, I found a Russell V. Wyndham Vacation Resort case, which is actually from the Southern District of California, which appears to be the case that Bolmer relies on. If it is not, I have not seen the case. But I'm just pointing that out. I believe I found the case that was in -- supposed to be cited based off quotes pulls.

So relying on that case, Your Honor, Bolmer claims that the case stands for the proposition that the Court declined to compel arbitration because the defendant waived its right to arbitrate after failing to comply with the AAA requirements. But in actuality, Your Honor, that court actually found that the defendants did not waiver their rights to compel arbitration despite the administrative errors that occurred.

Specifically, Bolmer uses a quote from that case and cites it as the court's holding, which says, "Prior to filing of this arbitration, the business failed to comply with the AAA policy regarding consumer claims. Accordingly, we must decline to administer this claim and any other claims between Defendant and its consumers at this time."

Now, Bolmer cites that as the holding, Your Honor. However, the quote cited is actually a quote from the AAA's letter to the parties after the defendant failed to timely

abide by the AAA rules. It was not the holding in that case.

Importantly, Your Honor, in the Wyndham case, the court actually distinguishes the facts from the Brown case, which I'll turn to next, because the defendant in that case -- in the Brown case -- sorry. In comparing the Brown case to the Wyndham case, Your Honor, the court found that the defendant in the Wyndham case acted differently than the defendant in the Brown case because the defendant in the Wyndham case actively attempted to resolve the issue with the AAA.

So the court -- and that's exactly what happened here. Auto Nation actively attempted to resolve the issue with the AAA. And that is a distinguishing factor in the Wyndham case.

Your Honor, second, Bolmer relies on Brown V. Dillard's. I believe it's a 9th circuit case. That case is also factually distinctive from the facts here. Briefly, Your Honor, Dillard's had employment agreements that contained arbitration provisions that required its employees to arbitrate employment-related claims.

Brown initiated a demand and payed her portion of the AAA filing fee. Dillard's failed to pay that filing fee and failed to participate in the arbitration. The court notes that Brown called Dillard's several times, trying to discuss the arbitration with them. Dillard's actively ignored the plaintiff in that case. And later, Dillard's counsel finally ended up discussing the arbitration with the plaintiff and

told Brown that her complaint had no merit and that Dillard's refused to arbitrate the case. Dillard's admitted that it refused to arbitrate the case and that it had acted inconsistent with its right to arbitration. Based on that, Dillard's own admission that it admittedly refused to arbitrate the case, the court found that Dillard waived its right to arbitrate.

Auto Nation here, obviously, was not outright refusing to arbitrate the claims, rather they inadvertently failed to pay the filing fee and sought to reopen the matter, and they did even file a notice of appearance in that action.

Your Honor, based on that, and again, the waiver law in South Carolina is clear, it is the voluntarily relinquishment of a known right, and that just did not happen here. In fact, Auto Nation sought to reopen the case and tried to comply with the AAA's requirements. It just did so, I believe, seven days late.

THE COURT: All right. Thank you.

And that's all I have initially.

THE COURT: All right.

Mr. Waddell, do you care to respond?

MR. WADDELL: Briefly, Your Honor. May it please the Court.

I think one of the things that's important to establish here is that there was actually two arbitration agreements

related to this matter. One, that was attached to the Motion to Compel Arbitration within the retail purchase agreement; and then a second one in the retail installment sale contract.

The reason I bring this distinction to you is the one attached to the defendant's Motion to Compel Arbitration does not (indiscernible) arbitration provider. It basically allows the parties to choose who's going to conduct the arbitration.

Whereas the one attached to the retail installment sales contract -- and I believe attached is Exhibit C to the opposition filed, provides for two different entities to conduct the arbitration, one of which is the American Arbitration Association. I bring this distinction to you because it's not like the claimant herein unilaterally chose some obscure arbitration provider to administer the case. It chose one of the only two options available pursuant to the adhesion contract.

And, again, the AAA gave both defendants three opportunities to pay their share of the filing fee before unilaterally making a determination themselves that the defendants had waived their rights to arbitrate and that the claimant had a legal right now to file in your court, which we've done. I think that finding by AAA itself, being that AAA was one of the two providers offered by the defendants here and their determination that that right has already been waived, should be outcome determinative.

But in the end, this matter needs to get going. I mean, that arbitration was filed almost two years ago, now. We filed that arbitration in good faith. There was no attempt to hide the ball. But it just it seems rich for a business to force arbitration upon a consumer within an adhesion contract and then irrespective of whether or not they are being gutted by legal counsel to ignore those demands to arbitrate once a claim has been filed. And so we'd like to move forward and to move forward with you.

That's all I've got. Thank you.

THE COURT: Okay.

All right. Any responses, Ms. Glunt?

MS. GLUNT: Just briefly, Your Honor.

I believe Bolmer's counsel, Mr. Waddell, focuses on the language in the AAA's letter, which basically states that should the AAA decline to administer an arbitration, either party may choose to submit it's dispute to the appropriate court for resolution. That same language, Your Honor, is in the Russell V. Wyndham case out of the District of South California -- Southern District of South Carolina -- sorry -- Southern District of California. That same language was in the letter that that court considers, but does not consider it as part of a waiver analysis.

And so, Your Honor, I would just say, even in that court, the court found that the defendant had not waived it's right

to arbitration and compelled arbitration, even with that very same clause. So, no, I do not thing that's dispositive on an issue of waiver.

Your Honor, this complaint ended up being filed on January 12th of 2024, and we filed this Motion to Compel in September of 2024. There's plenty of cases that say that this time frame does not result in a waiver and there has been a minimal discovery at this time.

THE COURT: Is there -- is this the first time this motion's been scheduled?

MS. GLUNT: I'm sorry?

THE COURT: IS this the first time this motion's been scheduled?

MS. GLUNT: No. It was moved. It was continued on one other time, I believe based off of a trial.

THE COURT: Okay. All right.

Thank you-all very much. I'll make a ruling forthwith by the end of the week.

MR. WADDELL: Thank you, Your Honor.

MS. GLUNT: Thank you, Your Honor.

(At 2:45:35, the hearing concluded.)

**END OF TRANSCRIPT.**

CERTIFICATE OF TRANSCRIBER

State of South Carolina

County of Charleston

I, BARBIE TEBOE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings and evidence introduced in the trial of the captioned case, relative appeal, in the Court of General Sessions for Charleston County, South Carolina, on the 13th day of February, 2025.

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

April 25, 2025

Barbie K. Teboe

Barbie Teboe,
Transcriber