

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas

The Honorable J. Derham Cole, Circuit Court Judge

Case No. 2021-CP-23-00244

Appellate Case No. 2023-001053

Penland Automotive, LLC and Charles W. Penland, Jr., ...Respondents,

v.

Dealer Financial Holdings, LLC, Steve Lanzl, and Daniel B. Haight, ...Petitioners.

APPENDIX - VOLUME II of III

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1 doing business. My client loaned money. The plaintiff
2 took the money, bought cars. And then another dispute
3 arose between the parties which forms the basis of the
4 lawsuit.

5 Judge, what's at issue is the plaintiff contends that
6 the contract was terminated in 2019. We contend whether
7 the contract was terminated in 2019 or not, the jury
8 waiver survives any termination or any interpretation of
9 what parts of the contract survive and what parts don't.

10 So I'll direct the Court's attention to the clause.
11 It's on page 3 of our brief. I think we put it in bold.
12 And it says in operative -- the operative language is,
13 quote, in any and all causes of action in any way relating
14 to any matter between them whether arising from or
15 relating to this agreement or any related agreement, or
16 arising from alleged extracontractual facts prior to,
17 during or subsequent to this agreement. So it's
18 undisputed that this language was agreed to in 2016.

19 And for the Court's benefit and for our argument,
20 what I would highlight is the waiver says "relating to any
21 matter between them." It's broader than just a contract.
22 It also says "relating to any alleged extracontractual
23 facts prior to, during or subsequent to this agreement."
24 So it essentially says if we're going to do business
25 together, we're going to have a relationship, whether it's

1 under this agreement or in the future, you agree to a jury
2 waiver. And so we're asking the Court to enforce this
3 waiver.

4 As set forth in our brief, Judge, and I think the
5 Court knows this, whether a party is entitled to a jury
6 trial is a question of law for the Court. It's not a
7 question of fact for the jury. I would cite Mims
8 Amusement Company, which is 266 SC 141, South Carolina
9 Supreme Court 2005.

10 I would also cite for the Court that in South
11 Carolina it's well-settled that a right to a jury trial
12 may be waived by contract. So the Court gets to determine
13 as a matter of law whether or not a waiver is enforceable,
14 and South Carolina law establishes that a contract term
15 can constitute a waiver if the parties agree to it.

16 Judge, I think what we're going to hear and you will
17 hear and I'll go ahead and address it and address it on
18 rebuttal if the Court wants to hear from me is that the
19 contract was terminated in 2019, and therefore, the waiver
20 was terminated. So as I cite at the outset of the
21 argument, if you look at this language, it's broader than
22 just the 2016 contract. It governs any relationship or
23 any business between the parties. And it's undisputed
24 that what this lawsuit is now about is about a lineal
25 relationship between the parties and a dispute over the

1 rights and obligations of the parties. I don't think
2 there's anything the plaintiff can present factually that
3 takes them outside of this clause. For those reasons, we
4 would ask the Court enforce the clause and strike the jury
5 demand.

6 We'd be happy to answer any questions the Court may
7 have.

8 THE COURT: Mr. Imhoff?

9 MR. IMHOFF: Yes, Your Honor. Jason Imhoff on behalf
10 of the plaintiffs Penland Automotive and Charles W.
11 Penland. And I say that intentionally. There's a couple
12 plaintiffs in this, Your Honor.

13 And I have the loan security agreement. May I
14 approach and also hand our brief to the Court, Your Honor?

15 THE COURT: Sure.

16 MR. IMHOFF: Your Honor, I thank you for coming over
17 here to hear us from Spartanburg. I'm not sure if you
18 have access to this entire file or not.

19 THE COURT: I don't at this moment.

20 MR. IMHOFF: It is well-motioned, well-briefed, huge
21 briefs with lots of exhibits, multiple depositions. Your
22 Honor, this has been going on for years. We've been
23 before this court multiple times.

24 As you see from the defendant's motion, this is
25 either their second or third attempt to have the Court

1 grant this motion. It has already been denied previously,
2 Your Honor.

3 The issue in this case is much larger than just that
4 agreement. But let me give you a thumbnail sketch of what
5 the plaintiff has argued and the evidence that's in the
6 file and in the briefs in this case already.

7 These folks had an agreement in 2016. It's -- in our
8 opinion it is a security agreement which needs to be in
9 writing which is what the document I just handed you is.
10 It has multiple, multiple pages. It also required
11 multiple signatures.

12 My client, Charles Penland, as you can imagine, is an
13 individual. There's a personal guarantee in that
14 agreement that he had to sign in 2016 to get the loan. He
15 also had to sign a different place on behalf of his
16 automobile dealership, Penland Automotive. He had to sign
17 in a third place for Penland Properties too for a mortgage
18 and collateral on property that was owned by a separate
19 company.

20 There's no dispute that in 2019 these parties ended
21 their relationship. Not only did they end their
22 relationship, the reserve money that the loan company had
23 was sent back to my client and they went their separate
24 ways except for one thing. There's a UCC1 filing which
25 tells any other lender out there we still have first

1 priority over the collateral on that car lot that Dealer
2 Financial did not remove.

3 So in the summer of 2020 -- I think it was 2020 --
4 during COVID, my client had to go get another loan and had
5 another lender ready to give him a loan except for the
6 UCC1 filing which was still filed, which there's documents
7 in the file that have been argued to this court before,
8 briefed to this court before, that my client asked Dealer
9 Financial to remove that UCC filing multiple times.
10 Instead of removing the UCC1 filing, they made verbal
11 promises to the general manager of Penland Automotive
12 about what loan they were going to give and when they were
13 going to get new documents. That's all important to say,
14 Your Honor, at that time as they were negotiating a new
15 loan relationship, there was no meeting of the minds on
16 what the terms were, what the amount was, whether or not
17 Charles Penland was going to have to be another personal
18 guarantee, whether he was going to have to mortgage
19 property owned by another company. All of this has been
20 argued to this court and argued between us, depositions,
21 everything else, Your Honor.

22 But the key to this case is Dealer Financial came and
23 took all of the collateral cars off of my client's lot
24 without my client being in arrears at all, and then the
25 principal owners of Dealer Financial followed him to an

1 auction where they followed him around with a piece of
2 paper and demanded that he sign some document is the
3 testimony, Your Honor. So my client, Charles Penland, has
4 a defamation per se cause of action, has a fraud cause of
5 action, has a negligence misrepresentation, inducement of
6 a contract cause of action. All of those causes of action
7 occur because of the behavior in 2020.

8 And what defendants want you to do is go back and
9 enforce the agreement that is the central issue to this
10 case. Is Dealer Financial allowed to renew a 2016
11 security agreement that's got to be 50 pages long, Your
12 Honor, with three different entities and three different
13 people and enforce that when in 2020 they never sent
14 anything in writing to say what the terms or what the
15 agreement or anything else was? Again, this court has
16 heard this twice now, and both times -- I think it was
17 Judge Verdin both times -- has ruled that there's a
18 genuine issue of material fact as to whether or not that
19 2016 agreement can be renewed verbally. And if it is
20 renewed verbally, what are the terms to that agreement?
21 Because they're different from 2016 to 2020. Even
22 Mr. Haight and Dealer Financial admitted that. The terms
23 changed over the years and did in 2020 as well.

24 And so, Your Honor, I don't want to belabor it, but
25 the issue has already been sent to the Court. It's much,

1 much bigger than just, well, here's a document and they
2 started doing business again. Here's a document with
3 parties who never signed, and it can't be argued that a
4 general manager of an automobile -- used automobile shop
5 can personally guarantee an individual and bind a complete
6 different company and their property.

7 And so I would agree with this. I think there's an
8 issue of how we get this factual issue to a jury or to a
9 judge. But this isn't the way. A motion to strike would
10 essentially take away two parties' rights who didn't sign
11 anything in 2020 to agree to that 2016 agreement, Your
12 Honor. And also, we've made an argument which was denied
13 a motion for summary judgment that because it's not in
14 writing, it violates the security agreement provision of
15 the consumer code for the UCC, Your Honor, which requires
16 it to be in writing. All of that will be shared with the
17 jury, will be shared at trial.

18 But we've tried to narrow the case down over the last
19 couple years, Your Honor. And so far every judge that's
20 heard this has found that there's a material issue or
21 genuine issue of material fact, Your Honor.

22 So we would ask that the motion to strike be denied.
23 Because if you find that the motion to strike should be
24 granted, then you found that the 2016, which is the
25 agreement which is the entire dispute in this case, was

1 renewed in 2020 as an enforceable against my client who
2 never signed anything in 2020 including a personal
3 guarantee.

4 Your Honor, I don't want to belabor the whole thing.
5 I mean, we've argued this for hours in this courthouse.
6 But if there are other questions you have, I'm happy to
7 answer them. We've given you the brief. Again, this file
8 is enormous. I mean, there's so many exhibits and
9 depositions in this case. I would ask that the Court just
10 deny the motion to strike, Your Honor.

11 THE COURT: Mr. Jordan.

12 MR. JORDAN: Thank you, Your Honor. Just briefly.

13 Mr. Imhoff is arguing the merits of the case as
14 expected. He's arguing about the factual disputes. Both
15 parties did file cross-motions for summary judgment.
16 Those were both denied. Those are the merits of the case,
17 and the facts and disputes we have. And, of course, we
18 dispute many of the facts he just recited to the Court
19 about what happened in this case. But that's not before
20 the Court today. You don't have to decide the case today.

21 What you have to decide is is this clause, which was
22 signed by both parties -- and, again, these are
23 sophisticated business parties. Penland Automotive, the
24 evidence in the case, is running millions of dollars of
25 business through their dealership. Okay. This is a

1 sophisticated party. They don't get to argue we didn't
2 understand or we didn't know what we were signing. And as
3 I said in my argument, relating to any matter between
4 them, everything Mr. Imhoff just argued, even if we
5 disagree with the facts, is related to business dealings
6 between the parties as to contractual facts subsequent to
7 this agreement, exactly everything he talks about at the
8 auction and about the repossession of the cars, all is
9 extracontractual facts related to subsequent to the
10 agreement. So giving this language its plain and ordinary
11 meaning, which the Court is required to do under our rules
12 of construction, it should be enforced.

13 And so I'm happy to answer any questions, but I think
14 the issue is not today, Judge, please look at the huge
15 file and tell us who's right and wrong. Obviously, that's
16 for another day before a judge or a jury. Today the issue
17 before Your Honor is this clause and what does it mean,
18 and as a matter of law, is it enforceable. We obviously
19 contend it is.

20 THE COURT: Mr. Imhoff says that that clause has
21 already been addressed by one or two other judges. Do you
22 disagree or agree with that?

23 MR. JORDAN: Judge, I agree at the outset of the case
24 a motion to strike was filed. And I have the order. It
25 was argued in front of Judge Kinlaw. I'm happy to pass it

1 up.

2 THE COURT: Well, you might need to. But I'll just
3 ask you, what's changed?

4 MR. JORDAN: Yeah. It was denied without prejudice.
5 It's an order. He filed a motion for summary judgment.
6 We filed a motion to strike. Both motions were heard
7 simultaneously. Judge Kinlaw said you guys go do
8 discovery. I'm denying it without prejudice. You can
9 come back at another time. We've now, as Mr. Imhoff
10 indicated, litigated this case for a year and a half.
11 We're now in a position where no facts have come forward
12 which take him outside of the clause.

13 THE COURT: What was denied without prejudice? Your
14 right to refile a motion for summary judgment after
15 discovery or your right to have a jury trial or not?

16 MR. JORDAN: The right to have the jury trial was
17 denied without prejudice. I have the language right here,
18 Your Honor.

19 THE COURT: Well, let me just look at it. I can read
20 it myself.

21 Is this an extra copy?

22 MR. JORDAN: Yes. You can have that, Your Honor.

23 THE COURT: Okay. Anything else y'all need to tell
24 me?

25 MR. JORDAN: Nothing, Your Honor.

1 MR. IMHOFF: Yeah. Just one thing. And to make an
2 analogy, if you have a Chase credit card, you close your
3 Chase credit card and you call them on the phone and they
4 never send you -- and say, hey, I'd like to get -- it's
5 been a couple years, I'd like to reopen that Chase credit
6 card, what the defendants are arguing is that anything
7 that looks like this in that original signed credit card
8 agreement now controls any relationship you have with that
9 company going forward. And that's not the law. That's
10 not the facts of this case. My client has said absolutely
11 not, Your Honor. I didn't sign anything.

12 And, again, there are other parties that can't be
13 bound by someone who doesn't have the right to bind them.
14 A general manager of one company can't do the other one's.

15 Your Honor, what they're asking you to do is find a
16 closed, ended, rescinded contract now controls a
17 completely new relationship, and all of the conduct we're
18 talking about arises out of that new relationship and what
19 the terms of that new relationship are. There is no basis
20 in law to find an old closed contract controls everything
21 between parties for years and years on end going into the
22 future.

23 THE COURT: All right. What about your motion to
24 compel?

25 MR. IMHOFF: I'm sorry?

1 THE COURT: What about your motion to compel?

2 MR. IMHOFF: Your Honor, I'd prefer to continue it.
3 We're having some issues. Frankly, I've been out of the
4 state for a while and we're having some issues downloading
5 what was sent to use. May I continue it, Your Honor, and
6 we can either figure it out or I could refile it?

7 MS. BRIDGES: Yeah. I didn't realize, Your Honor,
8 opposing counsel was out of state. I tried calling last
9 week, with the holiday I assumed he was out with his
10 family, to try to figure out what was the problem. And I
11 recently learned there does seem to be a technology issue
12 which the downloading, which I'm happy to see if we can
13 work out.

14 THE COURT: All right. So you just want to withdraw
15 it?

16 MR. IMHOFF: I can withdraw it. I'd prefer to
17 continue it, but ---

18 THE COURT: Well, let's just withdraw it. That way
19 I've accomplished my task this week.

20 (WHEREUPON, proceedings concluded at 11:37 AM.)
21
22
23
24
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF GREENVILLE)

5
6
7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 Common Pleas for Greenville County, South Carolina, on the
14 4th day of January, 2023.

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

17
18 July 14, 2023
19
20

21 *Cheryl A. Smith*

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Penland Automotive, LLC and Charles W.
Penland, Jr.,

Plaintiffs,

vs.

Dealer Financial Holdings, LLC, Steve
Lanzel and Daniel B. Haight,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2021-CP-23-00244

**PLAINTIFFS' REPLY BRIEF IN
OPPOSITION TO DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

I. BACKGROUND

In 2016, Penland Automotive, LLC ("Penland Automotive"), Charles W. Penland, Jr. ("Charles Penland"), Penland Properties II, LLC, and DFH entered into a Loan and Security Agreement dated November 21, 2016 (the "Financing Agreement"). True and correct copies of the Financing Agreement, the Demand Note, the Guaranty (collectively, the "Loan Documents") are attached as **Exhibit A**.

The parties' lending relationship continued pursuant to the Loan Documents and subsequent written amendments from their inception until on or about February 20, 2019, when the Comptroller for Penland Automotive requested DFH to, "As of 2/20/2019 Penland Automotive requests to close and deactivate our floorplan. We no longer need the services of Dealer Financial. Please forward all reserves fees to Penland Automotive." (**Exhibit B**). The account was closed, and the reserves were returned to Penland Automotive. The parties had no business relationship for sixteen (16) months.

In June of 2020, Penland Automotive was forced to quickly find a new floor plan financing

company due to economic issues with its floor plan financing company due to Covid. It obtained favorable terms from Upstate Auto Auction, which did not charge the fees and costs DFH charged; however, Upstate Auto Auction found that DFH had never cancelled a UCC-1 lien since the DFH account was closed in February of 2019. **(Exhibit C)**. Upstate Auto Auction required the removal of that lien which arguably gave DFH first priority to any collateral over Upstate Auto Auction. Penland Automotive asked DFH to remove the lien. **(Exhibit D)**. Instead of removing the lien, DFH began negotiating with Penland Automotive to renew their business relationship. In July of 2020, the parties renewed their relationship based upon verbal representations of Dan Haight and DFH. Charles Penland expected the terms to be the same as Upstate Auto Auction – which DFH promised – and expected new Loan and Security documents. **(Exhibit E)**.

Separately, Dan Haight, Steve Lanzl, and John Bethea prepared and reviewed new Loan and Security documents which contained different terms than those which had been verbally promised by DFH, but never sent those document or terms and conditions to Penland Automotive. **(Exhibit F)**.

At the expiration of 30 days, Penland Automotive was invoiced for fees and curtailments which it had not agreed to. Penland Automotive Comptroller, Karen Willis, emailed DFH for an explanation. **(Exhibit G)**. No explanation was received, but DFH agreed to postpone those fees and curtailments until October 1. **(Exhibit H)**. Tim Yarger also asked John Bethea for the terms and conditions. **(Exhibit I)**.

In October, DFH again invoiced for fees and curtailments which Penland Automotive had not agreed to pay and again would not produce new documents detailing the agreement or terms and conditions. Throughout this period of time, Penland Automotive was asking DFH representative John Bethea for those documents and John Bethea could not get them from Dan

Haight or DFH. **(Exhibit J)**. On October 8, the issue came to a head during a phone call between attorney Jason Imhoff and Dan Haight at the behest of Charles Penland. It was during this time period that DFH first admitted that no new Loan and Security documents had been executed and DFH intended to rely on the 2016 Loan and Security Agreement and terms and conditions.¹

Immediately after that call, DFH repossessed cars from Penland Automotive's car lot despite Penland Automotive being "in trust" and owing no money to DFH as concluded by a DFH audit of Penland Automotive the week before. **(Exhibit K)**. The next day, Steve Lanzel and Dan Haight followed Charles Penland to a busy auto auction and in front of auctioneers, wholesalers, peers, colleagues, competitors, and friends demanded that Mr. Penland sign new documents which contained terms and conditions Penland Automotive never agreed to in order to get his cars back. **(Exhibit L)**. During that conversation, Dan Haight waived a piece of paper and allegedly stated that Penland was "out of trust."² **(Exhibit M)**.

The next day, Dan Haight and DFH sent a letter to Penland Automotive's creditors informing them they had repossessed Penland Automotive's car and intended to sell them – despite knowing that Penland Automotive was not late, deficient, or out of trust. **(Exhibit N)**. John Bethea testified that having cars repossessed and being out of trust was damaging to reputation in the industry.

II. STANDARD OF REVIEW

Rule 56, SCRCP, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Although the moving party bears the

¹ This issue is briefed in Plaintiffs' Brief in Support of its Motion for Summary Judgment filed on October 13, 2022.

² "Out of trust" is an industry terms used to describe a dealer who has sold a car (collateral for the loan) but not paid back his floor plan lender – essentially theft or fraud.

initial burden of demonstrating the absence of a genuine issue of material fact, “this initial responsibility may be discharged by ‘showing’ – that is, pointing out to the trial court – that there is an absence of evidence to support the nonmoving party’s case.” *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party makes this demonstration, the opposing party “must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.” *Id.* (emphasis in original). The nonmoving party must specifically set forth such facts, “as would be admissible in evidence,” to show that a true jury issue exists. *See* 56(e), SCRCF.

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001). Under South Carolina law, where “plain, palpable and indisputable facts exist on which reasonable minds cannot differ,” summary judgment in favor of the moving party is proper. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

III. ARGUMENT

A. The Individual Defendants are NOT Entitled to Summary Judgment on Plaintiffs’ First, Fourth, Fifth, Sixth, and Seventh Causes of Action.

Plaintiffs individually are bound by the same agreement they allege binds Plaintiffs and therefore are also subject to the First, Fourth, Fifth, Sixth and Seventh causes of action. Defendants are bound by their own actions and allegation that a verbal reinstatement of the 2016 Loan and Security Agreement occurred and as such, if their own allegations are true, they would individually be bound by the same conversation they claim binds Penland Automotive, Penland Properties II and Charles Penland. It should not escape notice that in Defendants’ brief, Defendants’ second

sentence is “at no point did Haight or Lanzl sign an agreement with Mr. Penland or Penland Automotive.” (Defendants’ Brief in Support of its Motion for Partial Summary Judgment). Ironically, Defendants argue that Charles Penland, Penland Automotive, and Penland Properties II are all bound by that conversation - which did not include them but did include Defendant Dan Haight – while at the same time arguing they are NOT bound by it.

If a verbal agreement with a party not a signatory to a written agreement binds the Plaintiffs, it must then bind the individuals involved in that verbal agreement. Therefore, the argument is disingenuous on its face as noted by Defendants’ footnote 3, in which Defendants continue to claim only one side is bound while disclaiming it for themselves, negating arguments that they cannot then face causes of action for violation of that agreement.

If an agreement exists – that there is a verbal agreement to renew the 2016 Agreement – then Breach of the Covenant of Good Faith and Fair Dealing, Breach of Contract, Recission, Fraudulent Inducement and Negligent Misrepresentation are all appropriate and supported causes of action in this matter. *Mears Grp., Inc. v. Kiawah Island Util., Inc.*, 372 F. Supp. 3d 363, 376 (D.S.C. 2019). “For a contract to arise there must be an agreement between two or more parties.” *Rushing v. McKinney*, 633 S.E.2d 917 (Ct. App. 2006).

Defendants’ Motion for Partial Summary Judgment should be denied as they allege a contract – which they individually participated in – which gives rise to causes of actions based upon that contract.

B. Defendants Are NOT Entitled To Summary Judgment On Plaintiffs’ Third Cause Of Action.

Defendants are not entitled to summary judgment on Plaintiffs’ Third Cause of Action for conversion. If there is no agreement and therefore no security interest in or agreement covering the cars, then the repossession of those cars was conversion: Conversion is defined as the

unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. *Moore v. Weinberg*, 383 S.C. 583, 589, 681 S.E.2d 875, 878 (2009); *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990). "Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property." *Jenkins v. Few*, 391 S.C. 209, 218, 705 S.E.2d 457, 461 (S.C. Ct. App. 2010); *Regions Bank v. Schmauch*, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct.App.2003). A plaintiff may also prevail upon a claim for conversion by showing the unauthorized detention of the property, after a demand. *Mackela v. Bentley*, 365 S.C. 44, 48, 614 S.E.2d 648, 650 (S.C. Ct. App. 2005). The main issue in this case is whether the parties were operating under a contractual agreement, and the securing of these vehicles was performed pursuant to the Loan Documents - which makes this a material question of fact.

Further, both Defendants Haight and Lanzl were individually involved in obtaining the vehicles at issue. (**Exhibit O**). Because they took this action on their own, their conduct meets the required elements of conversion. As such, the individual Defendants are not entitled to summary judgment on this claim.

C. Defendants Are NOT Entitled To Summary Judgment On Plaintiffs' Eighth Cause Of Action.

The Court should not grant summary judgment on Plaintiffs' Eighth Cause of Action for Defamation Per Se because there is a genuine issue of material fact, including a letter sent by DFH to Plaintiffs' creditors (**Exhibit N**), the affidavit of Darryl Jeter (**Exhibit M**), and the testimony of Billy Penland and John Bethea (**Exhibit K**).

"In order to prove defamation, the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of

special harm caused by the publication.” *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653, 664 (2006). Defamation per se exists “only if [the plaintiff] charges the [defendant] with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one’s business or profession.” *Erickson*, 368 S.C. at 465 n. 6.

Daryl Jeter signed a statement that “out of trust” was said to Dan Haight. (**Exhibit M**). Additionally, DFH sent a letter to its creditors informing them that DFH had repossessed and was disposing of the cars. (**Exhibit N**). Charles Penland testified that the allegations, accusations, and being “out of trust” was a death sentence in his profession. (**Exhibit P**). Finally, John Bethea testified that Dan Haight told him Penland was out of trust and that being out of trust is a “bad thing.” (**Exhibit K**). He further testified that other dealers and people in the industry had asked him what happened with Penland’s cars, if Penland was out of trust and that being “out of trust” would negatively affect someone in the car industry. (**Exhibit K**).

As there is a genuine issue of material fact, Defendants are not entitled to summary judgment on Plaintiffs’ Eighth Cause of Action.

IV. **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants request for partial summary judgment to individual Defendants Lanzl and Haight on all causes of action, and to all Defendants on Plaintiffs’ Second, Third, and Eighth causes of action and that Plaintiffs’ Motion for Summary Judgment.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

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Attorney for Plaintiffs

October 14, 2022

Greenville, South Carolina



LOAN AND SECURITY AGREEMENT

This **LOAN AND SECURITY AGREEMENT** (this "Agreement") is made and entered into as of November 21, 2016 by and between **PENLAND AUTOMOTIVE LLC**, a South Carolina limited liability company ("Borrower"), located at the address listed opposite its name on the signature page to this Agreement, **PENLAND PROPERTIES II, LLC**, a South Carolina limited liability company ("PPII"), located at the address listed opposite its name on the signature page to this Agreement, **CHARLES W. PENLAND, JR.**, a resident of the State of South Carolina ("Penland" and, together with PPII and Borrower, "Grantors"), and **DEALER FINANCIAL HOLDINGS LLC** ("DFH"), located at 310 Arlington Avenue, Suite 303, Charlotte, North Carolina 28203.

A. Borrower has requested that DFH make certain advances (collectively, the "Advances") to or on behalf of Borrower to finance Borrower's acquisition of motor vehicle inventory.

B. Borrower will repay the Advances on the terms set forth in this Agreement and will secure its obligations under this Agreement with a perfected lien on Borrower's interest in the Collateral (as defined below).

C. Borrower is directly or indirectly owned by Penland, and Penland will materially benefit from the Advances made under this Agreement.

D. Borrower is executing and delivering this Agreement and the other documents contemplated by this Agreement, and Penland is executing and delivering his Guaranty (as defined below) and the other documents contemplated by this Agreement and the Guaranty, as a material part of the consideration given in connection with, and as an inducement to, DFH's execution and delivery of this Agreement, and DFH would be unwilling to extend and maintain the Facility (as defined below) established under this Agreement for the benefit of Borrower unless Borrower and Penland executed and delivered this Agreement and Penland executed and delivered his Guaranty.

E. In consideration of the foregoing facts and the mutual covenants and conditions set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

Section 1. Definitions. As used in this Agreement, the following words and terms have the meanings set forth in this Section. Each capitalized term used but not defined in this Agreement has the meaning given to such term in the UCC.

"Account Statement" means any statement that DFH sends or makes available online to Borrower detailing all outstanding Advances and any fees and charges owed by Borrower in accordance with this Agreement.

"Administrative Fee" means any fee (other than a Floorplan Fee) that (a) DFH charges to Borrower for any service or process that Borrower requests, or (b) DFH determines is reasonable or necessary to administer or monitor the Facility or protect DFH's security.

"Advance" means any loan or payment in any amount made pursuant to this Agreement by DFH to Borrower or on Borrower's behalf to any third party.

"Advance Rates" means the limitations on the amount of an Advance for a particular Financed Vehicle as set forth in the Terms Schedule.

"Collateral" has the meaning set forth in Section 4.

"Credit Limit" means the aggregate maximum amount Borrower may borrow at any one time under this Agreement, as set forth in the Terms Schedule.

"Default Floorplan Factor" means the ratio set forth in the Terms Schedule.

"Equipment" means all goods other than Inventory held for sale, lease, or daily rental by Borrower in the ordinary course of business.

"Equity Condition" means any condition or conditions to DFH's funding of Advances relating to Inventory purchased from Borrower's own funds as set forth in the Terms Schedule.

"Event of Default" has the meaning set forth in Section 7.

"Facility" means the floorplan line of credit established for Borrower's benefit pursuant to this Agreement.

"Financed Vehicle" means any Unit now or hereafter acquired or otherwise financed by Borrower with proceeds of an Advance in accordance with this Agreement.

"Floorplan Factor" means the ratio set forth in the Terms Schedule.

"Floorplan Fee" means the fee charged by DFH on each day during the term of this Agreement with respect to each Advance outstanding on such day, which shall equal the unpaid principal amount of such Advance on such day multiplied by the Floorplan Factor; *provided however*, on each day an Event of Default is continuing, the Floorplan Fee with respect to each Advance outstanding on such day shall equal the unpaid principal amount of such Advance on such day multiplied by the Default Floorplan Factor.

"Grantors" means, individually and collectively, Borrower, PPII and Penland.

"Guarantor" means Penland and each other person who executes and delivers a Guaranty from time to time to secure the repayment of the Liabilities under this Agreement.

"Guaranty" means each guaranty executed and delivered from time to time in favor of DFH to secure the repayment of the Liabilities under this Agreement, as the same may be amended, modified or replaced from time to time.

"Inventory" means, collectively, all Units held by Borrower for wholesale or retail sale, lease, or rent or leased by Borrower (including, without limitation, Financed Vehicles).

"Liabilities" means, collectively, any and all Advances, debts, financial obligations, Administrative Fees, Scheduled Fees, interest, late fees and any other duties, charges, costs or expenses (including attorney's fees) owing, arising, due or payable from Borrower to DFH of any kind or nature, present or future, under any instrument, guaranty, or other document, whether arising under this Agreement or otherwise.

"Maturity Date" means the date an Advance for each Financed Vehicle becomes due and payable, as set forth in the Terms Schedule.

"Note" means the Demand Note executed by Borrower to evidence its repayment obligations under this Agreement, as the same may be amended, modified or replaced from time to time.

"Place of Business" means any or all of the following locations:

- (a) the location where Borrower keeps its books and records;
- (b) the location where Borrower conducts its operations; and
- (c) if applicable, the location of Borrower's registered office.

"Related Agreements" means, collectively, this Agreement, the Note, the Guaranty, and any other document or agreement relating to, securing, or evidencing the Liabilities.

"Reserve Fee" means the amount, if any, set forth in the Terms Schedule to be paid to DFH with respect to each Financed Vehicle as additional security for Borrower's obligations under this Agreement.

"Scheduled Fee" means any fee (other than the Floorplan Fee) charged by DFH to Borrower as set forth in the Terms Schedule.

"Terms Schedule" means the schedule of fees and terms applicable to the Facility that is attached to this Agreement as Exhibit A. EACH TERM SET FORTH IN THE TERMS SCHEDULE MAY BE AMENDED FROM TIME TO TIME BY DFH IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

"Title" means the certificate of title or other document evidencing ownership of a Unit issued by a duly authorized state, province or government agency.

"UCC" means the Uniform Commercial Code as enacted in the state where the Collateral is located.

"Unit" means a motor vehicle for which a Title exists.

Section 2. *Advances; Advance Procedures.*

(a) DFH will not honor any Advance request unless (1) at the time of such request (and after giving effect to such request), Borrower is in strict compliance with all provisions of this Agreement, and (2) the request complies with the conditions set forth in this Section. Without limiting the foregoing, DFH may decline any such request in its sole discretion. DFH's right to decline to make an Advance is a material term of the Facility and may not be waived, suspended or altered except in a writing signed by DFH. In addition, DFH may at any time, in its sole discretion, (1) establish, rescind or change amounts, limits or the extent to which Advances may be requested by or extended to Borrower, or (2) honor an Advance request that would cause the aggregate principal amount outstanding of all Advances at any given time to exceed the Credit Limit (each, an "Overadvance"). Any Overadvance shall constitute an Advance subject to the terms of this Agreement and the Terms Schedule. DFH's decision to make or refuse to make any Advance (including, without limitation, any Overadvance) shall not limit DFH's right to make or refuse to make any other Advance.

(b) All Borrower requests to DFH for an Advance for the purpose of acquiring Financed Vehicles must include:

- (1) a copy of the bill of sale for any Unit which is the subject of the request, indicating the actual purchase price and vendor;
- (2) a completed Odometer Disclosure Statement;
- (3) the Unit's certificate of title showing that it has been duly assigned to the applicable Borrower; and
- (4) such other information regarding the Unit or the applicable Borrower as DFH may reasonably request.

Each request for an Advance is also subject to any additional terms and procedures set forth in the Terms Schedule, including the Advance Rates and, if applicable, DFH's determination that Borrower is in compliance with the Equity Condition. If DFH elects to make any such Advance, then the Advance will constitute an additional Liability under this Agreement from the date on which the Advance is made.

(c) At any time Borrower is in default under this Agreement, DFH may make an Advance on Borrower's behalf for any Liability to a third party. Any such Advance may be made without notice to Borrower and without regard to the Credit Limit and will constitute an additional Liability under this Agreement from the date on which the Advance is made. Nothing in this paragraph obligates DFH in any way to make any such Advance at any time.

(d) So long as Borrower is not in default under this Agreement, Borrower may sell Financed Vehicles to bona fide buyers in the ordinary and regular course of Borrower's business, but nothing in this Agreement shall be deemed to waive or release any interest DFH may have hereunder or under any other agreement in any proceeds or replacements of the Financed Vehicle. ON THE SALE OR OTHER DISPOSITION OF EACH FINANCED VEHICLE, BORROWER SHALL HOLD THE AMOUNT RECEIVED FROM THE DISPOSITION OF SUCH FINANCED VEHICLE IN TRUST FOR THE BENEFIT OF DFH, AND BORROWER SHALL PAY TO DFH, IN ACCORDANCE WITH THIS AGREEMENT, AN AMOUNT EQUAL TO THE UNPAID BALANCE OF THE LIABILITIES RELATING TO SUCH FINANCED VEHICLE (OR SUCH OTHER AMOUNT AS PROVIDED IN SECTION 3).

(g) Borrower shall grant DFH's officers, employees, agents, attorneys, designees and representatives access to Borrower's books and records at Borrower's Place of Business to conduct an audit of the Financed Vehicles. Borrower shall be responsible for and shall pay all of DFH's expenses in conducting any such audit.

(h) DFH may, in its sole discretion, grant any Borrower request to obtain, for a legitimate business purpose, the Title to a specific Financed Vehicle held by DFH. If DFH grants any such request, then DFH shall provide the applicable Borrower with any terms and conditions relating to such request, and Borrower must deliver to DFH a check or draft which is signed and dated on the date as of which Borrower takes physical custody of the subject Title in an amount equal to the Liability relating to such Financed Vehicle. If Borrower violates any of the terms and conditions established by DFH in connection with such request, then any outstanding Liability relating to any Advance for such Financed Vehicle shall become immediately due and payable, and DFH may deposit or present such check or draft for payment in partial or whole satisfaction thereof, whichever the case may be.

(i) Borrower authorizes DFH to obtain from time to time credit information from a credit bureau, and any financial institutions or trade creditor that Borrower has provided, as well as other credit investigation that DFH in DFH's sole discretion deems necessary in connection with the administration of the Facility. Borrower also authorizes DFH to contact any third parties to disclose information, including

information contained in the DFH application, for the purpose of, among other things, obtaining intercreditor agreements and perfection of DFH's security interest.

(j) Borrower's account is subject to "NSF" fees in the maximum amount permitted by law for each check or other payment made by Borrower that is subsequently returned for insufficient funds, in addition to any charge or fee imposed by Borrower's and/or DFH's depository institution. Further, Borrower's account is subject to Administrative Fees. Borrower acknowledges and agrees that any such Administrative Fee that DFH charges is permitted under this Agreement, and Borrower consents to the assessment of any such Administrative Fee to Borrower's account. Such Administrative Fees are subject to business and market conditions; DFH may therefore adjust the Administrative Fees unilaterally without notice to Borrower and at DFH's sole discretion.

(k) All terms and conditions set forth in the Terms Schedule are incorporated in this Agreement by this reference. DFH MAY FROM TIME TO TIME, IN ITS SOLE DISCRETION, AMEND ANY TERM SET FORTH IN THE TERMS SCHEDULE, INCLUDING THE FLOORPLAN FACTOR, THE DEFAULT FLOORPLAN FACTOR, THE CREDIT LIMIT, THE ADVANCE RATES, PRINCIPAL REDUCTION REQUIREMENTS AND ALL OTHER RATES, FEES AND TERMS SET FORTH IN THE TERMS SCHEDULE BY PROVIDING WRITTEN NOTICE TO BORROWER OF THE AMENDED TERMS AND THE EFFECTIVE DATE FOR SUCH CHANGES, WHICH DATE MUST BE AT LEAST 30 DAYS AFTER THE DATE OF SUCH NOTICE. DFH MAY PROVIDE THE WRITTEN NOTICE REQUIRED BY THIS SUBSECTION AS PART OF ANY ACCOUNT STATEMENT PROVIDED TO BORROWER.

Section 3. *Floorplan Fee; Repayment of Advances.*

(a) DFH will charge Borrower on a daily basis a Floorplan Fee with respect to each Advance outstanding on such day. As provided in the definition of "Floorplan Fee," the Floorplan Fee will be calculated using the Floorplan Factor set forth in the Terms Schedule unless an Event of Default has occurred and is continuing, in which case the Floorplan Fee will be calculated using the Default Floorplan Factor. Calculating the Floorplan Fee using the Default Floorplan Factor will result in an increase in the Floorplan Fee charged with respect to all Advances outstanding under this Agreement on each day that Borrower remains in default under this Agreement.

DFH will consider an Advance to be outstanding on the day DFH makes the Advance to or on behalf of Borrower but will not consider such Advance to be outstanding on the day such Advance is fully and finally repaid in accordance with this Section.

(b) DFH's internal records shall constitute presumptive evidence of the then-outstanding principal amount of each Advance, as well as the amount of Floorplan Fees and other charges that may be owed to DFH at any time. Absent manifest error, the principal balance and any outstanding fees and charges with respect to the Advances reflected in the Account Statement shall constitute conclusive evidence of such amounts unless Borrower objects in writing within 14 calendar days of the date of the Account Statement.

(c) Borrower shall pay, and Borrower hereby promises to pay, the Floorplan Fees charged with respect to each Advance in accordance with the terms of this Agreement and the Terms Schedule.

(d) Prior to demand, Borrower shall repay, and Borrower hereby promises to repay, each Advance with respect to any unsold Financed Vehicle in the amounts and at the times provided in this Agreement and the Terms Schedule.

(e) Following the sale or other disposition of any Financed Vehicle by Borrower, Borrower shall pay to DFH, without notice or demand, at DFH's principal office or as otherwise set forth in the

Terms Schedule, the amount of the Advance and all other Liabilities owed with respect to such Financed Vehicle on the earlier of:

- (1) ~~72~~ ^{168 hours / 7 days} hours after such sale or disposition;
- (2) 24 hours from the time Borrower receives payment by or on behalf of the purchaser of a Financed Vehicle; or
- (3) the Maturity Date.

Subject to the last sentence of this subsection, Borrower shall pay in full all Liabilities owed with respect to such Financed Vehicle, in cash, regardless of whether the proceeds received by Borrower are in cash or in kind or are less than the full amount of all Liabilities owed with respect to the Financed Vehicle. If an Event of Default has occurred and is continuing at the time of sale or other disposition of the Financed Vehicle, then Borrower shall pay to DFH the greater of (1) all Liabilities owed with respect to the Financed Vehicle, or (2) the full amount of the purchase price of the Financed Vehicle.

(f) DFH may apply any payments received with respect to the Liabilities in any order and method as it may determine in its sole discretion. Payments received by DFH after 3:00 pm, prevailing Eastern time, will be applied the next business day.

(g) If any payment due under this Agreement is unpaid for 15 days or more, Borrower shall pay DFH, in addition to any other sums due under this Agreement (and without limiting any other remedy available to DFH on account of such delinquent payment), a late charge equal to 5.00% of such unpaid amount.

(h) BORROWER EXPRESSLY WAIVES ANY AND ALL DEFENSES NOW OR HEREAFTER ARISING OR ASSERTED BY REASON OF (1) ANY LACK OF VALIDITY, LEGALITY OR ENFORCEABILITY OF ANY RELATED AGREEMENT; (2) ANY ACTION TAKEN UNDER ANY RELATED AGREEMENT OR ANY RIGHT OR REMEDY EXERCISED, DELAYED OR WAIVED UNDER ANY RELATED AGREEMENT; (3) ANY RELEASE, EXCHANGE, LAPSE IN PERFECTION OR OTHER IMPAIRMENT OF ANY SECURITY FOR, OR GUARANTY OF, THE LIABILITIES; (4) ANY DISSOLUTION, COMBINATION OR CONSOLIDATION OF ANY PARTY TO ANY RELATED AGREEMENT; OR (5) ANY OTHER CIRCUMSTANCE WHATSOEVER (WITH OR WITHOUT NOTICE TO OR KNOWLEDGE OF BORROWER) WHICH MIGHT IN ANY WAY OR TO ANY EXTENT VARY THE RISKS OF BORROWER, OR MIGHT OTHERWISE CONSTITUTE A LEGAL OR EQUITABLE DEFENSE AVAILABLE TO, OR DISCHARGE OF, A SURETY OR A GUARANTOR. IT IS THE EXPRESS PURPOSE AND INTENT OF EACH OF THE PARTIES TO THIS AGREEMENT THAT THE OBLIGATIONS OF BORROWER FOR THE LIABILITIES SHALL BE ABSOLUTE AND UNCONDITIONAL UNDER ALL CIRCUMSTANCES AND SHALL NOT BE DISCHARGED EXCEPT BY PAYMENT IN FULL AS PROVIDED IN THIS AGREEMENT. Notwithstanding the foregoing, the liability of Borrower with respect to its Liabilities shall be limited to an aggregate amount equal to the largest amount that would not render its obligations under this Agreement subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of applicable state law.

Section 4. Security Interest; Perfection.

(a) As security for the payment of all Liabilities under this Agreement and any Related Agreement (including, without limitation, Penland's obligations under his Guaranty), each Grantor hereby grants to DFH a continuing security interest in all of such Grantor's assets and properties, wherever located, including without limitation, (1) all Equipment of any kind or nature; (2) all Inventory, including, if applicable, all Financed Vehicles, now owned or hereafter acquired; (3) all additions, accessions, accessories, replacements and proceeds thereof; (4) all documents, accounts, accounts receivable, chattel

paper and general intangibles now owned or hereafter acquired by such Grantor, together with the proceeds thereof; and (5) all of such Grantor's books and records relating to the foregoing (collectively, the "Collateral").

(b) DFH may file financing statements, mark chattel paper, notify account debtors, note liens on documents of title, and the like, in order to establish, confirm, and maintain a perfected security interest in the Collateral. Each Grantor, as applicable, will execute and deliver any documents necessary and appropriate for this purpose and otherwise irrevocably appoints DFH to do so. DFH may require each Grantor, as applicable, to pay any fee, cost, tax, or assessment required by any government entity to perfect and maintain perfection of DFH's security interest in the Collateral.

(c) Unless DFH agrees otherwise in writing, Borrower must immediately turn over to DFH custody or control of all certificates of title, documents of title, bills of sale, invoices, and other records or instruments of ownership by Borrower pertaining to the Financed Vehicles. On DFH's request, each Grantor must protect and defend the Collateral against the claims and demands of all other persons.

(d) Borrower hereby grants a security interest in any Reserve Fees paid to DFH in accordance with the Terms Schedule. DFH shall hold each Reserve Fee in its custody pending payment in full of the applicable Advance. Upon the occurrence and during the continuance of an Event of Default, DFH may apply all or any part of the Reserve Fees against the outstanding Liabilities under this Agreement in any order and in any manner as DFH shall elect in DFH's sole discretion, without adversely affecting its other rights under any Related Agreement. The Reserve Fees shall not constitute trust funds and may be commingled with other monies held by DFH. All interest which accrues on the Reserve Fees shall be at a rate established by DFH, which may or may not be the highest rate then available, shall accrue for the benefit of Borrower and shall be added to and disbursed in the same manner and under the same conditions as the principal sum on which said interest accrued. On repayment in full of Borrower's Liabilities under this Agreement, DFH shall disburse to Borrower any remaining Reserve Fees in its custody within 15 days.

Section 5. Representations and Warranties. Each Grantor, as applicable, represents and warrants to DFH, as of the date of this Agreement, and, as of each occasion on which an Advance is made pursuant to this Agreement, as follows:

(a) Borrower is principally engaged in the retail sale of motor vehicles and has all necessary licenses, permits, qualifications, franchises and other approvals lawfully necessary to conduct its business.

(b) Each Grantor is the legal owner of its Collateral, free from any lien, security interest or encumbrance except for the security interests granted by this Agreement to DFH and as otherwise described in this Agreement.

(c) All Financed Vehicles, and all of Borrower's records concerning sales, accounts and contract rights, are (or will be) kept at the applicable Borrower's Place of Business, except (1) for Financed Vehicles temporarily removed from such locations in the ordinary course of Borrower's business, or (2) as otherwise disclosed by Borrower and approved by DFH.

(d) All information furnished to DFH concerning the Collateral for the purpose of obtaining credit is, and will be, true and correct in all respects.

(e) Each Grantor has the authority and the legal right to execute, deliver, and perform this Agreement and has taken all necessary action to authorize the execution, delivery, and performance of this Agreement and any other documents contemplated hereby; and this Agreement has been duly

executed and delivered and constitutes Grantors' legal, valid, and binding obligation enforceable against them in accordance with its terms.

(f) Each Grantor represents and warrants it has title to, rights in and/or the power to transfer its Collateral, and its rights, title and powers with respect to the Collateral are free of all adverse claims, liens, security interests and restrictions on transfer or pledge.

(g) Each Grantor's legal name and address as they appear on its signature page to this Agreement are accurate and complete.

(h) Each Grantor and any other Guarantor is legally competent and has authority to enter into and execute this Agreement and any and all related documents.

Section 6. Covenants of Grantors. For so long as any Liability remains outstanding under this Agreement, each Grantor, as applicable, agrees as follows:

(a) Borrower shall use Advances solely for business purposes and not for personal, family or household purposes. This means, among other things, that Borrower may not use Advances to purchase a vehicle to be used for Borrower's personal, family or household purposes.

(b) Each Grantor shall keep its Collateral in good condition and shall not damage or destroy its Collateral or permit the same to occur. No Grantor shall use its Collateral in violation of any statute, ordinance or governmental rule or regulation.

(c) Each Grantor shall keep the Financed Vehicles (and all proceeds of Financed Vehicles) free from any adverse lien, security interest or encumbrance (other than any such lien, security interest or encumbrance which is permitted in writing by DFH) and shall defend its interests in any Financed Vehicles (and all proceeds of Financed Vehicles) against all other claims and demands of all persons at any time claiming any interest therein. Each Grantor shall promptly pay when due all taxes and assessments upon the Collateral, including the Financed Vehicles.

(d) No Grantor shall (1) make any sales or leases of any Financed Vehicle other than in the ordinary course of business or (2) grant any other security interest in any of its Collateral, whether subordinate or superior to the security interests granted herein, without the prior written consent of DFH.

(e) No Grantor shall change: (1) the location of the Collateral; (2) the state in which any titled Unit is titled; (3) the location of its Place of Business; (4) the state in which it is organized; or (5) its legal name.

(f) Each Grantor shall keep its Collateral, including any Financed Vehicles, in good repair and insured against all physical risks in such amounts and under such policies issued by such insurance company as are deemed necessary and satisfactory by DFH. DFH shall be named "loss payee" to the extent DFH's interests may appear. If any Grantor fails to procure, maintain or provide proof of such insurance coverage, then DFH may, in its sole discretion, purchase necessary insurance to protect its interests and collect the costs from such Grantor pursuant to the terms of this Agreement. Each Grantor understands and agrees that DFH has an insurable interest in the Collateral, including but not limited to, the Financed Vehicles, by virtue of such Grantor's pledge of its Collateral as security to DFH as defined above, for the repayment of all Liabilities owed to DFH under this Agreement.

(g) Each Grantor shall keep at all times complete and accurate records of its business. Each Grantor shall provide records and financial information regarding its business and financial condition as required by the Terms Schedule or as DFH may reasonably request. Each Grantor authorizes DFH to share such information and any other information relating to its transaction with DFH with any and all persons or parties as DFH deems necessary.

(h) No Grantor shall pay or declare any dividends or distributions, redeem any capital stock, repay subordinate debt or repay any other loans to any principal or guarantor of such Grantor's business.

(i) No Grantor shall disclose to any third party, without the written consent of DFH, any terms and conditions applicable to the Facility.

Section 7. *Events of Default; Acceleration.* The occurrence of any of the following events shall be considered an event of default under this Agreement ("Event of Default"):

(a) Any Grantor fails to perform any of its respective obligations, undertakings or covenants under this Agreement, including, but not limited to, Borrower's failure to make payment of any outstanding Liability as and when due under this Agreement or the Terms Schedule;

(b) Any warranty or representation made by any Grantor proving to have been false or misleading in any material respect when made, or any schedule, certificate, financial statement, report, notice, or other writing furnished by such Grantor to DFH proving to have been false or misleading in any material respect when made or delivered;

(c) Any damage or destruction of a substantial part of the Collateral occurs and appropriate insurance naming DFH as "Loss Payee" is not in effect;

(d) Any Grantor becomes insolvent or consents to the appointment of a trustee, receiver or other custodian for such Grantor or any of its property, or makes a general assignment for the benefit of creditors; or any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or a dissolution or liquidation proceeding is commenced in respect of any Grantor;

(e) Any material change in the management, ownership or control of Borrower;

(f) The voluntary or administrative dissolution, death or incompetence of any Grantor or Guarantor;

(g) Any change in the financial condition of Borrower or any Guarantor that DFH deems materially adverse;

(h) DFH in good faith deems itself insecure for any reason; or

(i) Borrower defaults under any other written agreement between DFH and Borrower.

Section 8. *Rights and Remedies on Default.* Upon an event of default, DFH may, at its option and without notice, exercise any of the following rights in a separate, successive or concurrent fashion and such exercise of any right shall not preclude pursuit of other rights and remedies at a later time:

(a) Demand immediate payment of all Liabilities and all other indebtedness owed to DFH by Borrower. DFH shall have all the rights and remedies available hereunder, at law or in equity, including without limitation, the rights and remedies of a secured party under the UCC. These rights and remedies include the right to cancel any unfunded Advances, to enter into any Grantor's premises with or without legal process, but without force, and to take possession and remove the Collateral. At DFH's request and to the extent any Grantor may lawfully do so, Grantor shall assemble, prepare for removal and make available to DFH at a place designated by DFH which is reasonably convenient for DFH and such Grantor, such items of Collateral as DFH may deem sufficient to cover all of Borrower's Liabilities to DFH.

(b) Initiate proceedings to appoint a receiver in any court of competent jurisdiction. Each Grantor waives the right to notice and hearing of the appointment of a receiver and consents to the appointment without requiring DFH to post a bond.

(c) To the extent allowed by law, each Grantor gives consent to DFH to proceed in any action to collect on or execute against any and all bonds that such Grantor has posted with any governmental authorities.

(d) Take control of any funds generated by the Collateral, and in DFH's name or the applicable Grantor's name, demand, collect, receipt for, settle, compromise, sue for, repossess, accept returns of, foreclose or realize upon any Collateral.

Each Grantor waives any and all rights it may have to notice prior to seizure by DFH of any Collateral. Each Grantor agrees that private sale of any item financed by DFH at the amount owed to DFH on that item, less costs reasonably incurred by DFH in preparation of disposition of the Collateral, shall be a commercially reasonable method of disposition of the Collateral.

Borrower shall be liable to DFH for any deficiency resulting from DFH's disposition of the Collateral. Each Grantor agrees that the Collateral is of the type customarily sold on a recognized market and that DFH therefore has no obligation to notify any Grantor prior to a sale. However, each Grantor agrees that ten days' prior written notice of public sale date or the date after which a private sale may occur shall be reasonable notice. DFH shall not be responsible for the accuracy or validity of any document or for the existence or value of any Collateral. DFH shall not be required to marshal any assets in favor of any Grantor. DFH has no obligation to pursue any third person for any Liability or obligation owed to any Grantor. Each Grantor further agrees, jointly and severally, to pay reasonable attorneys' fees and collection costs incurred by DFH in enforcing this Agreement after an event of default by Borrower. To the extent not prohibited by law, each Grantor waives all appraisal, valuation, anti-deficiency, homestead, exemption or usury laws now or hereafter in effect and releases all right to appeal after payment in full.

Section 9. Indemnification. Each Grantor agrees to indemnify, defend and hold harmless DFH from and against any claims, liabilities, damages, costs or expenses, of any nature whatsoever, which DFH may suffer or incur as a result of, or arising from or in connection with, any act or omission on the part of any Grantor in respect of any matter referred to in, contemplated by, or otherwise relating to this Agreement.

Section 10. Failure to Exercise Remedies. The exercise of any right or remedy available to any party or the failure of any party to exercise or a delay by any party in exercising any right or remedy shall not operate as a waiver of such right or any other right. All of the parties' rights and remedies shall be cumulative and may be exercised singularly or concurrently.

Section 11. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns; *provided, however* that this Agreement and all rights and obligations under this Agreement may not be assigned or transferred by any Grantor without DFH's prior written consent and any purported assignment or transfer without such consent shall be void and without effect. Any obligation or function to be performed by DFH under this Agreement may, at the option of DFH, be delegated to and performed by any agent of DFH, which agent shall have such power and authority as DFH shall delegate to it.

Section 12. *Termination.* Borrower may terminate this Agreement upon written notice to DFH. DFH may terminate this Agreement at any time upon written notice to Borrower. Any termination of this Agreement shall not affect any obligation of DFH or any Grantor that may exist prior to the effective date of such termination.

Section 13. *Miscellaneous.* Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision of this Agreement. This Agreement constitutes the complete understanding between the parties hereto with respect to the subject matter hereof and no alteration, amendment or modification of any of the terms and provisions hereof shall be valid unless made pursuant to an instrument in writing signed by parties hereto. Unless the context of this Agreement otherwise requires, the masculine, feminine or neuter gender each shall include the other genders, and the singular shall include the plural. The section headings contained in this Agreement are for convenience of reference only and shall not limit or define the text hereof.

Section 14. *Governing Law.* This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

Section 15. *Notice.* Except as otherwise provided in this Agreement, all notices and other communications hereunder shall be in writing and shall be deemed duly given if and when personally delivered or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed to the applicable party at its address listed in the introductory paragraph of this Agreement or opposite its name on the signature page to this Agreement. Either party may change the address to which each such notice shall be sent by giving notice of such address change in the manner provided herein to the other party.

Section 16. *No Joint Venture or Partnership.* Nothing contained in this Agreement confers on DFH or any Grantor any interest in, or subjects any of them to any liability for, the business, assets, profits, losses or liabilities of the other. This Agreement does not constitute a joint venture or partnership between DFH and any Grantor. Nothing in this Section limits or restricts the respective obligations and undertakings of DFH and any Grantor under this Agreement.

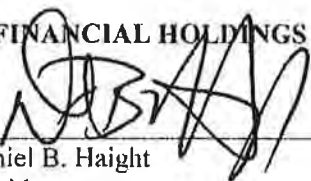
Section 17. *Waiver of Jury Trial.* TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH GRANTOR AND DFH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, ANY RELATED AGREEMENT, THE LIABILITIES, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith, AND ANY AND ALL CAUSES OF ACTION IN ANY WAY RELATING TO ANY MATTER BETWEEN THEM WHETHER ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY RELATED AGREEMENT, OR ARISING FROM ALLEGED EXTRA-CONTRACTUAL FACTS PRIOR TO, DURING, OR SUBSEQUENT TO THIS AGREEMENT AND REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH MATTER IS ASSERTED, AND (B) AGREE NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. EACH GRANTOR CERTIFIES THAT NEITHER DFH NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY

OR OTHERWISE, THAT DFH WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

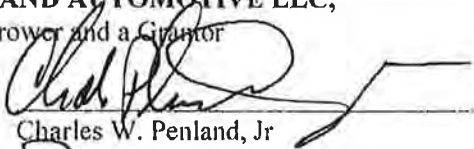
[Signatures Begin on Following Page]

IN WITNESS WHEREOF, each of the parties to this Agreement has caused this Agreement to be executed under seal by its duly authorized representative as of the date first written above.

DEALER FINANCIAL HOLDINGS LLC

By: 
Name: Daniel B. Haight
Title: President

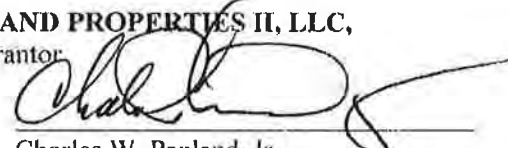
PENLAND AUTOMOTIVE LLC,
as Borrower and a Grantor

By: 
Name: Charles W. Penland, Jr.
Title: Pres

Notice Address:

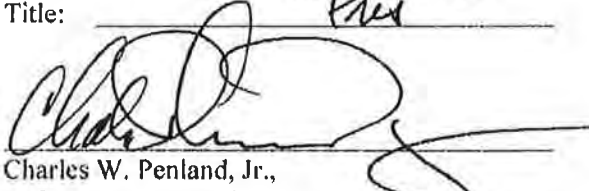
3406 Wade Hampton Blvd
Taylors, SC 29687

PENLAND PROPERTIES II, LLC,
as a Grantor

By: 
Name: Charles W. Penland, Jr.
Title: Pres

Notice Address:

3406 Wade Hampton Blvd
Taylors, SC 29687


Charles W. Penland, Jr.,
as Guarantor and a Grantor

Notice Address:

SAME AS ABOVE

EXHIBIT A

TERMS SCHEDULE

BORROWER
PENLAND AUTOMOTIVE LLC

NOVEMBER 21, 2016

This Terms Schedule is a material part of the Loan and Security Agreement dated November 21, 2016 (as the same may be amended, modified or replaced, the "**Agreement**") between Borrower listed above and Dealer Financial Holdings LLC ("DFH"). The terms set forth in this Terms Schedule may be amended by DFH in its sole discretion in accordance with the terms of the Agreement. Each capitalized term used but not defined in this Terms Schedule has the meaning given to such term in the Agreement. The payment information provided in this Terms Schedule in no way limits DFH's right to demand payment as provided in the Agreement. The Account Statements provided to Borrower summarize Borrower's payment obligations with respect to each Advance pursuant to the Agreement and this Terms Schedule. As provided in the Agreement, the Account Statements are binding on Borrower and DFH absent manifest error or Borrower's timely written objection.

CREDIT LIMIT

The **Credit Limit** for this Facility is \$200,000. The aggregate principal amount outstanding of all Advances made to Borrower under the Agreement at any given time may not exceed the Credit Limit.

FLOORPLAN FEES

Floorplan Factor means \$0.08 per \$100.00 borrowed, or 0.0008.

Default Floorplan Factor means \$0.10 per \$100.00 borrowed, or 0.0010.

DFH will charge a daily fee with respect to each outstanding Advance in an amount equal to the principal amount of such Advance multiplied by the Floorplan Factor (or, if an Event of Default is continuing at the time of calculation, the Default Floorplan Factor). For example, if DFH makes an Advance to a Borrower in the amount of \$10,000.00 and no Event of Default has occurred, DFH will charge Borrower \$8.00 for each day the Advance is outstanding (not including the day the Advance is repaid). If the principal amount of the Advance is repaid in full on the 11th day after the Advance is made, Borrower will owe DFH a total Floorplan Fee with respect to such Advance in the amount of \$80.00.

Floorplan Fees will be due by 3:00 pm (1) on each Friday following the date that an Advance has been outstanding for 30, 60 and 90 days, respectively, and (2) on each day Borrower is required to repay all or a portion of such Advance under the Agreement, whether following the sale or disposition of the applicable Financed Vehicle, on the Maturity Date or otherwise.

PRINCIPAL REDUCTION PAYMENTS; MATURITY DATE

Until a Borrower has sold or otherwise disposed of any Financed Vehicle, Borrower must repay the principal amount of the Advance relating to such Financed Vehicle as provided in the table below:

<u>Date</u>	<u>Percentage of Original Principal Amount of Advance Required to be Repaid</u>
Date of Advance + 60 days	10%
Date of Advance + 90 days	10%
Date of Advance + 120 days	100%

Each principal reduction payment will be due by 3:00 pm on the first Friday following each date indicated in the table above.

"**Maturity Date**" means, for each Advance, the first Friday following the date on which 100% of the outstanding principal amount of such Advance is due, as provided in the table above. Unless DFH agrees otherwise in writing, all Liabilities with respect to each Advance must be paid in full by 3:00 pm on the Maturity Date for such Advance.

ADVANCE RATES

DFH will not make an Advance for any Financed Vehicle in excess of the following rates:

<u>Source of Financed Vehicle</u>	<u>Maximum Amount Advanced</u>
Purchased at Auction	100% of the purchase price of the Unit, as verified by the applicable Borrower's invoice
Purchased Outside of Auction	(1) Lesser of (a) 80% of the published wholesale value for such Unit, as set forth in the then-applicable Used Car Guide as published by the National Automobile Dealers Association, assuming good condition, and (b) the actual purchase price of the Unit. Or as agreed in writing; or (2) as otherwise agreed by Borrower and DFH in writing.

EQUITY CONDITION

DFH will not fund any Advance unless Borrower establishes to DFH's satisfaction that Borrower maintains, at the time of such Advance, at least **\$50,000** in used vehicle inventory (based on actual purchase price) purchased from Borrower's own funds.

ADVANCE PROCEDURES

Borrower will provide DFH with a list of auctions from which Borrower intends to purchase Financed Vehicles. DFH will notify each auction specified by Borrower and acceptable to DFH that, subject to DFH's advice of credit availability, such auction may sell motor vehicles to Borrower. DFH will pay the auction for any Financed Vehicle on delivery to DFH of the documents set forth in the Agreement.

If DFH, in its sole discretion, makes an Advance prior to receiving a valid original Title for the Financed Vehicle, and such Title is not delivered within 15 days from the date of the Borrower's purchase, then Borrower

must immediately return the Financed Vehicle to the auction and repay the outstanding Advance with respect to such Financed Vehicle, plus any Floorplan Fees and any other fees or charges due to DFH.

In DFH's sole discretion, DFH may make Advances for the purchase of Financed Vehicles outside of auction. DFH will generally make any such Advance directly to the seller of the Financed Vehicle, though DFH may, in its sole discretion, elect to make Advances directly to Borrower.

FLOOR PLAN AUDITS

Borrower's inventory, other Collateral, records and sales information will be periodically audited by a DFH representative or a third-party contracted by DFH. Borrower must provide the auditor, at the time of audit, with detailed information on the location or disposition of any Financed Vehicle not physically verified by the auditor. Borrower must provide auditor with paperwork for all sold vehicles and contact information for any repair shops holding Inventory. If Borrower is found to be in compliance with the terms of the Agreement, then DFH will not charge Borrower for the audit. If an Event of Default is discovered in connection with an audit of Borrower's inventory, then DFH will charge Borrower the greater of (1) \$2.50 for each vehicle in Borrower's Inventory at the time of such audit and (2) \$100.00. Such audit fees will apply to each audit performed by DFH while the Event of Default is continuing.

FINANCIAL STATEMENTS

Borrower must provide DFH with the following financial information:

- (1) by the 15th day of each month, Borrower's balance sheet, income statement and bank statement for the immediately preceding month;
- (2) annually, no later than 15 days after filing, a signed copy of Borrower's and each Guarantor's federal tax return for the prior year;
- (3) on DFH's request, annual financial statements of Borrower and each Guarantor prepared by an independent accountant acceptable to DFH, with copies of all letters, footnotes and advice from such accountant, such financial statements to be audited, reviewed or compiled, all as DFH may request; and
- (4) such other financial information as DFH may reasonable request.

SCHEDULED FEES

DFH reserves the right to charge Borrower the **Scheduled Fees** listed below, which include fees customarily charged by lenders in connection with floorplan financings similar to the Facility:

<u>Scheduled Fee</u>	<u>Amount Charged Borrower (Absent Event of Default)</u>	<u>Amount Charged Borrower (During Event of Default)</u>
Onboarding Fees	\$0.00	\$100.00 at the time DFH makes each Advance
Curtailment Fees	\$0.00	\$100.00 at the time of each curtailment payment
Administrative Fees	\$15.00 per floor plan advance, title packet, and other as agreed	\$25.00 per floor plan advance, title packet, and other as agreed

Reserve Fee	\$100 per vehicle	\$200 per vehicle
Audit Fee	\$0.00	Greater of \$2.50 per Unit in Borrower's Inventory or \$100

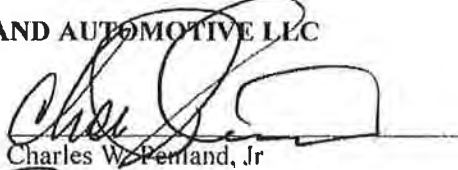
BORROWER'S PLACE(S) OF BUSINESS

<u>Borrower</u>	<u>Address for Location of Books and Records</u>	<u>Address for Location of Operations</u>	<u>Address for Location of Registered Office</u>
Penland Automotive LLC	3406 Wade Hampton Blvd Taylors, SC 29687	3406 Wade Hampton Blvd Taylors, SC 29687	3406 Wade Hampton Blvd Taylors, SC 29687

REQUIRED GUARANTOR

Charles W. Penland, Jr.

Reviewed and agreed as of the date written above.

PENLAND AUTOMOTIVE LLCBy: 

Name: Charles W. Penland, Jr.

Title: 

DEMAND NOTE

November 21, 2016

FOR VALUE RECEIVED, the undersigned ("Borrower") hereby promises to pay to Dealer Financial Holdings LLC or its assigns ("DFH"), on demand and otherwise in accordance with the provisions of a Loan and Security Agreement dated as of November 21, 2016 (as the same may be amended, modified or replaced from time to time, the "Loan Agreement") among Borrower, DFH, Charles W. Penland, Jr., and Penland Properties II, LLC, in such amounts and at such times as provided in the Loan Agreement, (1) the principal amount of each Advance from time to time made by DFH to Borrower under the Loan Agreement and (2) the Floorplan Fee and any other amount due and payable with respect to the unpaid principal amount of each Advance from the date of such Advance until such principal amount is paid in full. Each capitalized term used but not defined herein has the meaning given to such term in the Loan Agreement. The terms of the Loan Agreement are incorporated herein by this reference.

All payments under this Note shall be made to DFH in lawful money of the United States and in immediately available funds at DFH's principal office as provided in the Loan Agreement, or as DFH may otherwise instruct Borrower in writing. Each Advance and any amounts due respect to each such Advance under the Loan Agreement shall be evidenced by (1) records maintained by DFH in the ordinary course of business and (2) the Account Statements that DFH provides to Borrower from time to time. DFH may also attach schedules to this Note and endorse thereon the date, amount and maturity of each Advance and any payments with respect thereto.

This Note is given to evidence the payment obligations of Borrower to DFH in connection with the Loan Agreement and is subject to the terms and conditions of the Loan Agreement. This Note is also entitled to the benefits of any Guaranty and is secured by the Collateral. In the event of any conflict between the provisions of this Note and the Loan Agreement, the provisions of the Loan Agreement shall control.

THIS NOTE IS DUE AND PAYABLE ON DEMAND. Without limiting the foregoing, on the occurrence and continuation of one or more Events of Default specified in the Loan Agreement, all amounts then remaining unpaid on this Note shall (if required by the Loan Agreement) become, or may be declared to be, immediately due and payable all as provided in the Loan Agreement.

Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note. This Note shall be governed by and construed in accordance with the laws of the State of South Carolina.

BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL, (A) WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS NOTE, ANY RELATED AGREEMENT, THE LIABILITIES, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith, AND ANY AND ALL CAUSES OF ACTION IN ANY WAY RELATING TO ANY MATTER BETWEEN THEM WHETHER ARISING FROM OR RELATING TO THIS NOTE OR ANY RELATED AGREEMENT, OR ARISING FROM ALLEGED EXTRA-CONTRACTUAL FACTS PRIOR TO, DURING, OR SUBSEQUENT TO THE AGREEMENT AND REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH MATTER IS ASSERTED, AND (B) AGREES NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. BORROWER CERTIFIES THAT NEITHER DFH NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT DFH

WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

IN WITNESS WHEREOF, Borrower has caused this Demand Note to be executed under seal by its duly authorized representative as of the date first written above.

PENLAND AUTOMOTIVE LLC

By: 

Name: Charles W. Penland, Jr

Title: 

UNLIMITED GUARANTY

To induce **DEALER FINANCIAL HOLDINGS LLC** ("DFH") to make, continue to make, or at any time in the future make loans, advances, or grant other financial accommodations to **PENLAND AUTOMOTIVE LLC**, a South Carolina limited liability company ("Borrower"), in consideration thereof and for loans, advances or financial accommodations heretofore or hereafter granted by DFH to or for the account of Borrower, the undersigned ("Guarantor") absolutely and unconditionally guarantees the full and punctual payment to DFH of all sums which may be presently due and owing and of all sums which shall in the future become due and owing to DFH from Borrower, including, without limitation, interest, attorneys' fees and other amounts accruing after the filing of a petition in bankruptcy by or against Borrower, notwithstanding the discharge of Borrower from such obligations, together with all costs and expenses incurred by DFH including attorneys' fees in connection with such obligations, this Guaranty and the enforcement thereof, and also guarantees the due performance by Borrower of all its obligations under all other present and future contracts and agreements with DFH. This is a guaranty of payment and not collection.

Each capitalized term used but not defined herein has the meaning given to such term in a Loan and Security Agreement dated November 21, 2016 (as the same may be amended, modified or replaced, the "Loan Agreement") among Borrower, DFH, Guarantor, and Penland Properties II, LLC. Borrower is directly or indirectly owned by Guarantor, and Guarantor will materially benefit from the Advances to be made to the Borrower under the Loan Agreement. DFH is unwilling to extend and maintain the Facility established under the Loan Agreement unless Guarantor executes and delivers this Guaranty.

DFH may enforce this Guaranty on multiple occasions, each time without the necessity of joinder of any other guarantors or any other person. This Guaranty shall remain in full force and effect until all obligations of Borrower are unconditionally paid in full.

Guarantor also agrees that:

(1) this Guaranty shall not be impaired by any modification, supplement, extension, renewal or amendment of any contract or agreement to which the parties thereto may hereafter agree, nor by any modification, increase, release or other alteration of any of the obligations hereby guaranteed or of any security therefor, nor by any agreements or arrangements whatsoever with Borrower or anyone else, all of which may be done without notice to Guarantor;

(2) the liability of Guarantor hereunder is direct and unconditional and due immediately upon default of Borrower without demand or notice and without requiring DFH first to resort to any other right, remedy or security;

(3) Guarantor shall have no right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of Borrower to DFH;

(4) the liability of Guarantor is unlimited and joint and several with the liabilities of any other guarantors;

(5) if Borrower, Guarantor or any other guarantor should at any time become insolvent or make a general assignment, or if a petition in bankruptcy or any insolvency or reorganization proceedings shall be filed or commenced by, against or in respect of Borrower, Guarantor or any other guarantor of the obligations guaranteed hereby, any and all obligations of Guarantor shall be immediately due and payable without notice;

(6) DFH's books and records showing the account between DFH and Borrower shall be admissible in any action or proceeding, and shall constitute conclusive proof thereof absent manifest error;

(7) this Guaranty is, as to Guarantor, a continuing Guaranty that shall remain effective under successive transactions until expressly released by DFH;

(8) the death of Guarantor, if applicable, shall not effect the termination of this Guaranty;

(9) nothing shall discharge or satisfy the liability of Guarantor hereunder except the full, indefeasible payment and performance of all of Borrower's debts and obligations to DFH with interest and costs of collection;

(10) this Guaranty shall not be affected by the illegality, invalidity or unenforceability of the Liabilities guaranteed, by any fraudulent, illegal or improper act by Borrower, the legal incapacity or any other defense of Borrower, Guarantor or any other person obligated to DFH consequential to transactions with Borrower nor by the invalidation, by operation of law or otherwise, of all or any part of the obligations guaranteed hereby, including but not limited to any interest accruable on the obligations guaranteed hereby during the pendency of any bankruptcy or receivership proceeding of Borrower;

(11) any and all present and future debts and obligations of Borrower to Guarantor are hereby waived and postponed in favor of and subordinated to the full, indefeasible payment and performance of all present and future debts and obligations of Borrower to DFH, and Guarantor shall accept no payments on any such debts and obligations except to the extent permitted by DFH in writing;

(12) if at any time payment of all or any part of the obligations guaranteed hereunder is rescinded or otherwise must be restored by DFH to Borrower or to the creditors of Borrower or any representative of Borrower or representative of Borrower's creditors as a voidable preference or fraudulent transfer of conveyance upon the insolvency, bankruptcy or reorganization of Borrower or Guarantor, or to the creditors of Guarantor or any representative of Guarantor or representative of the creditors of Guarantor upon the insolvency, bankruptcy or reorganization of Guarantor or otherwise, this Guaranty shall continue to be effective or be reinstated, as the case may be, as though such payments had not been made, and shall survive as an obligation of Guarantor, and shall not be discharged or satisfied by said payment or payments, notwithstanding the return of the original of this Guaranty to Guarantor or to Borrower, or any other apparent termination of Guarantor's obligations hereunder;

(13) DFH's delay or omission in exercising any of DFH's rights and remedies shall not constitute a waiver of these rights and remedies, nor shall DFH's waiver of any right or remedy operate as a waiver of any other right or remedy available to DFH;

(14) Guarantor shall indemnify and hold DFH and DFH's directors, officers, employees, agents and attorneys harmless against all claims, obligations, demands and liabilities, by whomsoever asserted, and against all losses in any way suffered, incurred or paid as a result of or in any way arising out of or following or consequential to transactions with Borrower, except for any claim arising out of the gross negligence or willful misconduct of the DFH, its officers, directors, employees or agents;

(15) this Guaranty incorporates all discussions and negotiations between DFH and Guarantor concerning the guaranty and indemnification provided by the undersigned hereby, and that no such discussions or negotiations shall limit, modify, or otherwise affect the provisions hereof, there are no preconditions to the effectiveness of this Guaranty and that no provision hereof may be altered, amended,

waived, canceled or modified, except by a written instrument executed, sealed and acknowledged by DFH's duly authorized officer;

GUARANTOR EXPRESSLY WAIVES (1) NOTICE OF ACCEPTANCE HEREOF, PRESENTMENT AND PROTEST OF ANY INSTRUMENT AND NOTICE THEREOF, NOTICE OF DEFAULT AND ALL OTHER NOTICES TO WHICH GUARANTOR MIGHT OTHERWISE BE ENTITLED; AND (2) ANY AND ALL DEFENSES, INCLUDING WITHOUT LIMITATION, ANY AND ALL DEFENSES WHICH BORROWER OR ANY OTHER PARTY MAY HAVE TO THE FULLEST EXTENT PERMITTED BY LAW, ANY DEFENSE TO THIS GUARANTY BASED ON IMPAIRMENT OF COLLATERAL OR ON SURETYSHIP DEFENSES OF EVERY TYPE, AND ANY RIGHT TO EXONERATION OR MARSHALLING. EXCEPT AS OTHERWISE PROVIDED BY APPLICABLE LAW, DFH SHALL HAVE NO DUTY AS TO THE COLLECTION OR PROTECTION OF ANY COLLATERAL, IF ANY, SECURING THE GUARANTEED OBLIGATIONS BEYOND THE SAFE CUSTODY THEREOF.

Guarantor will from time to time execute and deliver to the DFH, and take or cause to be taken, all such other further action as the DFH may request in order to effect and confirm or vest more securely in the DFH all the rights contemplated in this Guaranty or respecting any of the obligations guaranteed hereby or to comply with applicable statute or law.

GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL, (A) WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS GUARANTY, ANY RELATED AGREEMENT, THE LIABILITIES, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith, AND ANY AND ALL CAUSES OF ACTION IN ANY WAY RELATING TO ANY MATTER BETWEEN THEM WHETHER ARISING FROM OR RELATING TO THIS GUARANTY OR ANY RELATED AGREEMENT, OR ARISING FROM ALLEGED EXTRA-CONTRACTUAL FACTS PRIOR TO, DURING, OR SUBSEQUENT TO THE AGREEMENT AND REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH MATTER IS ASSERTED AND (B) AGREES NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. GUARANTOR CERTIFIES THAT NEITHER DFH NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT DFH WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

This Guaranty, all acts and transactions hereunder, and the rights and obligations of the parties hereto shall be governed, construed and interpreted according to the internal laws of the State of South Carolina, shall be binding upon the heirs, executors, administrators, successors and assigns of Guarantor and shall inure to the benefit of DFH's successors and assigns. In addition, if Guarantor is a natural person, then this Guaranty shall be binding against Guarantor's sole and separate property and the property now or hereafter owned by the marital community property of Guarantor.

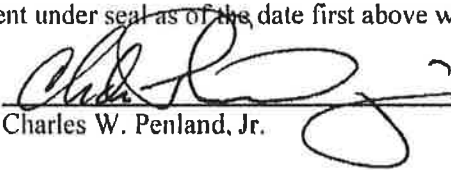
If any provision of this Guaranty is found to be invalid, illegal or unenforceable, the validity of the remainder of the Guaranty shall not be affected.

Guarantor's damages under this Guaranty and for all other relations between the parties are expressly limited to the actual dollar amount of Guarantor's economic or financial loss. DFH shall not be liable for, punitive, exemplary, consequential, or incidental damages.

THE LIABILITY OF GUARANTOR UNDER THIS GUARANTY SHALL BE JOINT AND SEVERAL WITH ALL OTHER GUARANTORS OF BORROWER'S OBLIGATIONS UNDER THE LOAN AGREEMENT, THE NOTE AND ANY RELATED AGREEMENT.

[Signatures Begin on Following Page]

This Guaranty is executed as an instrument under seal as of the date first above written.

 (SEAL)
Charles W. Penland, Jr.

POWER OF ATTORNEY

By executing this Power of Attorney in accordance with a Loan and Security Agreement dated November 21, 2016 (as the same may be amended, modified or replaced from time to time, the "Loan Agreement") among **PENLAND AUTOMOTIVE LLC**, a South Carolina limited liability company ("Borrower"), **PENLAND PROPERTIES II, LLC**, **CHARLES W. PENLAND, JR.**, and **DEALER FINANCIAL HOLDINGS LLC** ("DFH"), Borrower hereby irrevocably appoints DFH and DFH's agents as Borrower's lawful attorney-in-fact for the purposes of accomplishing any and all of the following actions, without notice to Borrower and without regard to whether an Event of Default has occurred and is continuing under the Loan Agreement:

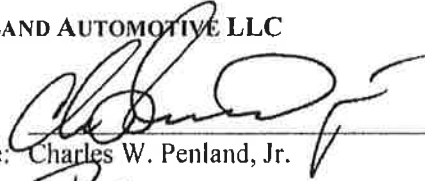
- (a) to sign Borrower's name on any motor vehicle or motorcycle bill of sale, certificate of title, registration, application or form submitted to a public agency or private party;
- (b) to demand collect, receive, receipt for, sue and recover all sums of money or other property which may now and in the future become due, owing and payable from the Collateral;
- (c) to execute, sign and endorse Borrower's name to any and all claims, instruments, receipts, checks, drafts or warrants;
- (d) to settle or compromise any and all claims arising under the Collateral, and in Borrower's name and place, to execute and deliver a release and settlement for the claim;
- (e) to file any claim or claims or to take any action or institute or take part in any proceeding either in DFH's own name or in Borrower's name;
- (f) to sign Borrower's name to any waiver of landlords lien, and in Borrower's name, place and stead, to notify and obtain waivers of any landlord's lien with respect to any facility leased or rented by Borrower, or in or at which any of the Collateral may be kept or stored;
- (g) to sign Borrower's name and, in Borrower's name, place and stead, to notify and obtain the concurrence of manufacturers, distributors, and suppliers of Borrower's Inventory and other Collateral; and
- (h) in Borrower's name, place and stead, to perform such acts as may be required of Borrower under any agreement with DFH, but which Borrower may not fully, or may refuse to perform for any or no reason, or that Borrower may delay in performing.

DFH will not be liable for any acts or omissions or for any error of judgment or mistake of fact or law, absent gross negligence, bad faith or willful misconduct. This power, being coupled with an interest, is irrevocable until the Liabilities have been fully satisfied.

Each capitalized term used but not defined in this Power of Attorney has the meaning given to such term in the Loan Agreement.

Executed this 21st day of November, 2016.

PENLAND AUTOMOTIVE LLC

By: 

Name: Charles W. Penland, Jr.

Title: 

From: Karen Willis <karen@penlandautomotive.com>
Sent: Wednesday, February 20, 2019, 3:44 PM
To: 'Dan Haight' <dhaight@dealerfinancial.com>; John Bethea <johnobethea@gmail.com>;
"krusch@dealerfinancial.com" <krusch@dealerfinancial.com>
Subject: Floor plan

As of 2/20/2019 Penland Automotive requests to close and deactivate our floorplan. We no longer need the services of Dealer Financial. Please forward all reserves fees to Penland Automotive. Please call us if you have any questions. Thank you.

Blessings,
Karen Willis
Comptroller
Penland Automotive/ Penland Asphalt & Paving
O: 864-520-2815 Option 4
F: 864-520-8068



Page 1

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF GREENVILLE

PENLAND AUTOMOTIVE, LLC
and CHARLES W. PENLAND, JR.,

Plaintiffs,

vs. CASE NO.: 2021-CP-23-00244

DEALER FINANCIAL HOLDINGS, LLC,
STEVE LANZL and DANIEL B.
HAIGHT,

Defendants.

30(b)(6) and Individually

DEPOSITION OF: CHARLES W. PENLAND, JR.

DATE: July 6, 2022

TIME: 10:00 a.m.

LOCATION: Parker Poe Adams & Bernstein
110 E. Court Street, Suite 200
Greenville, South Carolina

TAKEN BY: Counsel for the Defendants

REPORTED BY: Mary K. Stepp, Court Reporter

1 back, right?

2 A. Yes.

3 Q. Okay. Do you agree with Mr. Yarger's
4 position that, "DFH's terms were more favorable than
5 what we were getting from Penland Automotive's other
6 floor plan lenders"?

7 A. No.

8 Q. The last thing he says is, "But we went
9 ahead and paid off the balance owed under the credit
10 agreement and closed the DFH credit line" --

11 A. Correct.

12 Q. -- is that true?

13 A. That's true.

14 Q. Did you close the DFH credit line?

15 A. Completely. Paid them off and closed
16 them.

17 Q. Paragraph 12. "Later when Penland
18 Automotive's other lenders, Auto Lenders, decided to
19 dramatically reduce its credit limit" -- is that
20 true?

21 A. Yes.

22 Q. "And Penland Automotive's only remaining
23 lender, Upstate Auto Auction" -- is that Charna?

24 A. Yes.

25 Q. "Would not agree to increase its credit

Page 151

1 limit, except on unfavorable terms." Is that true?

2 A. No.

3 Q. Okay. What part of that is true?

4 A. The only part is -- why she wouldn't
5 increase it was because of the UCC filing that was
6 still in place by Dealer Financial.

7 Q. Okay.

8 A. She said, Get it removed and I'll give you
9 whatever you want.

10 Q. Okay. So it's -- it is correct that
11 Charna -- why is it called Upstate Auto Auctions,
12 Spartanburg Auto Auctions, Lewis Mason, instead of
13 Charna?

14 A. I don't know. I don't have a clue. I
15 don't get it either.

16 Q. Okay. But Upstate Auto Auction is Charna?

17 A. Is Charna.

18 Q. Is part of it true that Charna would not
19 increase its credit limit?

20 A. Yes.

21 Q. Okay. But not because of unfavorable
22 terms?

23 A. No.

24 MS. BRIDGES: Object to form.

25 THE WITNESS: No.

1 BY MR. IMHOFF:

2 Q. What -- what was the reason she wouldn't?

3 A. UCC filing from Dealer Financial. She
4 wanted to be first. I was increasing my credit line
5 all the way to like over 500,000. And she said, No
6 problem. She said, Even 6-, but I have to have the
7 UCC filing removed.

8 Q. I want to go down to 14. "Thereafter, DFH
9 and Penland Automotive" --

10 A. What number are you on? Sorry.

11 Q. 14.

12 A. Go.

13 Q. "Thereafter, DFH and Penland Automotive
14 agreed to reopen the DFH credit line on the same
15 terms as before." Is that true?

16 A. No.

17 Q. Did you ever sign anything to that effect?

18 A. No.

19 Q. Did you ever get an e-mail to that effect?

20 A. No.

21 Q. Did you ever send an e-mail to that
22 effect?

23 A. No.

24 Q. Was there anything in writing to that
25 effect?

From: Kim Rusch <krusch@dealerfinancial.com>
Sent: Tuesday, July 7, 2020, 10:30 AM
To: Dan Haight <dhaight@dealerfinancial.com>
Subject: Fwd: UCC

Hi Dan,

Just got this from Karen.

Kim Rusch
CLIENT SERVICES

DEALER FINANCIAL
310 Arlington Avenue, Suite 303
Charlotte, NC 28203
krusch@dealerfinancial.com
(T) 864-385-7302 | (F) 864-633-5645



Begin forwarded message:

From: Karen Willis <karen@penlandautomotive.com>
Subject: UCC
Date: July 7, 2020 at 10:28:54 AM EDT
To: "krusch@dealerfinancial.com" <krusch@dealerfinancial.com>

They just asked me to get that cancellation of the UCC filing. Billy needs to produce it on Thursday for something. Thanks!!

Blessings,
Karen Willis
Comptroller
Penland Automotive
O: 864-520-2815
F: 864-520-8068



From: Kim Rusch <krusch@dealerfinancial.com>
 Sent: Tuesday, July 7, 2020, 8:45 AM
 To: Karen Willis <karen@penlandautomotive.com>
 Subject: Re: UCC cancellation



I'm not actually part of that. Sorry, I don't know the details. Want me to get John to call Billy?

Kim Rusch
 CLIENT SERVICES

DEALER FINANCIAL
 310 Arlington Avenue, Suite 303
 Charlotte, NC 28203
krusch@dealerfinancial.com
 (T) 864-385-7302 | (F) 864-633-5645

On Jul 7, 2020, at 8:41 AM, Karen Willis <karen@penlandautomotive.com> wrote:

Can you give me the details? I know things have changed several times. They were supposed to call John yesterday and talk about the new limits.

Blessings,
 Karen Willis
 Comptroller
 Penland Automotive
 O: 864-520-2815
 F: 864-520-8068
 <image001.jpg>

From: Kim Rusch <krusch@dealerfinancial.com>
Sent: Monday, July 6, 2020 3:07 PM
To: Karen Willis <karen@penlandautomotive.com>
Subject: Re: UCC cancellation

That's interesting . . .

So, looks like we're almost done with the underwriting for Penland. If everything goes through, we'd just use that same UCC. If not, we'll make sure it gets canceled.

Does that work?

Kim

From: John Bethea
To: Karen Willis
Subject: Re: UCC Filing
Date: Wednesday, July 08, 2020 4:58:52 PM



Kim,

I just learned there was an accident in Dan's town which took out the internet. So the UCC-3 may not have gotten transmitted.
Will up date when I know more.

John Bethea
864.982.4011 (Mobile)
Be the reason someone SMILES today

On Jul 8, 2020, at 10:18 AM, Karen Willis <karen@penlandautomotive.com> wrote:

Good morning, We need proof that the UCC filing has been cancelled. Billy needs proof that it has been cancelled before tomorrow.

Blessings,
Karen Willis
Comptroller
Penland Automotive
O: 864-520-2815
F: 864-520-8068
<image001.jpg>

KDC 0009

Page 1

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF GREENVILLE

PENLAND AUTOMOTIVE, LLC
and CHARLES W. PENLAND, JR.,

Plaintiffs,

vs. CASE NO.: 2021-CP-23-00244

DEALER FINANCIAL HOLDINGS, LLC,
STEVE LANZL and DANIEL B.
HAIGHT,

Defendants.

30(b)(6) and Individually

DEPOSITION OF: CHARLES W. PENLAND, JR.

DATE: July 6, 2022

TIME: 10:00 a.m.

LOCATION: Parker Poe Adams & Bernstein
110 E. Court Street, Suite 200
Greenville, South Carolina

TAKEN BY: Counsel for the Defendants

REPORTED BY: Mary K. Stepp, Court Reporter

1 bit farther and explain how this -- why these
2 conversations were coming up. Is that okay?

3 Q. If that's how to answer the question.

4 A. That's how to answer this question.

5 Q. (Nods head.)

6 A. I went over to get a new floor plan with
7 Spartanburg Auto Auction, the lady's name is Charna.
8 She said, I'll give you whatever you need. I was
9 asking for 600,000. She says, You're approved. I'll
10 call you tomorrow.

11 Charna called me and said, I've got a UCC
12 filing on me. I said, That's impossible. I closed
13 the account out a year and a half ago. Then I came
14 back and I said, Karen, call Dealer Financial and get
15 that damn UCC filing released off me, so I can get my
16 new floor plan with Charna. Because Charna has no
17 interest and no curtailments until the car is sold.

18 That was my whole thing. The same with
19 Glenn. I don't have to pay any insurance or
20 curtailments until the car is sold. That helps my
21 cash flow.

22 When I came -- Karen e-mailed, and
23 e-mailed, and e-mailed. And all of a sudden, a week
24 later, John Bethea shows up and says, We'll match
25 Charna's floor plan.

1 Financial in June and July of 2020?

2 A. I have to answer that with a story. And I
3 don't like doing that, but I have to.

4 After I got done with -- Charna said she
5 could not give me the floor plan because the UCC
6 filing had never been released from Dealer Financial.
7 After four separate attempts to try to get the UCC
8 filing released so I could get back with Charna,
9 which is the floor plan that I wanted, John Bethea
10 came in and said they would match Charna's, which is
11 Spartanburg Auto Auction's floor plan. I said, If
12 you can do that and put it in writing, I would
13 consider it. He said, I'll go back and talk to Dan.

14 I was told that they would.

15 Q. Who told you that?

16 A. Dan.

17 Q. In what --

18 A. Not Dan -- John Bethea, sorry. My bad.
19 John Bethea said they would, per Dan. And Tim Yarger
20 verified it.

21 Q. When you say Tim Yarger verified it, what
22 do you mean?

23 A. Verified that there were no curtailments
24 and no interest, just like the other two floor plans
25 that I got.

From: Dan Haight <dhaight@dealerfinancial.com>
Sent: Monday, July 6, 2020, 7:19 PM
To: 'John Bethea' <jbethea@dealerfinancial.com>
Cc: "'Lanzl, Steve'" <slanzl@dealerfinancial.com>
Subject: Commitment Packets - Penland and [REDACTED]
Attachments: [REDACTED] Penland - Commitment Packet
- July 2020.pdf

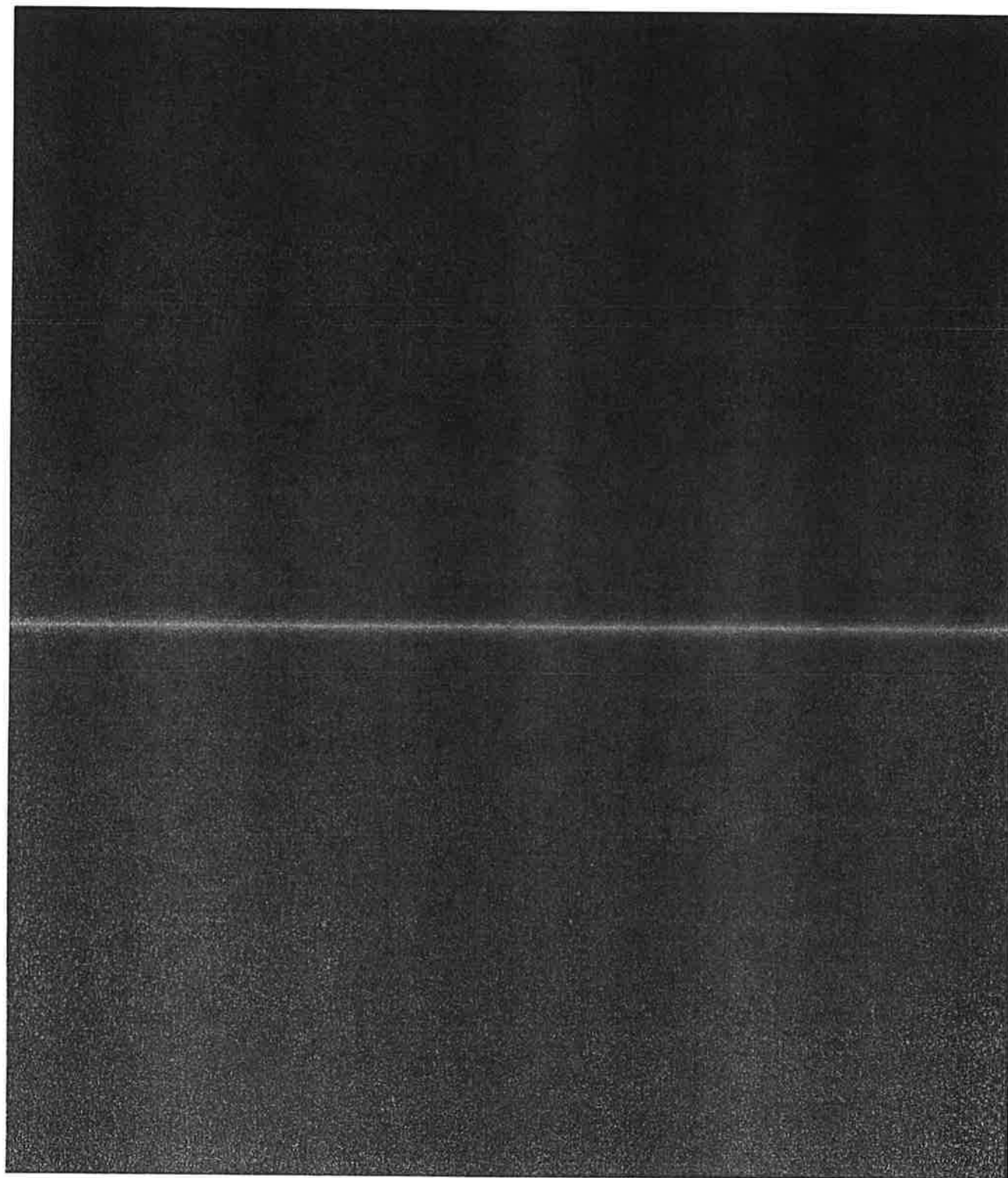
John,

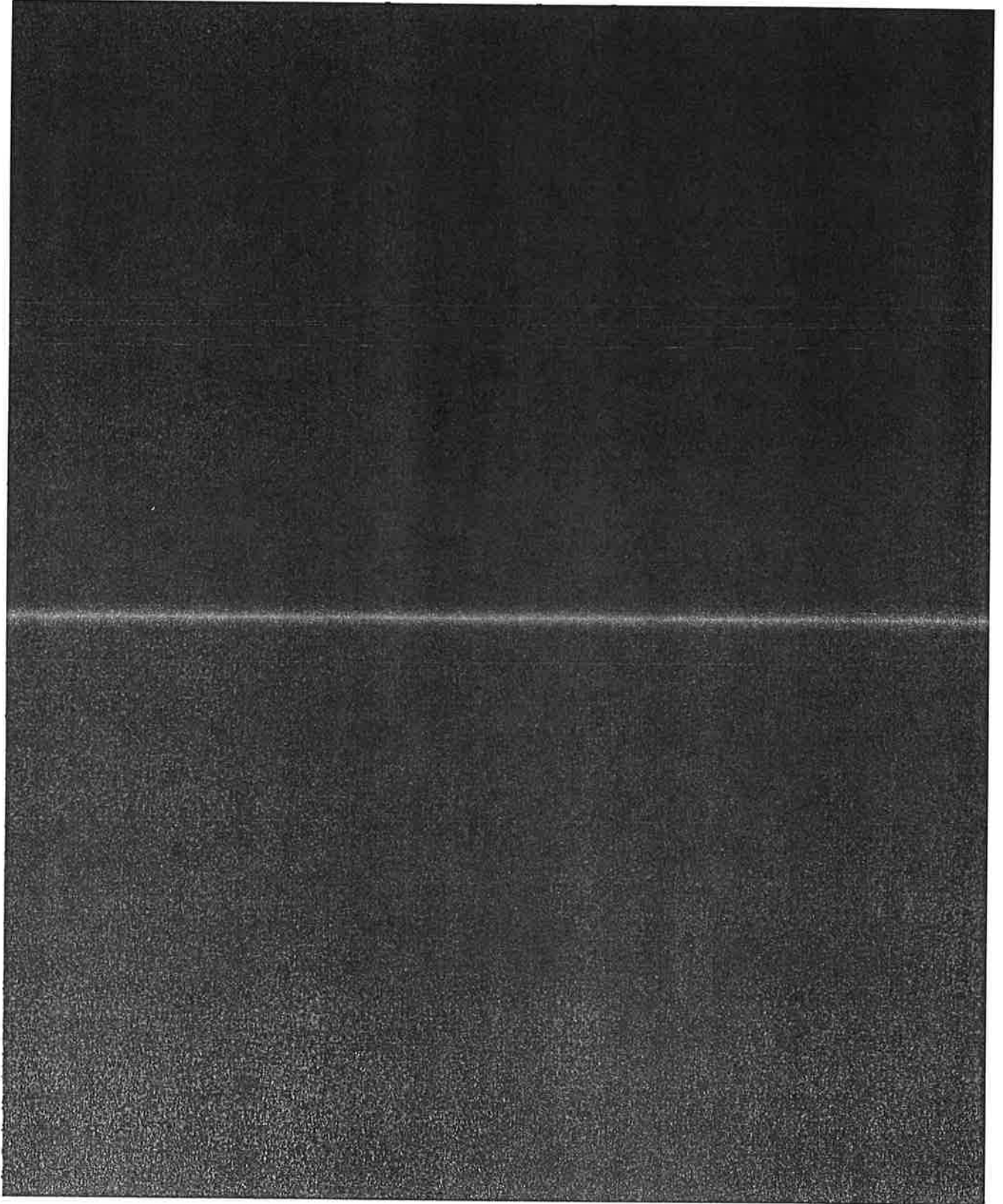
Let's make sure to discuss the intricacies of both letters!

Dan

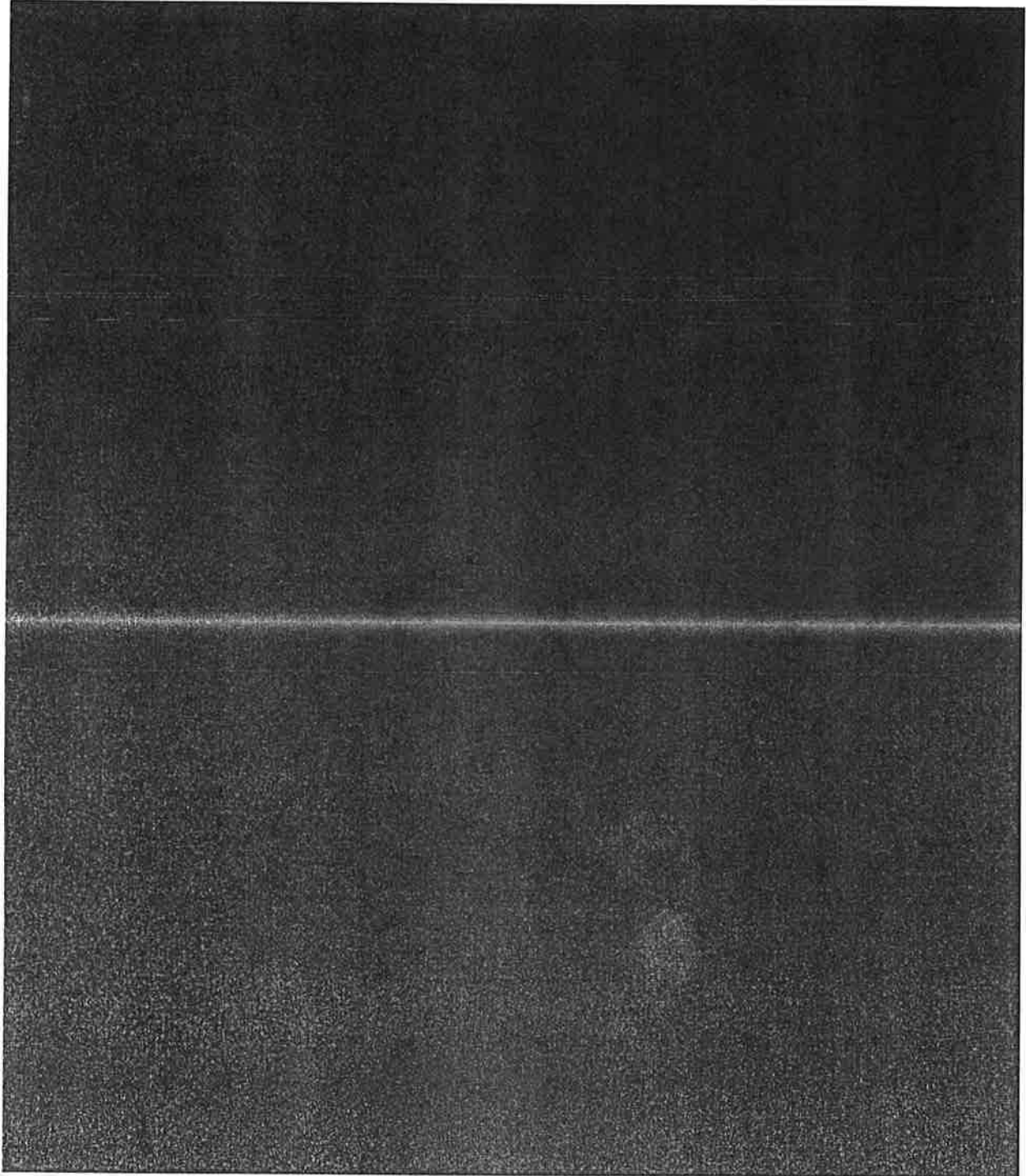
Dan Haight
DEALER FINANCIAL
310 Arlington Avenue, Suite 303
Charlotte, NC 28203
(W) 864-385-7302 | (C) 704-516-8988







Tel: 864.385.7302 Fax: 864.633.5645 • 310 Arlington Avenue, Suite 303, Charlotte, NC 28203 • www.dealerfinancial.com





July 6, 2020

Mr. Charles W. Penland Jr.
Penland Automotive LLC
3406 Wade Hampton Blvd
Taylors, SC 29687

Dear Bill,

Thank you for giving Dealer Financial the opportunity to supply your floor planning needs. John and I very much appreciated the opportunity to work with your team previously, and we hope our rekindled relationship is long and productive.

Pending execution of acceptable binding documents and additional application information, Dealer Financial is pleased to extend a commitment of \$750,000 for use as a secured Floorplan.

We understand that Dealer Financial will replace all current floor plans and be your sole floorplan supplier.

Please review the proposed terms and conditions. Given your approval, I can have the appropriate documents prepared and available for signature by the week of July 13. You would be able to use your Floorplan immediately upon execution of the documents.

We will review the plan in 180 days to ensure it was meeting our joint business objectives.

Thank you for giving us this opportunity. I look forward to completing the necessary documents.

Best Regards,

A handwritten signature in black ink, appearing to read "D. Haight", with a stylized flourish at the end.

Daniel B. Haight
President



Proposed Terms and Conditions

Date: July 6, 2020

Borrowers: Penland Automotive LLC EIN: 47-1083315
Penland Properties II LLC

Guarantors: Charles W. Penland Jr.

Floorplan Amount: \$750,000 Floorplan Line. Dealer Financial's floorplan will be the only floorplan.

Rate/Fees: \$.078 cents per \$100 per day. Example - A \$6,000 car would incur \$140.40 in floorplan fees every 30 days.

Floorplan Guidelines: See attached "Guidelines"

Wire Transfer Fee: \$15 per transfer.

Title Delivery Fee: \$15 per delivery via USPS, UPS or FedEx overnight delivery. Titles are currently maintained in Charlotte NC.

Collateral: Dealer Financial will obtain a first secured interest in all dealership/corporate assets and personal guaranty of owners. A lien securing the Dealership Property at 3406 Wade Hampton Blvd, Taylors SC 2968.

Working Capital: \$200,000 in working capital/owned vehicles

Term: This credit availability doesn't have a specified maturity date. Assuming no default, at 180 days Dealer Financial will review profitability, cash flow, and liquidity are satisfactory, and at the sole discretion of Dealer Financial the line maybe adjusted.

Covenants: In addition to other agreements, Dealer will maintain at least \$100,000 in vehicle equity or 10% in vehicle equity considering draws against all floor plan commitments, whichever is higher.

Dealer Reserve: \$100 per car will be added to the calculated payoff and maintained by Dealer Financial as a reserve. Any reserve balance will be returned upon termination and satisfaction of all Floorplan liabilities.

Disclaimer: This summary is intended as an expression of the mutual intent of the parties as to certain aspects of a proposed floor plan for the acquisition of used cars for retail sales on dealer's lot. The parties however agree that there are material terms as to which agreement has not been reached. The parties acknowledge and agree that this summary is not to be construed as a definitive contract and is subject to the execution and delivery of definitive agreements and related documents satisfactory to Dealer Financial Holdings LLC. In the event the required formal documents are not executed by all parties within 30 days, then this summary shall have no further force and effect and neither party.

Tel: 864.385.7302 Fax: 864.633.5645 • 310 Arlington Avenue, Suite 303, Charlotte, NC 28203 • www.dealerfinancial.com

DFH_00723



Floorplan Guidelines

Curtailments: Vehicles mature 120 days from the date financed. Typically a principle curtailment of 10% of the original amount financed will be due after 60 days from the date financed, and each additional 30 day period after that. Dealer may request an extension of the 120 day maturity if the dealer continues to make curtailment payments.

Vehicle Payoffs: Payment for floorplan units are due within 24 hours from the date dealer is funded, not to exceed 4 business days from date vehicle is considered sold.

Advance Rates: Maximum advance rate for used vehicles is 100% of the purchase price as verified by the dealer invoice if purchased at auction, or the lesser of 80% of Black Book Rough, Wholesale value or purchase price if purchased outside of an auction.

Floorplan Funding: Payments will be made directly to auto auctions for units purchased through that channel, and directly to sellers when other purchasing channels are used, as possible. Otherwise, payment will be made directly to the dealer.

Floorplan Audits: Dealer Financial personnel will perform vehicle inspections as it deems appropriate. Documentation of sold and unpaid vehicles will be verified. Documentation for any other vehicles not located on the lot at the time of the audit will also be obtained, and those units also inspected as possible. Audit fees will apply if the client is out of compliance with floor plan agreements.

Floorplan Commitments: Used vehicle commitments are generally adjusted on a 30-45 days inventory basis.

Dealer Reserve: A dealer reserve account will be established and funds added as floor planned cars are paid off.

Financial Statements: Client will be required to supply lender periodic updated balance sheet, income statement, and bank statement for review.



From: Karen Willis <karen@penlandautomotive.com>
 Sent: Wednesday, August 26, 2020, 2:47 PM
 To: Kim Rusch <krusch@dealerfinancial.com>
 Subject: RE: This week's invoice reminder

Thanks! But we were under the belief that we weren't having fees owed until the car sales. I think Tim is reaching out to John and Dan.

Blessings,
 Karen Willis
 Comptroller
 Penland Automotive
 O: 864-520-2815
 F: 864-520-8068



From: Kim Rusch <krusch@dealerfinancial.com>
 Sent: Wednesday, August 26, 2020 2:37 PM
 To: Karen Willis <karen@penlandautomotive.com>
 Subject: Re: This week's invoice reminder

Hi Karen,

That would be a floor plan fee invoice generated by the portal if there is a car that's been on the floor plan 30-day! Must be your first one since getting back onboard. It's in your portal "invoice list" marked "sent."

I attached a pdf here, too.

Does that make sense?

Kim

Kim Rusch
 CLIENT SERVICES

DEALER FINANCIAL
 310 Arlington Avenue, Suite 303
 Charlotte, NC 28203
krusch@dealerfinancial.com
 (T) 864-385-7302 | (F) 864-633-5645

On Aug 26, 2020, at 2:32 PM, Karen Willis <karen@penlandautomotive.com> wrote:

I'm totally confused! What invoice?

Blessings,
Karen Willis
Comptroller
Penland Automotive
O: 864-520-2815
F: 864-520-8068
<image001.jpg>

From: Kim Rusch <krusch@dealerfinancial.com>

Sent: Wednesday, August 26, 2020 2:32 PM

Subject: This week's invoice reminder

Hello,

Just a reminder that we'll be scheduling the ACH for this week's floor plan invoice tomorrow afternoon (Thursday).

This week's floor plan invoice is available in your portal *invoice list* (<http://portal.dealerfinancial.com>). You are welcome to change the online status from *sent* to *approved* by clicking the "pay invoice" button, however if we don't hear back we will assume that the invoice and ACH are approved and will change it on our end tomorrow afternoon.

Thank you!

Kim

Kim Rusch
CLIENT SERVICES

DEALER FINANCIAL
310 Arlington Avenue, Suite 303
Charlotte, NC 28203
krusch@dealerfinancial.com
(T) 864-385-7302 | (F) 864-633-5645

From: Karen Willis <karen@penlandautomotive.com>
Sent: Thursday, August 27, 2020, 9:25 AM
To: "krusch@dealerfinancial.com" <krusch@dealerfinancial.com>
Subject: Invoice

Can we please hold off on the ACH until we determine what is supposed to be going on?

Blessings,
Karen Willis
Comptroller
Penland Automotive
O: 864-520-2815
F: 864-520-8068



From: Karen Willis <karen@penlandautomotive.com>
Sent: Friday, August 28, 2020, 1:03 PM
To: dhaight@dealerfinancial.com
Subject: Floor Plan

Happy Friday! Can you please give me a call so we can work out all these details on the fees! My cell is 864-414-6715. Thanks so much

Blessings,
Karen Willis
Comptroller
Penland Automotive
O: 864-520-2815
F: 864-520-8068





From: Karen Willis <karen@penlandautomotive.com>
 Sent: Friday, August 28, 2020, 1:08 PM
 To: Kim Rusch <krusch@dealerfinancial.com>
 Subject: RE: Sold Units

Thanks! I've sent him an email. I heard Tim saying he had a missed call from Dan but I'd rather Dan call me

Blessings,
 Karen Willis
 Comptroller
 Penland Automotive
 O: 864-520-2815
 F: 864-520-8068



From: Kim Rusch <krusch@dealerfinancial.com>
 Sent: Friday, August 28, 2020 1:07 PM
 To: Karen Willis <karen@penlandautomotive.com>
 Subject: Re: Sold Units

I understand. When you talk to him tell him about your concerns about the titles going directly to auction. If he says we can send them to you, I will. Pulling them now . . .

Kim

Kim Rusch
 CLIENT SERVICES

DEALER FINANCIAL
 310 Arlington Avenue, Suite 303
 Charlotte, NC 28203
krusch@dealerfinancial.com
 (T) 864-385-7302 | (F) 864-633-5645

On Aug 28, 2020, at 1:02 PM, Karen Willis <karen@penlandautomotive.com> wrote:

I was running as chauffeur for the boys today.

I know it's not the normal practice to send us the titles but I am a little leary because they have lost a title of ours this week. If at all possible, sending them to us we can

hand deliver them to the auction and get checks immediately. Then we can schedule the ACH for Monday night. I am just trying to get your payoff sent ASAP.

As for the invoice, I need to speak with Dan. I don't feel like we are getting correct information on our end. Not through any fault of you guys. But honestly, to pay that invoice would mean we can't pay off sold units. We just don't have the cash flow during these times to cover that much. I am going to reach out to Dan.

If you have any suggestions please let me know!!

Blessings,
Karen Willis
Comptroller
Penland Automotive
O: 864-520-2815
F: 864-520-8068
<image001.jpg>

From: Kim Rusch <krusch@dealerfinancial.com>
Sent: Friday, August 28, 2020 12:21 PM
To: Karen Willis <karen@penlandautomotive.com>
Subject: Re: Sold Units

Hi Karen,

Tried to call but heard that you're at the auction :)

At what auction were these sold? Usually we send the titles directly to the auction.

Also, FYI, we're supposed to run this week's floor plan invoice today #13953 - \$3,309.94. Dan may have left a message on one of the guy's phones.

Talk soon,

Kim

Kim Rusch
CLIENT SERVICES

DEALER FINANCIAL
310 Arlington Avenue, Suite 303
Charlotte, NC 28203
krusch@dealerfinancial.com
(T) 864-385-7302 | (F) 864-633-5645

From: Karen Willis <karen@penlandautomotive.com>
Sent: Thursday, September 3, 2020, 11:08 AM
To: "krusch@dealerfinancial.com" <krusch@dealerfinancial.com>
Subject: ach

Hey, Can we hold off on the interest ach??? I am trying to get in touch with Dan to discuss it.

Blessings,
Karen Willis
Comptroller
Penland Automotive
O: 864-520-2815
F: 864-520-8068





From: Karen Willis <karen@penlandautomotive.com>
 Sent: Thursday, September 3, 2020, 11:36 AM
 To: Kim Rusch <krusch@dealerfinancial.com>
 Subject: RE: ach

I do need to that but I wanted to talk to him also. I think we are being told misinformation and I just wanted to go straight to the top and hopefully figure things out! I believe it's an internal problem here not anything on your end. But that's just between us girls! Hahahahaha

Blessings,
 Karen Willis
 Comptroller
 Penland Automotive
 O: 864-520-2815
 F: 864-520-8068



From: Kim Rusch <krusch@dealerfinancial.com>
 Sent: Thursday, September 3, 2020 11:33 AM
 To: Karen Willis <karen@penlandautomotive.com>
 Subject: Re: ach

Did you just need to hold on the ACH for a few days . . . like push it to Monday?

I can help with that if that's what it is!

Kim Rusch
 CLIENT SERVICES

DEALER FINANCIAL
 310 Arlington Avenue, Suite 303
 Charlotte, NC 28203
krusch@dealerfinancial.com
 (T) 864-385-7302 | (F) 864-633-5645

On Sep 3, 2020, at 11:29 AM, Karen Willis <karen@penlandautomotive.com> wrote:

If you can please ask him to call me instead of Tim?

Blessings,
 Karen Willis
 Comptroller

Penland Automotive
O: 864-520-2815
F: 864-520-8068
<image001.jpg>

From: Kim Rusch <krusch@dealerfinancial.com>
Sent: Thursday, September 3, 2020 11:28 AM
To: Karen Willis <karen@penlandautomotive.com>
Subject: Re: ach

Hi Karen,

Dan is out of pocket right now but can call around 1:00.

Kim

Kim Rusch
CLIENT SERVICES

DEALER FINANCIAL
310 Arlington Avenue, Suite 303
Charlotte, NC 28203
krusch@dealerfinancial.com
(T) 864-385-7302 | (F) 864-633-5645

On Sep 3, 2020, at 11:08 AM, Karen Willis
<karen@penlandautomotive.com> wrote:

Hey, Can we hold off on the interest ach??? I am trying to get in touch with Dan to discuss it.

Blessings,
Karen Willis
Comptroller
Penland Automotive
O: 864-520-2815
F: 864-520-8068
<image001.jpg>

From: Dan Haight <dhaight@dealerfinancial.com>
Sent: Sunday, September 6, 2020, 9:02 AM
To: 'Tim Yarger' <tyarger1212@gmail.com>; 'Karen Willis' <karen@penlandautomotive.com>
Cc: 'John Bethea' <jbethea@dealerfinancial.com>; 'Lanzl, Steve' <slanzl@dealerfinancial.com>; 'Kim Rusch' <krusch@dealerfinancial.com>
Subject: Penland - Weekly Invoices - September

Tim and Karen,

Based on our discussions last week, Dealer Financial agrees to hold all weekly invoices generated in late August and September 7, 14, 21 until September 29. We will run all open weekly invoices on September 29 so your account will be current by the end of September

There will likely be an invoice created on September 28, this will be due, as per normal, on Thursday October 1.

Of note, I believe the invoice generated on September 28 (due October 1) will have the first curtailments for vehicles floored in late July. Your curtailment rate is set at a preferred rate of 7.5% versus the normal 10%.....but that invoice could be considerable. There are 14 vehicles that may appear on this invoice.

The good news, weekly invoices are automatically updated (reduced) as you sell and payoff cars.

Call if this doesn't line up with your understanding.

Best

Dan

Dan Haight
DEALER FINANCIAL
310 Arlington Avenue, Suite 303
Charlotte, NC 28203
(W) 864-385-7302 | (C) 704-516-8988



STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

C.A. No.: 2021-CP-23-00244

Penland Automotive, LLC

and Charles W. Penland,

Plaintiffs,

v.

Dealer Financial Holdings,

LLC, Steve Lanzl and Daniel

B. Haight,

Defendants

Deposition of

JOHN OSCAR BETHEA, JR.

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, a deposition was taken on the 28th of July, 2022 commencing at approximately 9:38 a.m. attended by counsel as follows:

1 Q. In your discussions with Tim Yarger, was Tim Yarger
2 confused about the billing from Dealer Financial?

3 BY MS. BRIDGES:

4 Object to form.

5 WITNESS ANSWERS:

6 A. Yes.

7 Q. Okay, did Tim Yarger tell you that he was confused about
8 the billing from Dealer Financial?

9 BY MS. BRIDGES:

10 Object to form.

11 WITNESS ANSWERS:

12 A. Yes.

13 Q. Did he ask you to clarify the agreement between Dealer
14 Financial and Penland Automotive in September, hold on, of
15 2020?

16 A. No, ---

17 BY MS. BRIDGES:

18 Object to form.

19 WITNESS CONTINUES:

20 A. --- because he was involved with that discussion, I was
21 not involved in that discussion.

22 Q. Well, why would he bring it up to you and not just call
23 Dan?

24 A. Because I was probably there.

25 Q. So, did he ask you, "What are the Terms of our Agreement

STATE OF SOUTH CAROLINA

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1 A. No.

2 Q. Do you know if it was ever sent by Mr. Haight?

3 A. I don't know.

4 Q. Would you agree with me that if this email arrived
5 sometime around July 9th, 2020, you would have no reason
6 to ask where the documents were to Mr. Haight?

7 BY MS. BRIDGES:

8 Object to form.

9 WITNESS ANSWERS:

10 A. Ask that again, I'm sorry.

11 Q. Sure, read the email from Dan; if you will?

12 A. "Karen, Per our agreement with Billy and Tim, the existing
13 loan and security packet dated November 21st, 2016 as
14 amended remains in place."

15 Q. Okay, so, the email from Karen Willis said reopen the
16 floorplan at 400,000; right?

17 A. Yes.

18 Q. And it was dated July 9th at 3:13 p.m., 2020; ---

19 A. Yes.

20 Q. --- okay? You testified earlier that you asked Mr. Haight
21 where the agreement and documents were; right?

22 A. Yes.

23 Q. Okay, you asked him because you didn't know where the
24 agreement or documents were; right?

25 A. Yes.

1 Q. About the terms?

2 A. About the prices.

3 Q. Right, did they say because they didn't understand what
4 they were or why they were being charged that?

5 A. Yes, and I told them to contact Dan and Kim to find about
6 it.

7 Q. All right, so, they did say that. Did you talk to Dan
8 about them not understanding what the Terms and Conditions
9 were in the Agreement?

10 A. Yes.

11 Q. And what did he say?

12 A. He said he'd call them.

13 Q. Okay, and we see that, apparently, he talked to Tim. And
14 during that discussion with Mr. Haight, when you conveyed
15 that they were confused about the terms and conditions,
16 did you have any discussion about what had been presented
17 to Penland regarding the Terms and Conditions in writing
18 or an agreement or a contract?

19 A. No.

20 Q. Did you ask him, "What are the Terms and Conditions"?

21 A. He said, "We'll use the original Agreement."

22 Q. Okay, which, well, which Terms and Conditions?

23 A. That was what I was told.

24 Q. Which ones, the ones from 2016, the ones in 2017, the ones
25 in 2018, which Terms and Conditions?

1 A. I was just told the original contract.

2 Q. So, that would revert back to default standards, and we're
3 talking 10 percent right, 60 days, 90 days, all those
4 things; right?

5 A. It was not clear which one he went to, he said the
6 original contract, "We're going back to the contract."

7 Q. He was not clear or it was not clear?

8 A. I was not clear.

9 Q. You were not clear? So, in the fall, I'm sorry, in July
10 and through September of 2020, you weren't clear what the
11 Terms and Conditions were?

12 BY MS. BRIDGES:

13 Object to form.

14 WITNESS ANSWERS:

15 A. I was not made privy of those Terms and Conditions because
16 it was negotiated, I was not involved in the negotiations.
17 That was between Tim and Dan and I don't know if Bill was
18 involved or not.

19 Q. Okay.

20 A. I did not know what - - I was just told, "We're doing
21 business with Penland again."

22 Q. I'm a little confused by that because you're the
23 relationship guy with Penland; right?

24 A. Right.

25 Q. And you don't know in July, August, September what the

1 Terms and Conditions are?

2 BY MS. BRIDGES:

3 Object to form.

4 WITNESS ANSWERS:

5 A. Yes.

6 Q. Let me say it differently: Did you know what the Terms
7 and Conditions were in August, July and September of 2020
8 between Dealer Financial and Penland Automotive?

9 A. No.

10 BY MS. BRIDGES:

11 Object to form.

12 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

13 Q. Why not?

14 A. Because all that was negotiated independent of me being
15 involved in it, I was never told what the Terms and
16 Conditions were. I was told we're back in business with
17 Penland. Tim said, "We're back in business," and that's
18 all I know. I never saw any documents saying what we
19 would do, I never did any of that, I just said we were
20 doing, we're back, we're back in business again.

21 Q. Mr. Bethea, is it unusual for you not to know the Terms
22 and Conditions with your clients and customers?

23 A. Yes.

24 Q. Has that ever happened before in your career?

25 BY MS. BRIDGES:

STATE OF SOUTH CAROLINA

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1 Q. What does out of trust mean?

2 A. Means they sold a car and we didn't get paid for it.

3 Q. They kept the money?

4 A. We did not get paid for it. They have not paid for it.

5 Q. In the industry is that a bad thing?

6 A. It is.

7 Q. All right, you don't remember why they did this audit?

8 A. He may have had some cars that were out of trust. We do
9 audits every two weeks, so, this may have been his regular
10 audit.

11 Q. All right, and how did the audit turn out?

12 A. It looks - - I don't - - says he, Penland paid off the
13 cars that were sold.

14 Q. Was Penland Automotive out of trust on October 6th?

15 A. I don't know, I - - they had sold vehicles and then not
16 paid for them. But our rule of thumb is, it's funded, if
17 it's been funded and hadn't paid for, then you're out of
18 trust because there's a, sometimes a lag between the time
19 the car is sold and the car is funded that we get money
20 and the car could be off the lot; you understand?

21 Q. Sure.

22 A. So.

23 Q. Right.

24 A. So, according to this, based on this here, there was a
25 Dart that was in funding with credit acceptance, there was

1 a car that was sold, allegedly West Lake was the funder,
2 there was a Hyundai Sonata was back on the lot so it's not
3 out of trust, and there was sold a "True 'something'
4 funder;" I don't know who

5 ---

6 Q. (Inaudible).

7 A. Could've been, I don't know, I didn't do the dealers from
8 my auditor.

9 Q. Well, what is Peter Troutman's job at Dealer Financial?

10 A. He's our auditor, he counts cars all the time; that's all
11 he does.

12 Q. Have you ever had a dealership out of trust?

13 A. Yep.

14 Q. All right, and do they tell you they're out of trust?

15 A. I've had some tell me they were out of trust; they had
16 sold cars that hadn't been for.

17 Q. I'm sorry, does the audit or Peter Troutman or Dan or
18 Steve tell you that your dealership is out of trust?

19 A. Yes.

20 Q. Okay, they use those words?

21 A. Yes.

22 Q. Okay, did anyone at Dealer Financial tell you that Penland
23 Automotive was out of trust on October 6th?

24 A. I'm sure they did.

25 Q. They told you they were out of trust?

1 A. Yes.

2 Q. Who told you that?

3 A. Maybe Dan.

4 Q. Do you remember when he told you that?

5 A. No.

6 Q. Do you remember why they were out of trust, according to
7 Dan?

8 A. Well, they had cars that were sold and we hadn't been paid
9 for them and they were in funding, according to this, they
10 were in funding.

11 Q. In funding?

12 A. Um-hum.

13 Q. And if they're being funded but they haven't paid yet, are
14 they still out of trust?

15 A. Our definition of being out of trust is if they are funded
16 and haven't paid for them, they're out of trust.

17 Q. Okay, but were these three cars, the Dodge Dart, the Ford
18 Escape and Toyota Camry, were they out of trust, according
19 to this email that ---

20 A. No.

21 Q. --- Peter drafted?

22 A. No.

23 Q. Okay. All right, do you believe that this audit is why
24 Dan Haight told you that Penland Automotive was out of
25 trust or was it something different?

1 any of these cars they want to buy, and Sylvester
2 contacted me and said, "Are any of these Billy Penland's
3 cars," and I said, "I can't tell you whose cars they are.
4 Well, I'm not gonna buy them if they're Billy Penland's
5 because Billy and I are

6 - - I said, "Well, I can't, I can't tell you who the cars
7 they are because I don't, that's not what I do." I never
8 tell anybody whose cars.

9 Q. Has anyone ever asked you what happened with Penland
10 Automotive and Dealer Financial?

11 A. Not that I can recall.

12 Q. You've never talked to anybody in the car, used car
13 community at auctions, lenders, floorplan lenders, other
14 dealerships, about what happened between Dealer Financial
15 and Billy Penland?

16 BY MS. BRIDGES:

17 Object to form.

18 WITNESS ANSWERS:

19 A. The only thing I would've said is he's, "We don't do
20 business with him anymore."

21 Q. So, people have asked?

22 A. Yeah.

23 Q. How many?

24 A. I don't recall how many. I mean, it's, when a dealer
25 loses his cars off the floorplan, they ask what's

1 happened. I say, "Well, I don't know."

2 Q. Is it kind of a small community?

3 A. Yes.

4 BY MS. BRIDGES:

5 Object to form.

6 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

7 Q. People talk?

8 A. Yes.

9 BY MS. BRIDGES:

10 Object to form.

11 DIRECT EXAMINATION BY MR. IMHOFF:

12 Q. Spread gossip?

13 BY MS. BRIDGES:

14 Object to form.

15 WITNESS ANSWERS:

16 A. They've been known to.

17 Q. Do you generally, do you have an opinion as to whether or
18 not what happened to Penland Automotive and Billy Penland
19 is general knowledge in the used automotive community in
20 the Upstate?

21 BY MS. BRIDGES:

22 Object to form.

23 WITNESS ANSWERS:

24 A. I don't know, probably.

25 Q. And of the people that ask you, what's your response to

1 them?

2 A. That we don't do, that he's out of business, we're not
3 doing business with him anymore.

4 Q. Which one of those two things?

5 A. We don't do business with him anymore.

6 Q. Has anybody, has anyone asked you if he's out of trust?

7 A. No.

8 Q. Did you ever tell anybody he was out trust?

9 A. No.

10 Q. Has anyone ever suggested that they heard he was out of
11 trust?

12 A. I don't recall.

13 Q. Let me ask it a different way. Has anyone said to you,
14 "Was Billy Penland, Penland Automotive out of trust?"

15 BY MS. BRIDGES:

16 Object to form.

17 WITNESS ANSWERS:

18 A. I've been asked that.

19 Q. How many times?

20 A. I don't know.

21 Q. More than five?

22 A. No.

23 Q. Okay, what do you say to that?

24 A. I'm gonna say, "I can't discuss that because they're our"
25 - - "I can't discuss that with anybody."

1 Q. Did you say can't discuss it?

2 A. Yep.

3 Q. Okay. Was Penland Automotive out of trust on October 8th,
4 2020?

5 A. Not to my knowledge.

6 Q. Why don't you tell people that Penland Automotive and
7 Billy Penland were not out of trust?

8 A. Because it's a dealer and I don't want to say anything one
9 way or the other. I say, "I can't say one way or the
10 other."

11 Q. Why not?

12 A. Because I'm not supposed to.

13 Q. Per who?

14 A. Me.

15 Q. It's your own rule?

16 A. Yes.

17 Q. You told me earlier that being out of trust is bad in your
18 profession; right?

19 A. Yes.

20 Q. And you're of the opinion that Penland Automotive and
21 Billy Penland were not out of trust on October 8th, 2020;
22 right?

23 BY MS. BRIDGES:

24 Object to form.

25 WITNESS ANSWERS:

1 A. Yes.

2 Q. Then why wouldn't you tell people that Billy Penland and
3 Penland Automotive were not out of trust?

4 A. Because ---

5 BY MS. BRIDGES:

6 Object to form.

7 WITNESS CONTINUES:

8 A. --- I didn't want to spread any rumors that may get
9 mistaken wrong.

10 Q. How would that be mistaken?

11 A. I don't know. People talk.

12 Q. Have you been told not to tell anyone who asks that Billy
13 Penland was not out of trust?

14 A. No.

15 BY MS. BRIDGES:

16 Object to form.

17 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

18 Q. Have you been told what to say one way or the other?

19 A. No.

20 Q. Do you have an opinion on Billy Penland as a businessman
21 and as a person?

22 A. Sure.

23 Q. Okay, what's your opinion?

24 A. I think he's a good guy. I think he's a very good car
25 buyer.

1 Q. Okay, do you have a negative opinion of his honesty or
2 integrity?

3 A. No.

4 Q. Do you know if the used car community has a negative
5 opinion of his honesty or integrity?

6 A. I don't know; I haven't heard anything.

7 Q. You haven't heard anything?

8 A. Yeah.

9 Q. Okay. If someone is out of trust, in your opinion, does
10 that diminish their honesty and credibility and ability as
11 a business person in this industry?

12 BY MS. BRIDGES:

13 Object to form.

14 WITNESS ANSWERS:

15 A. Say that again.

16 Q. Sure.

17 A. I'm sorry.

18 Q. If a dealer or dealership is out of trust, does that
19 diminish their reputation in the used car business
20 community?

21 A. Yes.

22 Q. Does having cars taken off your lot by a lender, a
23 floorplan lender, diminish a dealer or dealership's
24 reputation in the used car business?

25 BY MS. BRIDGES:

1 Object to form.

2 WITNESS ANSWERS:

3 A. It may.

4 Q. What circumstances wouldn't it?

5 A. Well, if the dealer was out of trust and they came back in
6 trust and the car came back, you don't know why they got
7 the cars back.

8 Q. Do you have a business card?

9 A. I didn't hear what you said.

10 Q. Do you have a business card?

11 A. Yes.

12 Q. May I see? Thank you. May I have it?

13 A. You may.

14 BY MR. IMHOFF (TO THE COURT REPORTER):

15 Can you mark it, please?

16 BY THE COURT REPORTER:

17 It'll be Number 6.

18 (BUSINESS CARD MARKED AS PLAINTIFFS' EXHIBIT NUMBER 6;
19 ATTACHED TO DEPOSITION)

20 BY THE WITNESS:

21 That's a first, I've never given a lawyer a business card.

22

23 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

24 Q. Is Exhibit Number 6 your business card?

25 A. Yes.

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF GREENVILLE

PENLAND AUTOMOTIVE, LLC
and CHARLES W. PENLAND, JR.,

Plaintiffs,

vs. CASE NO.: 2021-CP-23-00244

DEALER FINANCIAL HOLDINGS, LLC,
STEVE LANZL and DANIEL B.
HAIGHT,

Defendants.

30(b)(6) and Individually

DEPOSITION OF: CHARLES W. PENLAND, JR.

DATE: July 6, 2022

TIME: 10:00 a.m.

LOCATION: Parker Poe Adams & Bernstein
110 E. Court Street, Suite 200
Greenville, South Carolina

TAKEN BY: Counsel for the Defendants

REPORTED BY: Mary K. Stepp, Court Reporter

1 independent contractors or employees present, at this
2 time?

3 A. Darryl Jeter. I think Karen already went
4 home.

5 Q. And who is Mr. Jeter?

6 A. He's one of my salesmen.

7 Q. And was he at the auction with you or was
8 he at your dealership, to your knowledge?

9 A. No, I was at the auction by myself.

10 Q. So to your knowledge, was Mr. Jeter at --

11 A. At the car lot.

12 Q. -- the car lot?

13 A. I told him, don't give them no trouble
14 because all it's going to do is make things worse.

15 Q. What did you do the next day?

16 A. I went to the auction, where Dan and Steve
17 chased me around the auction. Everybody watching.
18 They got papers in their hands like this
19 (indicating), you know, making sure everybody saw.
20 Embarrassed the living shit out of me.

21 Now, Darryl was with me, at that time,
22 standing three inches away from me. Dan handed me
23 the papers and I said, What is this? He goes, We re-
24 -- we took your cars because you're in default. I
25 said, I'm not in default. I don't owe you a dime.

1 He goes, You're in default. I said, Well, we'll see
2 what happens in court. He goes, There will be no
3 court. There will be no court. I said, We'll see
4 about that. And I walked away.

5 He proceeded to go back into the auction
6 with the papers in his hand walking around.
7 Everybody in the world was asking me what was going
8 on. Him and Steve. And he said, There will be no
9 court, about seven times. And I said, We'll see
10 about that.

11 (Defendant's Exhibit No. 6 was marked for
12 identification.)

13 BY MS. BRIDGES:

14 Q. Mr. Penland, I'm handing you a document
15 that's been marked as Exhibit 6. Actually, will you
16 hand me that back? I might have given you the wrong
17 piece of paper. No, I apologize, I had the wrong one
18 in my hand.

19 You can take a minute and review it. Do
20 you recognize this document?

21 A. Yeah, that's what he handed me.

22 Q. And when you say handed you, who handed it
23 to you?

24 A. Dan.

25 MR. IMHOFF: Hold on a minute.

1 Q. Did you see Mr. Andrews speak with
2 Mr. Haight --

3 A. Oh, no --

4 Q. -- is what I was asking.

5 A. No, no, no.

6 Q. Okay.

7 A. No. But he was -- he was watching what
8 was going on. Because Dan got a little close to me,
9 a little too close to my personal space.

10 Q. But, and I apologize, I just want to make
11 sure I understand -- that we understand each other
12 here. You did not see Mr. Andrews speak to
13 Mr. Haight or Mr. Lanzl?

14 A. No, because they don't know each other.
15 But they knew there was trouble, because I was pinned
16 up against a wall. He had his head down and he just
17 kept repeating the same thing over and over. Ain't
18 going to be no court. Ain't going to be no court.
19 Do you want the cars back? Do you want the cars
20 back? That's all he kept saying.

21 Q. And did you respond to, "Do you want the
22 cars back?" What was your response to that question?

23 A. I was very, very angry, okay,
24 understandably. I said, No, we'll let the courts
25 decide. Because I felt like I was raped.



To Whom It May Concern:

Statement of Darryl Jeter

Billy and I were at America's Auto Auction on 10-9-2020. Two gentlemen approached us. I was not aware of who they were. They introduced themselves as Dan and Steve with Dealer Financial. They asked Billy if they could talk to him for a minute, Billy said sure, so we left the building. When we got outside where there were some people around. Dan stated to Billy that we were out of trust. Billy replied that the company was not out of trust you picked up the cars for no reason. Dan stated again that we were out of trust. The conversation went back and forth with them debating if Penland Automotive was out of trust. Dan asked if we wanted the cars back and Billy replied no you picked them up and I was not out of trust. Dan became agitated and started yelling that he was bringing the cars back. Billy said no I do not want the cars back and I will see you in court. Dan repeated do you want the cars back. Billy said No and I will see you in court. Dan yelled, "There won't be any court!!" Billy walked away to go look at the auction cars. I followed behind Dan and Steve back into the auction. When they were walking off Steve patted Dan on the back and said, "That's the way to do it". Billy came back into the auction with me, while we were bidding on cars and walking around, Dan and Steve followed us back and forth for about an hour and a half.

Darryl Jeter
10-9-20

October 9, 2020

PENLAND AUTOMOTIVE LLC
3406 WADE HAMPTON BLVD
TAYLORS, SC 29687

With Copies to: CHARLES W. PENLAND JR.
PENLAND PROPERTIES II, LLC
AUTOMOTIVE DEALERS FINANCE
CORPORATION SERVICE COMPANY (as Representative)
LEWIS C. MASON ENT. TRUST

NOTIFICATION OF DISPOSITION OF COLLATERAL

We will sell motor vehicles or other inventory or goods securing Dealer's indebtedness to us by private sale or other commercially reasonable disposition on or after ten (10) calendar days from the date of this letter.

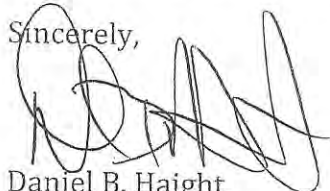
For a fee, Dealer is entitled to an accounting of the unpaid indebtedness secured by the collateral which we intend to sell. The request for an accounting must be made in writing and delivered to us by mail or other courier with payment in certified funds, cashier's check, or money order in the amount of \$25.00.

The collateral may be redeemed in accordance with applicable law at any time prior to disposition.

This notice is given without prejudice to our exercise of additional rights or remedies provided by law or agreement.

This notice is for informational purposes only, as may be required by law, and is not an attempt to collect a debt.

Sincerely,



Daniel B. Haight
President



Dan Haight

From: Dan Haight <dhaight@dealerfinancial.com>
Sent: Thursday, October 8, 2020 5:23 PM
To: JD (Jevon) Davis (millionjd@yahoo.com)
Subject: RE: Cars to Pick Up

Sent you a text, we are told that the 2016 Hyundai Sonata – 26952 is on the lot.

Dan Haight
 DEALER FINANCIAL
 310 Arlington Avenue, Suite 303
 Charlotte, NC 28203
 (W) 864-385-7302 | (C) 704-516-8988

From: Dan Haight <dhaight@dealerfinancial.com>
Sent: Thursday, October 8, 2020 4:42 PM
To: JD (Jevon) Davis (millionjd@yahoo.com) <millionjd@yahoo.com>
Subject: Cars to Pick Up

Please have Alpha Towing secure these vehicles AFTER HOURS. I will pay \$150 per car secured, with keys.

VIN	Year	Make	Model
1FMCU0J98HUA65046	2017	Ford	Escape
5NPD84LF4LH526656	2020	Hyundai	Elantra
3FA6POH78HR224416	2017	Ford	Fusion
5NPE34AF7GH426952	2016	Hyundai	Sonata – not present last audit, but check
5NPE34AB8HH521275	2017	Hyundai	Sonata – not present last audit, but check
5XYPG4A56GG108235	2016	Kia	Sorento
5NPE34AF9GH379052	2016	Hyundai	Sonata

Dan Haight
 DEALER FINANCIAL
 310 Arlington Avenue, Suite 303
 Charlotte, NC 28203
 (W) 864-385-7302 | (C) 704-516-8988

Dan Haight

From: Dan Haight <dhaight@dealerfinancial.com>
Sent: Friday, October 9, 2020 6:42 PM
To: JD (Jevon) Davis (millionjd@yahoo.com)
Subject: Inventory and Prices
Attachments: JD - Inventory for sale.xlsx

This will get you started. Need to confirm trim levels.....can you help with that.

These are subject to change.....still doing work, but wanted to get you something.

NO DOODOO DEALS. No one drives off with one of these things without a completed package that's been accepted by a finance company!!!!!!

Dan Haight
DEALER FINANCIAL
310 Arlington Avenue, Suite 303
Charlotte, NC 28203
(W) 864-385-7302 | (C) 704-516-8988

Inventory Number	VIN	Year	Make	Model	Trim	Mileage	Title Status	Price
205-5046-1	1FMCU0J98HUA65046	2017	Ford	Escape		103,448	received	\$ 15,000
205-6656-1	5NPD84LF4LH526656	2020	Hyundai	Elantra		9,193	received	\$ 16,000
205-2416-1	3FA6P0H78HR224416	2017	Ford	Fusion		58,439	received	\$ 14,000
209-6952-1	5NPE34AF7GH426952	2016	Hyundai	Sonata		74,265	received	\$ 14,000
233-1275-1	5NPE34AB8HH521275	2017	Hyundai	Sonata	Limited	81,859	received	\$ 17,000
233-8235-1	SXYPG4A56GG108235	2016	Kia	Sorento		92,132	received	\$ 13,800
233-9052-1	5NPE34AF9GH379052	2016	Hyundai	Sonata	Limited	80,715	received	\$ 14,500

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DEPOSITION OF: CHARLES W. PENLAND, JR.

DATE: July 6, 2022

TIME: 10:00 a.m.

LOCATION: Parker Poe Adams & Bernstein
110 E. Court Street, Suite 200
Greenville, South Carolina

TAKEN BY: Counsel for the Defendants

REPORTED BY: Mary K. Stepp, Court Reporter

Page 170

1 Q. Always had to be signed --

2 A. Always had to be signed like crazy.

3 Q. -- or was in writing, right?

4 MS. BRIDGES: Object to form.

5 THE WITNESS: Exactly.

6 MR. IMHOFF: What's your objection to
7 that?

8 MS. BRIDGES: Yeah, I can tell where the
9 end of the question was and then you're assuming
10 different things. And there's assumptions based in
11 there.

12 BY MR. IMHOFF:

13 Q. As we sit here today, and as you sat in
14 your office in September and August of 2020, do you
15 know what the terms were that DFH, Dealer Financial,
16 claimed you agreed to?

17 A. No.

18 Q. When Dealer Financial repossessed your
19 cars on October 8th, were you embarrassed?

20 A. Very much so.

21 Q. Did you suspect it was going to get out?

22 A. Oh, I knew it would.

23 Q. Did you suspect that people would believe
24 that you -- that you were incapable of doing your
25 work and paying your bills in your chosen profession?

1 MS. BRIDGES: Object to form.

2 THE WITNESS: Yes.

3 BY MR. IMHOFF:

4 Q. Okay. And that day when Mr. Lanzl and Mr.
5 Haight came to an auction and followed you in an
6 auction with papers, were you embarrassed?

7 MS. BRIDGES: Object to form.

8 THE WITNESS: Extremely. And angry.

9 BY MR. IMHOFF:

10 Q. In your experience, how many -- how many
11 years have you been going to an auction?

12 A. 45 years.

13 Q. How many times have you have seen the
14 owners and principals of a lender come to an auction
15 to confront a dealer?

16 A. Never.

17 Q. You've never seen that happen before?

18 A. Never.

19 MS. BRIDGES: Object to form.

20 THE WITNESS: It doesn't happen.

21 BY MR. IMHOFF:

22 Q. You said you've talked to people who were
23 asking you what was going on?

24 A. Yeah.

25 Q. Did they express surprise that owners and

1 principals of a lender came to a auction to confront
2 you?

3 A. Yes.

4 Q. How do you think that -- how do you think
5 that affected your professional relationship or your
6 professional reputation?

7 A. It hurt it.

8 Q. What does it say when you can't pay your
9 bills and your lenders have to come and repossess
10 your cars?

11 A. Run.

12 MS. BRIDGES: Object to form.

13 BY MR. IMHOFF:

14 Q. What does "run" mean?

15 A. Stay away from them.

16 Q. Why?

17 A. Because you might get burned.

18 Q. Why?

19 A. Because they can't pay their bills.

20 Q. Why can't they pay their bills?

21 A. They're out of trust. They're not paying
22 their -- they're selling the cars and not paying them
23 off. They ain't got no money.

24 Q. Is that important in your industry?

25 A. Yes, very much so.

1 Q. For the lenders to trust you and believe
2 in you?

3 MS. BRIDGES: Object to form.

4 THE WITNESS: Yes.

5 BY MR. IMHOFF:

6 Q. Do the auctioneers have to trust and
7 believe in you?

8 MS. BRIDGES: Object to form.

9 THE WITNESS: Yes.

10 BY MR. IMHOFF:

11 Q. Do you -- do you --

12 A. It's the auctions, not the auctioneers.
13 The auctions.

14 Q. I'm sorry --

15 A. I just wanted to --

16 Q. No, no, no.

17 A. Auctions.

18 Q. Do the auctions have to trust and believe
19 in you?

20 A. Absolutely.

21 MS. BRIDGES: Object to form.

22 BY MR. IMHOFF:

23 Q. Would you prefer that your peers and other
24 professionals in your industry don't believe that you
25 are unable to run your business and pay your bills?

1 MS. BRIDGES: Object to form.

2 THE WITNESS: Back then, you know, I
3 had -- I had a lot of people come up to me going,
4 What's going on? And, you know --

5 BY MR. IMHOFF:

6 Q. It bothered you?

7 A. Bothered me.

8 MS. BRIDGES: Object to form.

9 THE WITNESS: Bothered me? It was
10 horrifying.

11 MR. IMHOFF: I don't have any other
12 questions. Thank you.

13 MS. BRIDGES: Couple of follow-up
14 questions based on what Mr. Imhoff discussed with
15 you.

16 EXAMINATION

17 BY MS. BRIDGES:

18 Q. Did Charna ever offer any comment or
19 objection to the US -- I'm sorry, the CSC UCC filing?

20 A. Explain that again. One more time.

21 Q. So looking at Exhibit -- oh, Exhibit 8.
22 If you'll pull out Exhibit 8. So the first one is --
23 that was filed first. As Mr. Imhoff and I have
24 discussed with you, if you turn to the second page of
25 that 3441, was Corporation Service Company. If

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF GREENVILLE

PENLAND AUTOMOTIVE, LLC
and CHARLES W. PENLAND, JR.,

Plaintiffs,

vs. CASE NO.: 2021-CP-23-00244

DEALER FINANCIAL HOLDINGS, LLC,
STEVE LANZL and DANIEL B.
HAIGHT,

Defendants.

30(b)(6) and Individually

DEPOSITION OF: CHARLES W. PENLAND, JR.

DATE: July 6, 2022

TIME: 10:00 a.m.

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Page 2	Page 4
1 APPEARANCES OF COUNSEL: 2 ATTORNEY FOR PLAINTIFFS: 3 KENISON DUDLEY & CRAWFORD, LLC 4 JASON IMHOFF, ESQUIRE 5 704 East McBee Avenue 6 Greenville, South Carolina 29601 7 864.242.4899 8 jimhoff@conlaw.com 9 ATTORNEY FOR DEFENDANTS: 10 PARKER POE ADAMS & BERNSTEIN, LLP 11 EMILY I. BRIDGES, ESQUIRE 12 110 East Court Street, Suite 200 13 Greenville, South Carolina 29601 14 864.577.6370 15 emilybridges@parkerpoe.com 16 ALSO PRESENT: 17 Karen Willis, Penland Automotive, LLC 18 Daniel B. Haight, Dealer Financial 19 Steve Lanzl, Dealer Financial 20 (Via Video Conference) 21 (INDEX AT REAR OF TRANSCRIPT) 22 23 24 25	1 ask that you finish your answer to it and then we'll 2 take a break before another question is asked. Does 3 that sound fair? 4 A. Fair. 5 Q. Okay. And as you know, the court reporter 6 sitting here is taking down your testimony. And so 7 it needs to be verbal. It's very easy to forget that 8 and make head nods, uh-huhs, huh-uhs, that type of 9 thing. But we want to try our best to have a clean 10 record, so I may remind you throughout. 11 That is very easy, that happens all the 12 time to every witness. So I just ask you to do 13 verbal answers. 14 A. That's fine. 15 Q. Okay. There may be times that we 16 inadvertently talk over each other. Again, that's 17 something that happens in every day conversation. So 18 I will do my best not to ask a question to you before 19 you finish your answer. And I just ask that you let 20 me finish my question before you give the answer. 21 A. Okay. 22 Q. Okay. If during the course of this 23 deposition, if I ask you a question that you don't 24 understand, please let me know and I'll try again. 25 Sometimes many things -- a thought starts in one
Page 3	Page 5
1 CHARLES WILLIAM PENLAND, JR., 2 having been first duly sworn, testified as follows: 3 EXAMINATION 4 BY MS. BRIDGES: 5 Q. Good morning, Mr. Penland. My name is 6 Emily Bridges. I'm a lawyer here with Parker Poe and 7 am representing Dealer Financial Holdings, LLC, Steve 8 Lanzl, and Dan Haight in today's case. We met 9 briefly yesterday. 10 A. Uh-huh. 11 Q. So I'll just sort of go over -- I know you 12 sat in on yesterday's deposition. But I'll still 13 sort of go through the ground rules about what we're 14 doing, and then we'll get started on your deposition. 15 Okay. So, first thing is, if you need to 16 take a break, go to the bathroom, get a snack, a 17 drink -- do you need anything to drink? 18 A. Not right now. 19 Q. Okay. Then just let me know. The only 20 thing is that I ask that you answer -- if there's a 21 question pending, if I had said, you know, what color 22 is the sky, and you said you need a break before you 23 answered that, just answer the question and then we 24 can do it. 25 So if there's a question on the floor, I	1 place and the sentence ends up in another, and I can 2 easily ask a bad question. 3 Or it may just be something that you were, 4 you know, thinking about your last answer or thinking 5 about something else you have going on today. I 6 recognize that this is not the only thing everybody 7 has going on today. So if you need me to -- don't 8 understand, you need me to rephrase a question, 9 please ask. 10 A. Okay. 11 Q. If you do answer my question, I'm going to 12 assume that you understood the question. Is that 13 reasonable? 14 A. Yes. 15 Q. In regard to my questions, if you don't 16 understand or if you have any questions throughout 17 this deposition, need additional clarification, I ask 18 that you ask those questions to me, not Mr. Imhoff, 19 your counsel in this case. 20 If you guys go out and talk about things 21 related to this case, you will be under -- still 22 under oath during deposition and I do have the 23 ability to ask about those -- ask you questions about 24 that, okay? 25 A. Yes.

Page 6

1 Q. Okay. And just another thing that we're
2 doing today for efficiency sake that Mr. Imhoff and I
3 have discussed is, this lawsuit has been brought by
4 you personally as well as on behalf of Penland
5 Automotive. Frequently, when we're dealing with
6 smaller, more closely-held companies, the same person
7 is -- wears a lot of hats. So I'll be asking
8 questions about you personally and what Mr. -- and is
9 it Charles, Billy, William, what's your preferred?
10 A. Just Billy is fine.
11 Q. Okay. Yes, sir.
12 A. All right.
13 Q. What Mr. Billy Penland thought, as well as
14 what Penland Automotive thought. I'll do my best to
15 keep that clear, but we'll sort of be doing both
16 sides of things throughout this deposition.
17 A. Okay.
18 Q. Okay. Now, do you have any questions for
19 me before we get started?
20 A. No.
21 Q. All right. Have you ever had your
22 deposition taken before?
23 A. I don't recall. It's been -- if it has,
24 it's been well -- a long time ago.
25 Q. All right. Can you state your full name

Page 7

1 for the record?
2 A. Charles William Penland, Jr.
3 Q. And what's your date of birth?
4 A. 4-2 of '61.
5 Q. What's your current address?
6 A. 305 Indigo Way, Greenwood, South Carolina.
7 Q. And what is your Social Security number,
8 which we'll redact for the record.
9 A. XXX-XX-4631.
10 Q. Okay. Now, I don't want to know about any
11 discussions you had with your attorney, but what did
12 you do to, if anything, prepare for today's
13 deposition?
14 A. Nothing.
15 Q. Did you look at any documents?
16 A. No.
17 Q. Did you talk to -- again, not going into
18 any conversations you had with your attorney. Did
19 you talk to anybody about your testimony today?
20 A. No.
21 Q. Have you personally, as Mr. Billy Penland,
22 been involved in any lawsuits before?
23 A. Yes.
24 Q. As the plaintiff or as the defendant or
25 both?

Page 8

1 A. Both.
2 Q. Where were those lawsuits?
3 A. One of them was with -- I sued somebody
4 for some equipment to get back. It was in
5 Greenville. We settled it.
6 Q. Do you know approximately what year that
7 was?
8 A. It was about a year ago.
9 Q. And have you been involved in any
10 other as -- you personally been involved in any other
11 lawsuits?
12 A. I've got one going on now with a lender.
13 There's three cars involved.
14 Q. Where is that one?
15 A. That would be Atlanta.
16 Q. And is that one still ongoing?
17 A. Yes, it's still going on.
18 Q. And are you the plaintiff or defendant in
19 that case?
20 A. I am the plaintiff.
21 Q. So you're the one that brought the
22 lawsuit?
23 A. No, no. I'm the defendant.
24 Q. Okay.
25 A. Sorry, my bad.

Page 9

1 Q. Somebody brought the lawsuit?
2 A. Yes. Yeah, yeah.
3 Q. Okay. What is your highest level of
4 education?
5 A. Ninth grade.
6 Q. Where are you from originally?
7 A. Born in Baltimore, Maryland.
8 Q. When did you come to South Carolina?
9 A. 20-something years ago.
10 Q. What brought you to South Carolina?
11 A. The -- I came with my folks and opened up
12 a car dealership here.
13 Q. Where was that car dealership located?
14 A. Laurens -- Laurens Road.
15 Q. Are you still involved in that car
16 dealership?
17 A. No.
18 Q. Are you married?
19 A. Engaged.
20 Q. Were you previously married, prior to this
21 engagement?
22 A. Yes.
23 Q. How many marriages prior to this?
24 A. Three.
25 Q. Do any of your former spouses live in

Page 10	Page 12
1 Greenville County? 2 A. No. 3 Q. Your current fiancé, are they in 4 Greenville County? 5 A. Greenwood. 6 Q. And what is their name? 7 A. Tawana O'Neal. 8 Q. Can you spell that? 9 A. T-a-w-a-n-a, O'Neal. 10 Q. Do you have any children over the age of 11 18? 12 A. Yes. 13 Q. Are any of them located in Greenville 14 County? 15 A. Yes. 16 Q. What are -- how many and what are their 17 names? 18 A. Three. Mike Penland who lives in 19 Anderson. Dawn Penland, she lives in Greenville. 20 And Shawn Penland, he lives in Greenville. 21 Q. And does your fiancé have any children 22 over the age of 18 -- 23 A. No. 24 Q. -- currently living in Greenville? 25 A. No.	1 A. No. 2 Q. Are you a member of any church or other 3 sort of social group, like a rotary club -- 4 A. No. 5 Q. -- or anything like that? Were you in the 6 military? 7 A. No. 8 Q. What is your current employment or work 9 situation? 10 A. Penland Automotive. 11 Q. And is that Penland Automotive, LLC? 12 A. Uh-huh. Yes. Sorry. 13 MR. IMHOFF: Good. 14 BY MS. BRIDGES: 15 Q. Good job on that. 16 A. Yeah. Sorry about that. 17 Q. Oh, it's very easy to do. 18 What is the current address of Penland 19 Automotive? 20 A. 108 Fleming Street, Laurens, South 21 Carolina. 22 Q. And how long has it been at that address? 23 A. A year and two months. It could be just a 24 little bit longer. That's a guess, but that's pretty 25 close.
Page 11	Page 13
1 Q. Have you ever been convicted of a crime? 2 A. Convicted, no. 3 Q. Have you ever been charged with a crime? 4 A. Yes. 5 Q. When was that? 6 A. Uhm, six, seven years ago. No, eight 7 years ago. 8 Q. What was the nature of the crime? 9 A. I bought a car, had a bad title. 10 Q. And was that in Greenville County? 11 A. Yes. All charges were dropped. No 12 convictions. In fact, my -- I have no convictions of 13 any kind. I have some misdemeanors for hunting 14 violations. I have a baiting a turkey charge, which 15 is a misdemeanor. 16 Q. Do you have any professional licenses or 17 certifications? 18 A. I have a dealer's license, which a 19 criminal background is pulled every year. And if 20 there's anything on it, you don't get it. 21 Q. And is that through the state of South 22 Carolina? 23 A. Yes. 24 Q. Do you have any other licenses in any 25 other states?	1 Q. And what was the address, if there was a 2 prior address, for Penland Automotive? 3 A. That would be on Wade Hampton Boulevard. 4 Q. And how long was it at that address? 5 A. Six, seven years. 6 Q. How long have you been with Penland 7 Automotive? 8 A. Approximately ten years. 9 Q. Did you found the company? 10 A. Yes. 11 Q. What did you do for employment prior to 12 Penland Automotive? 13 A. I had a company called Spartanburg Auto 14 World, which was a car dealership. 15 Q. And what type of cars was that in the 16 business of selling? 17 A. Used cars. 18 Q. And was that a company that you owned? 19 A. Yes. 20 Q. Does anybody else own any part of 21 Spartanburg Auto World? 22 A. Yes, there was a Nabal -- Nadal Abousham 23 (ph). 24 Q. Do you know how to spell that? 25 A. No.

Page 14

1 Q. Okay. And what was the ownership
2 structure for that?
3 A. And there was a Mark Wansley.
4 Q. What was that last name?
5 A. W-a-n-s-l-e-y.
6 Q. Were there any other owners?
7 A. No.
8 Q. What was the ownership structure of
9 Spartanburg Auto World?
10 A. Third, third, and third.
11 Q. Was that an LLC?
12 A. Yes.
13 Q. And where was that company located?
14 A. That was in Spartanburg.
15 Q. Do you remember the address?
16 A. Actually, I don't.
17 Q. And how long did you operate Spartanburg
18 Auto World?
19 A. Five years.
20 Q. And what did you do for work prior to
21 that?
22 A. I was a wholesaler.
23 Q. And where was -- was that with a --
24 A. That was Spartan- -- that was at -- in
25 Woodruff, a little place called Auto Gallery. It was

Page 15

1 retail and wholesale, but mostly wholesale.
2 Q. And were you an owner of that or an
3 employee?
4 A. Owner.
5 Q. Were there any other owners?
6 A. No.
7 Q. And how long did you have that company?
8 A. Four years, approximately.
9 Q. And is that business still a --
10 A. No.
11 Q. -- going concern?
12 A. No.
13 Q. What happened to it?
14 A. I moved to -- I sold the place and moved
15 to Wade Hampton Boulevard.
16 Q. Is Spartanburg Auto World still a going
17 business?
18 A. No.
19 Q. What -- how was -- what happened with it?
20 A. When the banks and bubble burst -- that
21 was a buy here, pay here car lot. And we were
22 selling paper, which -- we were selling our accounts
23 to a bunch of -- Mid-Atlantic, United Credit. When
24 the bubble burst, they all bellied up. So I went
25 from selling 150 cars a month to 20. So after -- I

Page 16

1 kept it going for about a year and then closed it.
2 Q. And approximately what year was it closed?
3 A. I don't even remember.
4 Q. Would that have been after -- when you say
5 "the bubble burst," were you talking the 2008 --
6 A. Yeah.
7 Q. -- bubble? Okay.
8 A. Yeah, yeah. When the banks bellied -- car
9 lots and everything was helter-skelter.
10 Q. Prior to Auto Gallery in Woodruff, where
11 was your employment?
12 A. That would be Woodruff Auto Sales.
13 Q. And what were the approximate years that
14 you were there?
15 A. Eight years.
16 Q. And were you an owner of that company?
17 A. No.
18 Q. What was your -- were you an employee or
19 independent contractor? What was your relationship?
20 A. I was the General Manager.
21 Q. Do you recall whether you were employee or
22 an independent contractor?
23 A. No, I was -- I was an employee.
24 Q. And do you remember what -- I understand
25 it was about eight years -- what, you know, years

Page 17

1 that was? That was --
2 A. It was a long time ago.
3 Q. Okay. Okay. Other than the lawsuit that
4 we're currently here for, has -- has Penland
5 Automotive been involved in any other lawsuits?
6 A. No. Wait a minute. There's -- I just got
7 hit with two lawsuits from five years ago, which
8 Jason's representing me on. Which is about -- it's
9 the same attorney. It's like an ambulance chaser.
10 And he -- one of them is because of a bad CARFAX and
11 the other one is because of a prior accident to the
12 car.
13 Q. And those are cases where Penland
14 Automotive is being sued?
15 A. Yes.
16 Q. Has Penland Automotive been a plaintiff,
17 other than this lawsuit, in any lawsuits?
18 A. No.
19 Q. Do you have any other businesses that you
20 currently operate?
21 A. No. I have -- well, I have Penland
22 Properties. You know, it's -- yeah, Penland
23 Properties, LLC.
24 Q. And what is the nature of that?
25 A. Holding company.

Page 18

1 Q. And what does it hold?
2 A. Real estate.
3 Q. And what is it -- invested real estate?
4 Is it personal property?
5 A. Personal.
6 Q. How much real estate does it currently
7 hold?
8 A. Holds my car lot and some land I have in
9 Laurens County.
10 Q. Is that undeveloped land?
11 A. Yes. Hunting property.
12 Q. Other than the companies we just
13 discussed, have you ever had a business interest in
14 any other companies?
15 A. No.
16 Q. Have you ever been an owner of any other
17 companies?
18 A. No. Other than the ones I told you about.
19 Q. Yeah. Yeah, are there any other ones --
20 A. No, no.
21 Q. -- that you have been either employed by
22 or --
23 A. No.
24 Q. -- owned or --
25 A. No.

Page 19

1 Q. -- had any sort of financial stakes, been
2 an --
3 A. No.
4 Q. -- investor in?
5 A. No.
6 MR. IMHOFF: Let her -- let her finish her
7 question.
8 THE WITNESS: Okay. Sorry.
9 MR. IMHOFF: The court reporter won't be
10 happy with that.
11 THE WITNESS: My bad, I'm sorry.
12 BY MS. BRIDGES:
13 Q. I'll just do for the record, have you been
14 an investor in any other --
15 A. No.
16 Q. -- companies? Other than the ones we've
17 discussed?
18 A. Oh, wait a minute. I'm sorry. I just
19 remembered, there was a Penland Asphalt and Paving.
20 Q. And what is Penland Asphalt and Paving?
21 A. Zero. It doesn't exist.
22 Q. Okay. It no longer exists?
23 A. No longer exists.
24 Q. And when was it clo- -- shut down?
25 A. Couple years ago.

Page 20

1 Q. And what was the nature of the work
2 performed by this company?
3 A. We were doing asphalt and paving. And
4 that did not work out well.
5 Q. Were you the only owner of that company?
6 A. No, it was me and Tim Yarger. And we
7 closed it down because it was a catastrophe.
8 Q. What was the ownership structure?
9 A. I actually can't remember. It was open
10 and closed so quick, it wasn't -- I couldn't even
11 remember.
12 Q. About how long was it a going concern?
13 A. Six months.
14 Q. And do you believe it was shut down within
15 the last two years? Five years?
16 A. Within the last two years for sure. This
17 is approximate.
18 Q. Oh, of course.
19 (Defendant's Exhibit No. 1 was marked for
20 identification.)
21 BY MS. BRIDGES:
22 Q. All right. Mr. Penland, I'm handing you
23 what has been marked by our court reporter as Defense
24 Exhibit 1. If you want to take a minute. Have you
25 seen this document?

Page 21

1 A. (Witness peruses document.) Yes.
2 Q. And what this is, is it's -- a company
3 can't really itself come and talk for it. What we do
4 is we depose an individual who is involved with the
5 company and go over certain topics.
6 So on the third page, if you'll turn
7 to -- fourth page, I apologize. Fourth page of this.
8 It goes through several topics that we'll be
9 discussing today. Are you the correct person to
10 discuss --
11 A. Yes.
12 Q. -- these topics? Okay.
13 A. I'm sorry for -- I went too quick. Sorry.
14 Q. I apologize. I may have asked this
15 question. When was Penland Automotive founded?
16 A. Approximately six or seven years ago. I
17 don't have the exact dates, okay?
18 Q. Who was the founder of it?
19 A. Me.
20 Q. What -- how many employees or independent
21 contractors work with Penland Automotive?
22 A. That was -- it varied all the time.
23 Q. How many employees or independent
24 contractors do you have currently?
25 A. Three. No, I have four, if you count the

Page 22 1 little lot man. 2 Q. And are these all independent contractors 3 or is it a mixture? 4 A. Independent contractors. 5 Q. And can you describe what the roles are of 6 these four individuals? 7 A. Karen's comptroller, Joey is the F&I, 8 that's finance and insurance, Darryl's a salesman, 9 and Tinky, T-i-n-k-y, is the lot man that cleans the 10 cars. 11 Q. What is the largest number of independent 12 contractors or employees you've had with Penland 13 Automotive in the past? 14 A. This would be just a guess because it 15 changed daily, but 12 to 14. 16 Q. And was that at one time or over the 17 course of its history? 18 A. No, sometimes we hired like eight or nine 19 salesmen. 20 Q. Has anybody left Penland Automotive within 21 the last five years? 22 A. Yes. 23 Q. Who was that? 24 A. Well, one of them is Tim Yarger. The rest 25 of them, they were just salesmen. I didn't even	Page 24 1 It's a pretty broad, wide range, but that's... 2 Q. Why did you move from Wade Hampton to your 3 new address in Laurens? 4 A. Two reasons. When Dealer Financial 5 repossessed my cars the word got out. It took -- it 6 took me down. And then COVID. 7 But the main reason, when Dealer Financial 8 took my cars, word got all over the street that I was 9 out of trust, couldn't pay my bills and all this 10 stuff. Pretty much destroyed me. 11 Q. What were your profits for Penland 12 Automotive in 2019? 13 A. I don't -- am I allowed to go to my notes? 14 Q. I mean, if you have notes. And then I 15 will be -- I can look at them. That's -- 16 A. Is that okay? 17 MR. IMHOFF: I don't -- I don't know that 18 we have notes. 19 THE WITNESS: Okay. Well, all right. I 20 can only tell you that I -- 21 MR. IMHOFF: Is there a document that -- 22 MS. BRIDGES: Yeah, is there documents? 23 MR. IMHOFF: -- you want her to give you 24 or that you have to look at? 25 THE WITNESS: I -- I had a loss since
Page 23 1 really know their names. 2 Q. For the salesmen that have left in the 3 last five years, to your knowledge did any of them 4 have any involvement with the subject matter of this 5 lawsuit? 6 A. No. And for the record, if I may, Tim 7 Yarger was fired. 8 Q. What was the corporate structure of 9 Penland Automotive upon its founding? 10 A. An LLC. 11 Q. And were you the only owner? 12 A. Yes. 13 Q. At any point did anybody else have any 14 ownership at Penland Automotive? 15 A. There was -- after years and years there 16 was a -- Tim Yarger wanted to -- he told me he was 17 going to give me \$150,000, if I would give him 25 18 percent of the Penland Automotive name. He never 19 gave me the \$150,000, so the contract was void. 20 There was no money ever exchanged. 21 Q. How many cars is it typical for you to 22 have on your lot at any particular time? And it can 23 be a range. 24 A. Well, there was some times when there was 25 140 and then there was some times when there was 20.	Page 25 1 Dealer Financial took my cars of 2. -- not a loss, a 2 loss of revenue of 2.5 million. 3 BY MS. BRIDGES: 4 Q. Is there a document that has been produced 5 that -- let me step back. Strike that. 6 Do you have profit and loss statements? 7 A. I can get them for you. She's looking at 8 you. 9 MR. IMHOFF: Yeah, I'm looking to see. I 10 thought we had. You don't have it? 11 MS. BRIDGES: I'm looking and have not 12 seen that. Is that something that you can get for 13 us? 14 MR. IMHOFF: Yes. 15 MS. BRIDGES: Okay. 16 BY MS. BRIDGES: 17 Q. Do you know -- you said you had a loss of 18 revenue. What were your -- do you know what you had 19 -- whether you had any profits in 2019? 20 A. I'm going to have to get that for you. 21 Q. Okay. Do you know how many cars you sold 22 in 2019? 23 A. I'm going to have to get that for you, 24 too. 25 Q. Do you know what your profits were in

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1 2020?
2 A. No. I've got to get it for you. Sorry.
3 Q. Do you know how many cars were sold in
4 2020?
5 A. No. I can get it. I can get all this
6 information for you.
7 Q. No, I just want to make sure -- just so
8 the records really --
9 A. Yeah.
10 Q. We want to make sure we have the record on
11 it.
12 A. Yeah, I will get -- we can get them for
13 you.
14 Q. And do you know -- and would you be able
15 to get me your profits for 2021?
16 A. Yes.
17 Q. And would you be able to get the number of
18 cars sold --
19 A. Yes.
20 Q. -- in 2021?
21 Okay. How did you meet Mr. Yarger?
22 A. I was introduced to him by a guy
23 named -- his last name was Brockman. And he came and
24 talked to me about a job and I hired him.
25 MR. IMHOFF: Emily, it was produced in

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1 August.
2 MS. BRIDGES: Okay.
3 MR. IMHOFF: And it is KDC -- there's
4 several of them, but KDC 67. And KDC 64 through 66.
5 MS. BRIDGES: So these look like about
6 specific cars. I guess there are questions as to
7 whether there are fees or anything else in the --
8 looks like anything else, any other fees.
9 MR. IMHOFF: If you look at 59 through
10 63 -- I'm not looking back at the other ones.
11 MS. BRIDGES: Uh-huh.
12 MR. IMHOFF: But it has January sales,
13 February sales, it has the date sold, the year,
14 model, VIN, amount, trade, profit, payoff. And it
15 has everything broken down by month, which I think is
16 what you asked for.
17 MS. BRIDGES: Uh-huh. And these -- okay,
18 I just found them. Can we go off the record for a
19 minute?
20 (Off-record discussion.)
21 MS. BRIDGES: We can go back on the
22 record.
23 BY MS. BRIDGES:
24 Q. Do you have profit and loss statements for
25 the company?

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1 A. Yes.
2 Q. Is that something you can give to --
3 A. Yes.
4 Q. -- your attorney --
5 A. Yes.
6 Q. -- to then give to us?
7 A. Yes, yes.
8 Q. Okay. So what did you hire Mr. Yarger
9 for, initially?
10 A. General Manager.
11 Q. Was he an employee or an independent
12 contractor?
13 A. Independent contractor.
14 Q. And what was his day-to-day
15 responsibilities?
16 A. His day-to-day was strictly to talk to the
17 customers, close the deal, and send it to the F&I
18 department for closing and finishing the deal. And
19 delivering -- and Joey would deliver, excuse me,
20 deliver the car.
21 Q. Did he have any formal job description?
22 A. Just what I said there.
23 Q. Do you have anything written down?
24 A. No.
25 Q. Was there any sort of written Employment

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1 Agreement?
2 A. No.
3 Q. Do you know whether Tim Yarger spoke with
4 any floor plan financiers?
5 A. Well, I'm sure that he talked to -- his
6 real close friend was John Bethea. They'd known each
7 other 10 or 12 years prior. So I guess he spoke to
8 him.
9 Q. Do you know whether he spoke to any other
10 floor plan financiers?
11 A. The only thing that he -- that he would
12 assist in would be the -- when the floor plan audits
13 check, he would handle that. He was not allowed to
14 sign checks. He wasn't allowed to make any decisions
15 of any kind without referring back to me. He never
16 signed anything. He wasn't allowed to sign checks.
17 He wasn't allowed to make any decisions at all
18 without talking to me first.
19 Q. How was he paid?
20 A. Every week.
21 Q. Based on what?
22 A. He was on salary. He made a certain
23 amount every week. There was no commissions or
24 bonuses or anything.
25 MS. BRIDGES: Mark this as Exhibit 2.

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1 (Defendant's Exhibit No. 2 was marked for
2 identification.)
3 BY MS. BRIDGES:
4 Q. Mr. Penland, I'm handing you what's been
5 marked as Defense Exhibit 2. Do you recognize this
6 document?
7 A. Yes, I do.
8 Q. And if you'll flip to the last page. Is
9 that your signature on it?
10 A. Yes, it is.
11 Q. If you recall, who drafted this agreement?
12 A. They pulled it off the Internet.
13 Q. When you say "they," who is that?
14 A. Tim and his -- I guess Tim did. I'm
15 assuming Tim did.
16 Q. And this document purports to be a
17 Partnership Agreement between yourself and Mr. Yarger
18 for Penland Automotive; is that correct?
19 A. Yeah, and it was never consummated. He
20 never paid the money.
21 Q. That is your signature on the last page?
22 A. Yes.
23 Q. Okay.
24 A. He said he would pay the money a week
25 later, and it never happened.

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1 Q. Did you ask him for the money?
2 A. Yes.
3 Q. What was his response?
4 A. It's coming. It never came.
5 Q. Did Mr. Yarger ever bring other floor plan
6 or other businesses to you, suggesting that Penland
7 Automotive engage in business with them?
8 A. I got the floor plan from Charna.
9 Q. And who is --
10 A. And I got the floor plan from Glenn Hall
11 Auto Lenders, so no.
12 Q. And who is -- let's back it up. Who's
13 Charna?
14 A. All right. That would be Spartanburg Auto
15 Auction. Charna, that's her name, she's the owner.
16 Q. And the second one you mentioned?
17 A. Glenn Hall, which is Auto Lenders.
18 Q. And who handled any conversations with the
19 representatives of Spartanburg Auto Auction?
20 A. That was me and Charna. Now, when the
21 floor plan check came in, if I wasn't there
22 Mr. Yarger would go ahead and show them where the
23 cars were. That would be the same situation when
24 Dealer Financial came in on an audit and John Bethea
25 sometimes would come in and he would handle that.

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1 But as far as, again, signing checks,
2 making decisions, he couldn't do that, ever.
3 Q. You said he was your General Manager,
4 though?
5 A. Yes.
6 Q. And did he have any business cards, to
7 your knowledge?
8 A. I don't recall. I don't know. He might
9 have had. He had to ask me for everything, okay?
10 Q. Did he introduce himself as the General
11 Manager of Penland Automotive?
12 A. Yes.
13 Q. Did he ever bring any other business
14 opportunities to you?
15 A. The -- he talked me into this asphalt and
16 paving thing, which was a catastrophe. And I ended
17 up closing that down fast.
18 Q. Did you personally, Mr. Penland, ever tell
19 Mr. Yarger not to communicate with anyone in
20 particular?
21 A. I don't really understand that question.
22 Q. So did you, Mr. Penland, ever tell
23 Mr. Yarger that he was not allowed to communicate
24 with Spartanburg Auto Auction?
25 A. He never did.

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1 Q. Did you ever tell him he was not allowed
2 to?
3 A. I -- I don't recall, but he never did
4 because I was the one -- I always talked to Charna
5 myself.
6 Q. I understand that, Mr. Penland, but my
7 question is, did you ever tell Mr. Yarger, whether
8 orally or in a document, that he was not allowed to
9 talk to them?
10 A. I didn't put it in a document, but Charna
11 was not a fan of Tim Yarger.
12 Q. Again, I understand that. That's -- my
13 question is, did you ever -- you say there's not a
14 document. Did you ever tell Mr. Yarger he was not
15 allowed to communicate with anyone at Spartanburg
16 Auto Auction?
17 A. No. I didn't tell him that, no. But he
18 had -- but he assumed that he wasn't, you know,
19 because Charna didn't like him.
20 Q. But you yourself never told him that he
21 was not allowed to do that?
22 A. No.
23 Q. Did you ever tell Mr. Yarger he was not
24 allowed to communicate with Auto Lenders, I believe
25 was the other name you mentioned?

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1 A. No. But he never did because Glenn
2 didn't like him.
3 Q. Did you ever tell, in writing, that he was
4 not allowed to communicate with them?
5 A. No.
6 Q. Did you tell Mr. Yarger he was not allowed
7 to communicate with Mr. Haight at Dealer Financial?
8 A. No, I did not.
9 Q. When did the relationship with Mr. Yarger
10 end?
11 A. I don't know the exact date. It was
12 approximately three or four months ago, five months
13 ago. It might have been longer.
14 No, it was -- no, I'm sorry. It was a
15 year -- about a year and three months ago. My bad,
16 sorry.
17 Q. Why did the relationship end?
18 A. Well, there wasn't enough business
19 to -- to keep him around and I had to let him go.
20 Q. Did you ever address any concerns that you
21 had with Mr. Yarger's performance with him?
22 A. Toward the end, yeah.
23 Q. What were the concerns?
24 A. He wasn't working.
25 Q. When you say not working, what do you

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1 mean?
2 A. He wasn't closing deals right. He was
3 passing them off to Joey. He didn't want to do
4 anything. He just sat in his office. He didn't want
5 to talk to customers or anything.
6 Q. Have you spoken with Mr. Yarger since that
7 September of 2020?
8 A. No.
9 Q. Do you know if anyone else has spoken to
10 Mr. Yarger on behalf of Penland Automotive?
11 A. Now, are you talking about the day that I
12 let him go, have I spoken to him --
13 Q. Yes. Since he was -- since he was no
14 longer with the company, have you spoken with
15 Mr. Yarger?
16 A. The day that he got let go there was a lot
17 of threats.
18 Q. What do you mean?
19 A. He said a lot of things that he was going
20 to do. He was going to call my banks. He was going
21 to get even with me.
22 Q. Have you seen or spoken to Mr. Yarger
23 since that day?
24 A. No.
25 Q. Do you know whether anyone on behalf of

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1 Penland Automotive has seen or spoken to him since
2 that day?
3 A. Not that I'm aware of.
4 Q. Have you asked anybody to speak with
5 Mr. Yarger?
6 A. No. After all the threats and everything,
7 I blocked his number. He was going to call my banks,
8 my lenders. He said he was going to try to destroy
9 me.
10 Q. Now, who is Karen Willis?
11 A. (Indicating.) She's my comptroller.
12 Q. And how long has she been with the
13 company?
14 A. Between six and seven years.
15 Q. Has she been there with you since
16 Penland --
17 A. Since the beginning.
18 Q. -- Automotive was founded? And is she an
19 independent contractor?
20 A. Yes.
21 Q. What is her job description?
22 A. Books, checks, taking care of any problems
23 that come up to call me, paying the bills, dealing
24 with the banks, creditors.
25 Q. Do you have an independent contractor

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1 document written with her?
2 A. Yes.
3 Q. Did you have an independent contractor
4 document with Mr. Yarger?
5 A. I did at one time.
6 Q. I don't believe -- or is that something
7 you still have copies of, both Ms. Willis' IC
8 agreement and Mr. Yarger's IC agreement?
9 A. I should.
10 Q. I don't believe I saw copies of that. So
11 I would like to get copies of those IC agreements.
12 Is that something that you can get your hands on and
13 give to your attorney?
14 A. I should be able to. They were in the
15 safe.
16 Q. Is Ms. Willis on salary or some other
17 method of payment?
18 A. Salary.
19 Q. What is her weekly salary?
20 A. 700.
21 Q. Who does she report to?
22 A. Me.
23 Q. Does she have anyone underneath her that
24 would report up to her?
25 A. I don't understand the question.

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1 Q. So, yeah. Is there anyone -- does she 2 have like an assistant or -- 3 A. No. 4 Q. -- something else? 5 A. No. 6 Q. When did your relationship with Dealer 7 Financial begin? 8 A. I don't have the exact dates. 9 Q. Approximately? 10 A. Three or four years ago. 11 Q. And how did it get started? 12 A. John Bethea came in and talked to Tim. 13 And then Tim came to me and we decided to go ahead 14 and give them a try. 15 Q. Who at Dealer Financial did you speak 16 with? 17 A. John Bethea. 18 Q. Did you ever speak with Dan Haight? 19 A. I did in the -- when he came -- when he 20 came to sign the contract, he showed up. But 21 everything before that was really with John Bethea. 22 Q. And did you have the -- 23 A. He was relaying the messages to 24 Mr. Haight. 25 Q. And did you have conversations with John	1 wasn't there. 2 Q. Did Mr. Yarger ever report to you what he 3 spoke to Mr. Bethea about? 4 A. Yes. 5 Q. What did he tell you? 6 A. He would say sometimes that the floor plan 7 check was fine. The -- they would talk about their 8 health and stuff like that, you know. 9 Q. Prior -- as -- prior to signing the 10 agreement with Dealer Financial, did Mr. Yarger ever 11 pass messages to you about, you know, here's what 12 John Bethea has told me about the -- 13 A. No, because I was talking to John Bethea 14 directly. 15 Q. Did you ever speak with Steve Lanzl at -- 16 A. No. 17 Q. -- Dealer Financial, during this time 18 period? 19 A. The first time I -- 20 Q. Make sure to wait -- 21 MR. IMHOFF: You've got to let her finish. 22 THE WITNESS: Oh, I'm sorry. My bad. 23 BY MS. BRIDGES: 24 Q. No, it's okay. So I'll just rephrase. 25 Did you ever speak with Steve Lanzl, when the first
Page 39	Page 41
1 Bethea? 2 A. Yes, many. 3 Q. Did you have any e-mail correspondence 4 with John Bethea? 5 A. I don't e-mail. I talk. 6 Q. Do you have an e-mail? 7 A. I have e-mail, but I don't -- I don't use 8 it. I text or I -- I like to call. 9 Q. Do you have any text messages from this 10 time period? 11 A. No, but I -- John Bethea came in once a 12 week. I had a conversation every week with John 13 Bethea. He was our rep. 14 Q. Was Mr. Yarger involved in these 15 conversations? 16 A. Sometimes, sometimes not. It depends if I 17 was there or not. 18 Q. So if you were not there, did Mr. Yarger 19 speak with Mr. Bethea, to your knowledge? 20 A. To my knowledge, I would assume, yes. 21 They were very good friends. They had known each 22 other 12, 13 years. 23 Q. To your knowledge, if you were not there, 24 did Mr. Yarger and John Bethea talk about -- 25 A. I don't know what they talked about, if I	1 loan agreement was being negotiated? 2 A. No. 3 (Defendant's Exhibit No. 3 was marked for 4 identification.) 5 BY MS. BRIDGES: 6 Q. Mr. Penland, I'm handing you a document 7 being marked as Defense Exhibit 3. Do you recognize 8 this? 9 A. Would this be the '16 contract? 10 Q. If you want to look through it, but I can 11 represent to you that, yes. And I -- 12 A. (Witness peruses document.) I haven't 13 seen this in a long time. And if you expect me to 14 read this, we're going to be here all night. 15 Q. No. If you just want to flip through it 16 and confirm that it looks like what you -- and your 17 sig- -- I can ask it, is your -- if you flip two 18 pages. Page 13 to start with. 19 A. (Witness complies.) If I may say that 20 this contract was expired, closed, and done away 21 with. And I paid it off and I got my reserve money. 22 And this thing was closed for a year and six months. 23 No business at all with this contract. 24 Now what page do you want me to go to? 25 Q. Page 13.

Page 42 1 A. Uh-huh. 2 Q. Is that your signature? 3 A. Yes. This is the signature that is mine 4 and this is the contract that was closed. 5 Q. This is the contract from November 21st -- 6 originally signed on November 21st, 2016 or -- 7 A. Yeah. 8 Q. -- effective on that date? 9 A. The closed contract, yes. 10 Q. Now, Mr. Penland, on page A-iv, iv, the 11 Bate -- little number in the corner says 1419, if 12 that's easier for you to find. 13 A. Do what now? 14 Q. This -- the Bates number in the corner is 15 1419. So it's -- 16 A. Okay. 17 Q. -- A-iv otherwise? 18 A. More? 19 MR. IMHOFF: 1419. 20 BY MS. BRIDGES: 21 Q. 1419. 22 A. Okay. 23 Q. Is that your signature on that page? 24 A. Yep. This is the signature of the closed 25 contract.	Page 44 1 MR. IMHOFF: Object to the form. 2 THE WITNESS: I don't... 3 BY MS. BRIDGES: 4 Q. Let me rephrase it. Did you have any 5 discussions with Mr. Haight, while -- directly while 6 this contract was being negotiated? 7 A. Yes. 8 Q. When was that? 9 A. It was in -- not in Tim's office, it was 10 in the office next to Tim, where me and Mr. Haight 11 went over the terms. 12 Q. Was that the date that it was signed? 13 A. I -- I'm pretty sure that's correct. 14 Q. Did you have any communications with 15 Mr. Haight prior to that, you -- you, yourself, have 16 any communications with Mr. Haight prior to that day 17 of signing? 18 A. I don't believe so. It was -- everything 19 was with John Bethea, since he was our rep. I have 20 many, many, many, many conversations with John 21 Bethea. 22 Q. Did you ever e-mail with John Bethea? 23 A. No, I don't e-mail. I've already -- I 24 don't e-mail. 25 Q. Did you ever text -- have any text
Page 43 1 Q. Mr. Penland, I'm just asking you if that's 2 your signature. 3 A. Yes. 4 Q. Okay. If you'll flip over to 1421. 5 A. (Witness complies.) 6 Q. Is that your signature on that -- 7 A. Yes. 8 Q. -- page? 9 A. Uh-huh. 10 Q. Let me finish my question. Is that your 11 signature on that page? 12 A. Yes. 13 Q. And then on 1425. 14 A. (Witness complies.) Yes. 15 Q. Is that your signature? 16 A. Uh-huh. Yes. 17 Q. And then on 1427, the last page? 18 A. (Witness complies.) Yes. 19 Q. Is that your sig- -- that is your 20 signature? 21 A. Yes. 22 Q. Okay. 23 A. Of the closed contract. 24 Q. Did you ever speak with Mr. Haight about 25 this agreement?	Page 45 1 messages with John Bethea? 2 A. No, I called him. 3 Q. So you have no documentations of these -- 4 written documentations of these conversations? 5 A. Well, when we depose him, he'll tell you. 6 Q. That's not my question, Mr. Penland. You 7 don't have any written documentation of those 8 conversations? 9 A. I don't have any written anything. 10 Q. So is it -- that would be a yes, you don't 11 have any written communications with Mr. Bethea? 12 A. I don't have any written communications 13 with John Bethea. 14 Q. Okay. 15 A. I always called. 16 Q. But you did not call Mr. Haight prior to 17 the signing of this contract? 18 A. I don't remember. That was 19 three-something years ago. So I don't -- I don't 20 remember -- 21 Q. To -- 22 A. -- if I did. 23 Q. To your knowledge -- 24 A. To my knowledge, I don't. But, I mean, I 25 don't know. I can't remember.

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1 Would it be okay if I used the men's room?
2 MS. BRIDGES: Oh, yes, if you want to take
3 a break.
4 (Recess was taken from 11:00 a.m. to 11:08
5 a.m.)
6 BY MS. BRIDGES:
7 Q. Mr. Penland, did there ever come a point
8 in time in which you took a break from dealing --
9 having any financial arrangements with Dealer
10 Financial?
11 A. Yeah.
12 Q. And when was that?
13 A. I don't know the exact dates, again, but
14 it was a year and six months when I closed the
15 contract, got the reserve money, and said goodbye.
16 And the reason for that was it was the worst floor
17 plan in the history of the United States of America.
18 Q. You entered this floor plan in November
19 21st, 2016?
20 A. Uh-huh.
21 Q. And it was ended in approximately -- let
22 me start that question over.
23 The security agreement was entered into on
24 November 21st, 2016?
25 A. I would assume.

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1 Q. Do you agree that's the date on the
2 agreement? Or, actually, on -- on the top of page 1,
3 first sentence of the first paragraph it says --
4 A. Yes, okay.
5 Q. Okay. So do you see where it says
6 November --
7 A. Yes. I got that.
8 Q. Do you have any reason to doubt that's not
9 the correct date?
10 A. No, I do not.
11 Q. And to your knowledge, was it deactivated
12 on or about February 20th of 2019? Would that sound
13 approximately correct to you?
14 A. Approximately.
15 Q. Did you ever speak with Mr. Haight about
16 deactivating this financing arrangement?
17 A. I told Karen. I sent -- Karen sent an
18 e-mail to close the account, terminate the account,
19 and give me my reserve money.
20 Q. Mr. Penland, did you ever speak with
21 Mr. Haight about deactivating the account?
22 A. No, I didn't. I didn't know I had to. It
23 would -- he -- he must have got the message, because
24 he closed it and got my money. So apparently he got
25 the e-mail.

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1 Q. But, Mr. Penland, you yourself did not
2 have any of the communications with Mr. Haight?
3 A. No, but he --
4 MR. IMHOFF: Object to form.
5 THE WITNESS: He got the e-mail. He sent
6 me my money and closed the account.
7 BY MS. BRIDGES:
8 Q. Do you know whether Mr. Yarger was
9 speaking with Mr. Bethea during this time period?
10 A. Which time period?
11 Q. During -- let's say, February --
12 approx- -- the month of February of 2019?
13 A. Yes.
14 Q. Yes, he was or yes, you're aware?
15 A. Yes, I'm aware.
16 Q. To your knowledge, what were the nature of
17 those conversations?
18 A. I can answer that, but I need to say
19 something prior to so it will make sense.
20 Q. Can you answer my question and then --
21 A. Okay. Yes. I was aware he was talking to
22 him.
23 Q. And what was the nature of those
24 conversations, to your knowledge?
25 A. Okay. I got to go back and -- a little

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1 bit farther and explain how this -- why these
2 conversations were coming up. Is that okay?
3 Q. If that's how to answer the question.
4 A. That's how to answer this question.
5 Q. (Nods head.)
6 A. I went over to get a new floor plan with
7 Spartanburg Auto Auction, the lady's name is Charna.
8 She said, I'll give you whatever you need. I was
9 asking for 600,000. She says, You're approved. I'll
10 call you tomorrow.
11 Charna called me and said, I've got a UCC
12 filing on me. I said, That's impossible. I closed
13 the account out a year and a half ago. Then I came
14 back and I said, Karen, call Dealer Financial and get
15 that damn UCC filing released off me, so I can get my
16 new floor plan with Charna. Because Charna has no
17 interest and no curtailments until the car is sold.
18 That was my whole thing. The same with
19 Glenn. I don't have to pay any insurance or
20 curtailments until the car is sold. That helps my
21 cash flow.
22 When I came -- Karen e-mailed, and
23 e-mailed, and e-mailed. And all of a sudden, a week
24 later, John Bethea shows up and says, We'll match
25 Charna's floor plan.

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1 Q. Mr. Penland, we'll come back to that. I
2 guess my question was, in the time period of February
3 2019, when your relationship with Dealer Financial
4 was deactivated, do you know whether Mr. Bethea and
5 Mr. Yarger had any conversations?
6 A. Oh, I don't know. I don't know what Tim
7 did on his off hours. I don't know if they hung out
8 together or drank together or what.
9 Q. Do you know -- did Mr. Bethea have any
10 conversations with you in February of 2019 about
11 staying with Dealer Financial?
12 A. The only way -- is this the -- when we
13 were trying to renegotiate?
14 Q. At the -- in 2019, when the plan was --
15 A. Terminated.
16 Q. -- deactivated.
17 A. Oh, no. Nothing. I told him I didn't
18 want any part of it. We were closing it.
19 Q. And who was that to?
20 A. That was with John Bethea.
21 Q. What did you understand John Bethea's role
22 with Dealer Financial to be?
23 A. I thought he worked for them.
24 Q. I mean --
25 A. He never said any other thing. I thought

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1 he was an employee.
2 Q. Did he ever tell you what his title was?
3 A. Never.
4 Q. Did he ever -- did you ever get anything
5 from Dealer Financial with John Bethea's signature?
6 A. No. It was always verbal. Now, Karen got
7 some e-mails from him, but I didn't.
8 Q. No, I'm not talking about e-mails. Did
9 you have anything with his -- a document with his
10 signature, you know, signing on behalf of --
11 A. No.
12 Q. -- Dealer Financial?
13 A. No. I have no idea. Everything was
14 verbal.
15 Q. Did you or anyone with Penland Automotive
16 speak with anyone -- speak with Dan Haight at Dealer
17 Financial from February of -- or, I'm sorry, yeah,
18 from February of 2019 until June of 2020?
19 A. Is that after the contract was closed?
20 Q. So, when the agreement was paused on
21 February 20th of 2019, it was deactivated?
22 A. The word's not paused. Canceled.
23 Q. When the con- -- when the contract was
24 deactivated --
25 A. There you go.

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1 Q. -- in 2019, did you have any -- until June
2 of -- approximately June of 2020, did you have any
3 conversations with Dan Haight at Dealer Financial?
4 A. No.
5 MR. IMHOFF: Object to the form.
6 BY MS. BRIDGES:
7 Q. From approximately February of 2019 until
8 June of 2020, are you -- to your knowledge, did
9 anyone at Penland Automotive have any discussions
10 with Mr. Haight at Dealer Financial?
11 A. Not when Mr. Haight, Dan -- John Bethea
12 would always stop by. Him and Tim were really good
13 friends. We would say -- and I would stop in, you
14 know, if I was there. I'd say hey to him.
15 Q. In the time period from February of 2019
16 to June of 2020, about how often would you estimate
17 Mr. Bethea came by?
18 A. Is this while the contract was going on or
19 after the contract was closed?
20 Q. It's from February of 2019 until June of
21 2020.
22 A. So that's after the contract was closed,
23 you're saying?
24 Q. That's the time period -- I'm asking from
25 February 2019 until June of 2020 --

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1 A. Okay.
2 Q. -- approximately how often --
3 A. John Bethea would probably stop by and
4 talk to Tim once a week. They were friends. If he
5 was in the area, he would stop in.
6 Q. Did you have any conversations with
7 Mr. Bethea, during that time period?
8 A. If he was in Tim's office I'd say, Hey,
9 how you doing, good to see you.
10 Q. Did you ever, in that time period from
11 February of 2019 to June of 2020, have any
12 discussions with Mr. Bethea about floor plan
13 financing with Dealer Financial?
14 A. No, I -- no. I went to -- I was going to
15 get my floor plan with Charna, which is Spartanburg
16 Auto Auction. Now, if Tim did, I was unaware.
17 Q. Did you ever ask Tim to stop speaking with
18 Mr. Bethea?
19 A. No. I didn't think there was any reason
20 to. They were friends.
21 Q. Throughout the time that Tim Yarger was
22 with Penland Automotive, was his title consistently
23 General Manager?
24 A. Uh-huh.
25 Q. Who began the negotiations with Dealer

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1 Financial in June and July of 2020?

2 A. I have to answer that with a story. And I

3 don't like doing that, but I have to.

4 After I got done with -- Charna said she

5 could not give me the floor plan because the UCC

6 filing had never been released from Dealer Financial.

7 After four separate attempts to try to get the UCC

8 filing released so I could get back with Charna,

9 which is the floor plan that I wanted, John Bethea

10 came in and said they would match Charna's, which is

11 Spartanburg Auto Auction's floor plan. I said, If

12 you can do that and put it in writing, I would

13 consider it. He said, I'll go back and talk to Dan.

14 I was told that they would.

15 Q. Who told you that?

16 A. Dan.

17 Q. In what --

18 A. Not Dan -- John Bethea, sorry. My bad.

19 John Bethea said they would, per Dan. And Tim Yarger

20 verified it.

21 Q. When you say Tim Yarger verified it, what

22 do you mean?

23 A. Verified that there were no curtailments

24 and no interest, just like the other two floor plans

25 that I got.

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1 Q. Was that in any sort of documentation?

2 A. Verbal. I was waiting for the contract.

3 There was never any mention of -- ever of this

4 contract being put into existence. Never. I'm

5 talking about the '16 contract.

6 Q. How many conversations, during this time

7 period, did you have, approximately, with Mr. Bethea?

8 A. 30.

9 Q. And what was the nature of those?

10 A. Where's my contract? Every week he came

11 in, if he came in twice, Where's my contract? He

12 said it was getting done.

13 Q. Did you personally ever follow up with

14 Mr. Haight at Dealer Financial to ask about the

15 contract?

16 A. No. John Bethea was a representative of

17 the company and he kept saying he was on it.

18 Q. Do you know what John Bethea's job title

19 was?

20 A. I thought he -- I thought, personally,

21 that he was Dan's right-hand man.

22 Q. What did he tell you his job was?

23 A. That he worked for Dealer Financial. He

24 was our representative. And he said he talked to Dan

25 three to five times a day.

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1 Q. Do you know whether Mr. Yarger ever spoke

2 with Mr. Haight at Dealer Financial?

3 A. Yes.

4 Q. Do you know what those conversations were?

5 A. I told Yarger to call Mr. Haight and tell

6 him that I haven't got my contract yet and I want my

7 contract. He took -- he got on his phone and went

8 outside, was walking around on the yard. I

9 wasn't -- I didn't hear the conversation. But when

10 he came back in he said it was being done.

11 Q. Do you know approximately when that

12 conversation happened?

13 A. No. I mean, I don't have the date or the

14 time or anything like that.

15 Q. Uh-huh.

16 A. I just --

17 Q. Would it have been, to your recollection,

18 in the June, July of 2020 period of time?

19 A. I'm just guessing. I mean, this

20 was -- when we got the first -- when the first

21 curtailments hit is when the e-mails started. I sent

22 Karen to say, Why am I getting curtailments and

23 interest? And then I called my attorney.

24 Q. When did you receive the first payment --

25 or first financing from Dealer Financial in 2020?

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1 A. I don't remember the date. I'm sure

2 you've got it.

3 Q. Was it prior to receiving notice of any

4 payments being --

5 A. I can pull the contract and get you the

6 exact date. I mean --

7 Q. Are --

8 A. -- are you -- wait a minute. I'm sorry.

9 I misunderstood the question. Can you hit it again

10 with me?

11 Q. Absolutely. When did you receive the

12 first financing from Dealer Financial in 2020?

13 A. It would be the day that they came and

14 checked out the cars and paid off the Auto Lenders.

15 But I don't know what date that was. John Bethea

16 told me that the contract would be there the

17 following day. I kind of thought that was strange,

18 but I said okay.

19 Q. Was this prior to receiving notice of any

20 invoices or payments being owed, did that occur?

21 A. That --

22 Q. That the -- the day they came out to check

23 the vehicles. Did that day occur prior to receiving

24 any sort of fees or invoice from Dealer Financial?

25 A. No, they came -- John Bethea took all day

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1 and he did it in one day.
2 Q. Okay. But did that one day happen before
3 you got notice of any sort of fees --
4 A. Yes.
5 Q. -- being owed or anything like that?
6 A. Yes, yes.
7 Q. Okay.
8 A. Like, again, I thought it was very strange
9 that I didn't have the contract, when they were doing
10 the booking out of the cars. Because I was --
11 expected to get the contract that following day, per
12 John Bethea.
13 Q. Did you contact John Bethea following that
14 day?
15 A. No. It was the day after that that he
16 stopped by. And I said, Where's the contract? He
17 said, They're working on it. I'm going to call Dan.
18 And he left. I thought it peculiar, but I just, you
19 know...
20 Q. Did you call Dan, at that point?
21 A. No. I was told by Tim Yarger that Dan
22 Haight didn't like me, so I had all my -- my business
23 with -- being done with John Bethea.
24 Q. When did Mr. Yarger say -- say that to
25 you?

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1 A. Numerous occasions. He said it to -- he
2 said it to the whole office. He said it to Karen.
3 Everybody in -- that was -- everybody that worked
4 there. I can't really use the exact termination
5 because it would be inappropriate.
6 Q. At that point in time had you had any
7 interactions with Mr. Haight, other than the day that
8 he came to sign the paperwork with you?
9 A. On this one?
10 Q. On -- when Mr. Yarger -- when you say
11 Mr. Yarger made those statements, had you had any
12 other -- any interaction with Mr. Haight, other than
13 the day you --
14 A. Not that I recall.
15 (Defendant's Exhibit No. 4 was marked for
16 identification.)
17 BY MS. BRIDGES:
18 Q. Mr. Penland, I'm handing you an exhibit
19 that's marked -- marked Exhibit 4. Now, I recognize
20 you indicated you do not e-mail this, but are you
21 familiar with this doc- -- these -- this exchange?
22 Have you seen it before?
23 A. Let me read it.
24 Q. Absolutely.
25 A. (Witness peruses document.) This is about

Page 60

1 fees, correct?
2 Q. I just want to know if you're familiar
3 with the -- this e-mail exchange. Have you seen this
4 before or are you familiar with the topic of it?
5 A. I believe that this is when they started
6 saying that there was going to be a floor plan fee
7 invoice generated. And there wasn't supposed to be
8 any. And this is when I'm still waiting for my
9 contract.
10 Q. Now, do you know who Kim Rusch is?
11 A. Tim Rusch, no.
12 Q. Kim Rusch.
13 A. Kim, oh, no.
14 Q. Kim Rusch.
15 A. No, no. I believe Karen would know that.
16 Q. Did you ever have any interactions --
17 A. No.
18 Q. -- with her? In looking at the first
19 e-mail, it's dated Wednesday, August 26, 2020. It
20 says, "Thanks, but we were under the belief that we
21 weren't having fees owed until the car sales. I
22 think Tim is reaching out to John and Dan."
23 Is that what that -- the first top -- did
24 I read that correctly? It's that top e-mail.
25 A. (Witness peruses document.) What page is

Page 61

1 that on?
2 Q. I'm sorry. On the very first page. The
3 very top. It's from Karen Willis and it says, "Sent
4 Wednesday, August 26, 2020." And then it says, "To
5 Kim Rusch." And the it says -- starts with,
6 "Thanks."
7 A. Yes. Okay.
8 Q. Okay.
9 A. Yeah.
10 Q. Were you aware that Karen had sent this
11 e-mail to Dealer Financial?
12 A. Yeah. I know that we were starting to get
13 in trouble right here. This was a problem.
14 Q. And you were aware of this e-mail being
15 sent?
16 A. Yes.
17 Q. And were you aware that -- is the Tim
18 referenced here Mr. Tim Yarger, to your knowledge?
19 A. Yes.
20 Q. Were you aware that Mr. Yarger was --
21 A. I went --
22 Q. -- reaching out?
23 A. I went to Yarger and said, What is all
24 this about? And then I called John Bethea and asked
25 him what's this all about, because there's not

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1 supposed to be any curtailments or interest until the
2 cars sold.
3 Q. So, did you ask Mr. Yarger --
4 A. Then I -- no, I asked John, Where's my
5 contract?
6 Q. Do you recall what the response was?
7 A. Working on it.
8 Q. Were you aware that Mr. Yarger was
9 reaching out to John Bethea and Dan Haight?
10 A. I know he called John. I don't know if he
11 called Dan. We thought John was a little bit more
12 important than he was. Apparently, he's just a
13 flunky. He sure acted like he was important.
14 Q. Did you, Mr. Penland, send an e-mail to
15 Dan Haight or anyone at Dealer Financial asking about
16 your financing arrangements?
17 A. If I sent an e-mail, it would have been
18 through Karen, because I don't e-mail.
19 Q. But you, yourself, did not?
20 A. No. I don't e-mail.
21 Q. Did you call Mr. Haight at Dealer
22 Financial to ask about the financing terms?
23 A. Called John Bethea.
24 Q. So that would be you -- so just to go
25 back. Did you call Dan Haight to discuss the --

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1 A. No.
2 Q. -- financing terms?
3 A. Because I was told Dan doesn't like me
4 about 600 times.
5 Q. You -- did you call Mr. Haight to ask
6 about what you were told?
7 A. No.
8 Q. Did you send Mr. Bethea a text message --
9 A. No.
10 Q. -- questioning -- may I finish my -- let
11 me finish my question. Did you send Mr. Bethea a
12 text message questioning the terms of any sort of
13 financing arrangement with Dealer --
14 A. He came in -- again, he would've come in
15 twice a week. And I'd say, I need my contract. What
16 is going on? And he left.
17 Q. But did you send a text message or any
18 other documentat- --
19 A. No.
20 Q. Let me finish my question. Did you send a
21 text message or other written documentation
22 questioning or asking about the financing
23 arrangement?
24 A. No. I personally did not. Karen might
25 have.

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1 Q. Did you ever send a document to Dan Haight
2 with any proposed terms for a financing arrangement?
3 A. No.
4 Q. Did you send Mr. Bethea a document with
5 any proposed --
6 A. No.
7 Q. -- finance terms? Approximately how many
8 cars did you have on your lot in September of 2020,
9 to your knowledge?
10 A. September of what?
11 Q. 2020.
12 A. I'd have to pull the inventory. I
13 don't -- I can't remember.
14 Q. Do you know if it was more or less than
15 50? September of 2020.
16 A. I don't think it was 50, no.
17 Q. Do you think it was more than 20?
18 A. In '20 -- I would say it was around 22
19 cars, because I kept it down. We -- we eliminated
20 our employees and I was paying the bills, keeping the
21 lights on, paying everybody, and we're going to ride
22 the pandemic through. So I kept a minimum amount of
23 cars.
24 Q. What other employees did you -- or
25 independent contractors did you eliminate in 2020?

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1 Who?
2 A. Well, salesmen, Yarger. Like I say, I
3 kept Karen, Darryl, and Joey, and me, and a lot man
4 named Tinky. With the amount of cars that I had at
5 that time, I could pay the bills, keep the lights on,
6 and we'll ride this pandemic thing out.
7 Q. Was Mr. Yarger -- let me rephrase this
8 question. Did your relationship -- did this
9 relationship with Mr. Yarger end in September of
10 2020, to your recollection?
11 A. I don't know the exact date. You might
12 have it. If you pull it out, I can verify it. I
13 don't -- is that a document you're pulling from us?
14 Q. (Nods head.)
15 A. Okay.
16 Q. One second. I'm not going to mark this as
17 an exhibit yet. But let me hand you a document that
18 was used in yesterday's deposition, just to see if
19 this refreshes your recollection of timing. Read
20 that.
21 A. (Witness peruses document.) Yes.
22 Q. So based on this e-mail, does that refresh
23 your recollection --
24 A. Yes.
25 Q. -- as to when Mr. Yarger --

Page 66 1 A. Yes, it does. Yes. 2 Q. So when did Mr. Yarger's relationship with 3 Penland -- 4 A. It -- 5 Q. -- Automotive end? 6 A. It could have been a couple of days prior 7 to this. And Karen just got around to send it. Or 8 it could have been the same day. I don't actually 9 100 percent remember. 10 Q. So, based -- and what is the date of that 11 document? 12 A. September 23rd of 2020 at 11:04 a.m. 13 Q. Okay. I'll take it. So, based on this 14 refreshing your memory, Mr. Yarger's relationship 15 with Penland Automotive ended pri- -- by the end -- 16 A. On -- 17 Q. -- on or about -- by the end of September 18 of 2020? 19 A. Uh-huh. 20 Q. Did you ever ask anyone to get in touch 21 with Dan Haight or Dealer Financial on your behalf 22 regarding the financing arrangement in the fall of 23 2020? 24 A. I had Karen e-mail. 25 Q. Was there anybody else you asked to	Page 68 1 I was going to talk to you about that afterwards, the 2 one question we had yesterday. 3 MR. IMHOFF: Yes. So, now that it was all 4 on the record. So ask him the question -- 5 MS. BRIDGES: Uh-huh. 6 MR. IMHOFF: -- I'm going to allow it, 7 with your stipulation that you won't ask him any 8 attorney-client privilege about anything else. We'll 9 see if I followed the law on that correctly or not. 10 MS. BRIDGES: Okay. Here's the -- that 11 was what I was trying to come up with. 12 MR. IMHOFF: Okay. 13 BY MS. BRIDGES: 14 Q. And I'm asking about a conversation that 15 occurred in approximately October -- early October of 16 2020, when you said you called your attorney; is that 17 correct? 18 A. Yes. 19 Q. What did you -- and that attorney was 20 Mr. Imhoff? 21 A. Yes. 22 Q. What did you say to your attorney in that 23 conversation regarding this matter? 24 MR. IMHOFF: All right. So, for the 25 record, as we just discussed, I'm going to allow him
Page 67 1 contact? 2 A. No. Well, John Bethea. 3 Q. Uh-huh. I believe -- and, Mr. Penland, I 4 believe earlier in your testimony you mentioned that 5 you called your attorney, at some point; is that 6 correct? 7 A. Yes. 8 Q. Was that Mr. Imhoff? 9 A. Yes. 10 MR. IMHOFF: I think you're pausing for 11 attorney-client privilege. 12 MS. BRIDGES: Yes. 13 MR. IMHOFF: I mean, I don't know if you 14 can waive the attorney-client privilege for one 15 conversation, but if you will stipulate an agreement 16 that we will waive it for that conversation and no 17 other conversation, then we'll put it on the record, 18 mark it, and take it to the judge to make sure that 19 doesn't waive all attorney-client privilege before we 20 allow it. 21 Does that make sense? I mean, we've got 22 to file a protective order anyway, so we might as 23 well go ahead and get a protective order on that, 24 also. 25 MS. BRIDGES: Yeah, and I may -- actually,	Page 69 1 to answer this question with the belief and 2 reservation that I am not waiving attorney-client 3 privilege for any other conversation, at any other 4 time. And with your stipulation that you will agree 5 that I'm not waiving attorney-client privilege for 6 any other conversation, at any other time, other than 7 October 8, 2020. 8 MS. BRIDGES: I'll agree that I will not 9 ask about any other attorney-client privilege 10 conversations, at this point. I think we'll need to 11 take that up with the Court as to whether 12 that -- what we're agreeing to is permissible 13 under -- 14 MR. IMHOFF: I can't -- 15 MR. BRIDGES: -- South Carolina law. 16 MR. IMHOFF: I can't waive the entire 17 attorney-client privilege because I've waived it for 18 this. 19 MS. BRIDGES: Uh-huh. 20 MR. IMHOFF: And, honestly, I just don't 21 know, sitting here today, if you can waive it for 22 individual -- 23 THE WITNESS: Is it possible while you 24 talk, that I go to the men's room? 25 MS. BRIDGES: Of course. Let's go off the

Page 70 1 record for a minute. 2 (Off-record discussion.) 3 (Recess was taken from 11:48 a.m. to 4 11:55 a.m.) 5 (Defendant's Exhibit No. 5 was marked for 6 identification.) 7 BY MS. BRIDGES: 8 Q. Mr. Penland, I've marked -- handed you a 9 document that's been marked Exhibit 5. Do you 10 recognize this? And take your time in reading it 11 good. 12 A. Is this an e-mail? 13 Q. This was one of the -- this is a document. 14 I want to know if this was something -- it's not in 15 an e-mail format. Whether it was attached to an 16 e-mail initially, I'm not certain. I want to know if 17 this is something you've seen before and are familiar 18 with. 19 A. I actually don't remember this. I'm not 20 saying I didn't get it. I'm not saying I didn't read 21 it. But I just can't remember the words -- the 22 \$750,000 is throwing me. Again, how did this come? 23 Q. I think I'm -- I more want to know if 24 you're familiar with this. 25 A. Well, we'll have to come back to this one,	Page 72 1 not giving me the details of what you discussed, but 2 what was your intention when you called your 3 attorney? 4 A. To get my contract. 5 Q. Do you know whether or not Mr. Imhoff took 6 any action following -- again, not asking the 7 details. Do you know if he took any action following 8 your discussion with him? 9 A. No. I don't know if he did. 10 Q. Would you have -- again, not telling me 11 the details of the conversation, would you have 12 expected him to, based on your discussion? 13 A. Well, I can't answer that because 14 of -- that would be -- 15 Q. I'm not -- 16 A. -- I'd have to get into our conversation. 17 Q. No, I'm not asking you about your -- the 18 details of your conversation. I'm asking based on 19 your understanding. Would you have expected him to 20 take any action? 21 A. So you're asking me to speculate? 22 Q. I'm asking for your opinion, based on your 23 conversation with him. Would you have expected 24 Mr. Imhoff to take any sort of action? 25 A. I will -- yes.
Page 71 1 because I can't remember it right now. 2 Q. Would you, in the course of operating 3 Penland Automotive, be the one to review commitment 4 letters or proposals like this? 5 A. Yes, I would. And I don't remember 6 \$750,000. 7 Q. Do you recall whether you took any 8 action -- if you upon, you know, receiving this -- 9 MR. IMHOFF: Object to form. 10 THE WITNESS: I didn't do anything. 11 BY MS. BRIDGES: 12 Q. Do you recall whether anybody at Penland 13 Automotive or otherwise told you about this document? 14 A. I don't recall. 15 Q. Circle back to October 8. Is that the 16 date we discussed? 17 MR. IMHOFF: (Nods head.) 18 BY MS. BRIDGES: 19 Q. October 8. I don't -- I'm not asking you 20 about your conversations with your lawyer. What 21 prompted you to get in touch with your lawyer? 22 A. Because of the curtailments and interest 23 came in. It wasn't supposed to happen that way. And 24 I called my attorney. 25 Q. What was your intention, when -- again,	Page 73 1 Q. Okay. What did you hope or think that 2 action would be? 3 A. That he could get my contract. 4 Q. Did you receive a phone call from 5 Mr. Haight on about October 8th of 2020? 6 A. No. Oh, wait a minute. Are you speaking 7 of when I was at the auction? 8 Q. When you got -- I'm asking for phone 9 calls. So that's the date of the auction. Did you 10 get a phone call from Mr. Haight? 11 A. If that was the time I was buying cars at 12 the auction and Mr. Haight called me. 13 Q. Uh-huh. 14 A. I was buying a car, I said I'd call back. 15 I planned on calling back the next day. Because when 16 I buy cars there, I have to drive every car back all 17 the way to Laurens. 18 So it would have been the following day I 19 was going to call him back. I had no time to call 20 him -- I bought six, seven cars that night. 21 Q. Do you recall whether you received a 22 follow-up call from him that you either did or did 23 not answer? 24 A. No, I never got no more calls from him. 25 Not that I recall. But I was going to call him the

Page 74 1 following day. But I didn't have to because he 2 showed up with repossession papers and took my cars. 3 So he came and found me at the auction. 4 Q. Were you notified that Dealer Financial 5 was coming to secure vehicles? 6 A. You're going to have to reframe the 7 question. 8 Q. Were you notified that -- 9 A. By who? 10 Q. Anybody. That -- were you provided any 11 notification from anybody that Dealer Financial was 12 coming to secure vehicles? 13 A. I got a phone call from ALPHA Towing 14 saying that I was auth- -- that they were given 15 authorization to go repossess my cars. And I said, 16 What? And he said, Yeah. I got to do it, Billy. 17 But I ain't going to do it -- I ain't going to do it 18 at night. I'm just going to tell you. I said, Well, 19 I -- I don't -- I don't understand why, but okay. 20 Q. Who did you speak with at ALPHA Towing? 21 A. Ted. 22 Q. Do you know Ted's last name? 23 A. No. 24 Q. When did that call take place? 25 A. I can't give you an exact time. I can	Page 76 1 keys -- and handed the keys to him. I said, Just 2 don't -- just do whatever they ask. Don't cause no 3 trouble. 4 Q. Approximately how many vehicles were on 5 your lot on that -- on October 8th, 2020? 6 A. On the -- when Ted called me and said, 7 Billy, I ain't going to do what they're telling me to 8 do at night, because we've known each other a long 9 time. I said, Well, I ain't going to get you in no 10 trouble or anything like that. 11 He said, There's probably three or four 12 cars that are not going to be on the lot. I said, 13 Every car's on that lot. There's -- the only car 14 that's missing -- he said, Well, I know where that 15 is, because they told me that was at Tim Yarger's 16 house. I said, Oh, they know that. Okay. 17 And he said, I'm just there to get the 18 cars. I said, Everything's there. Here's the list. 19 They're all there. Don't -- don't -- just -- we 20 won't give you no trouble. Handed him the keys. 21 Didn't cause no trouble. 22 Q. And how many other cars were on your lot, 23 at that time? 24 A. Another seven. 25 Q. Other than Joey, were any other
Page 75 1 just guess. It was in the afternoon sometime. 2 Q. Was it the same afternoon that you had 3 received a phone call from Mr. Haight? Was it that 4 same day? 5 A. Yes, yes. 6 Q. What did you do in -- 7 A. I think I was still at the auction, when 8 the -- when Ted called me. 9 Q. What did you do in response? 10 A. Well, there's really not a lot you can do. 11 Q. Did you go and meet ALPHA Towing at your 12 lot? 13 A. No, I didn't. I was too far away. 14 Q. Did you tell anyone who was at your place 15 of business that they were coming? 16 A. Yes. 17 Q. Who did you -- 18 A. Well, actually, I called Joey and said, 19 Apparently they are going to repossess our cars and I 20 have no clue why. And he asked why. And I said, I 21 have no idea. I said, Go ahead and, you know, 22 cooperate. Don't cause no trouble. 23 Q. To your knowledge, what did Joey do upon 24 your instructions to cooperate? 25 A. He parked the cars out back, put the	Page 77 1 independent contractors or employees present, at this 2 time? 3 A. Darryl Jeter. I think Karen already went 4 home. 5 Q. And who is Mr. Jeter? 6 A. He's one of my salesmen. 7 Q. And was he at the auction with you or was 8 he at your dealership, to your knowledge? 9 A. No, I was at the auction by myself. 10 Q. So to your knowledge, was Mr. Jeter at -- 11 A. At the car lot. 12 Q. -- the car lot? 13 A. I told him, don't give them no trouble 14 because all it's going to do is make things worse. 15 Q. What did you do the next day? 16 A. I went to the auction, where Dan and Steve 17 chased me around the auction. Everybody watching. 18 They got papers in their hands like this 19 (indicating), you know, making sure everybody saw. 20 Embarrassed the living shit out of me. 21 Now, Darryl was with me, at that time, 22 standing three inches away from me. Dan handed me 23 the papers and I said, What is this? He goes, We re- 24 -- we took your cars because you're in default. I 25 said, I'm not in default. I don't owe you a dime.

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1 He goes, You're in default. I said, Well, we'll see
2 what happens in court. He goes, There will be no
3 court. There will be no court. I said, We'll see
4 about that. And I walked away.
5 He proceeded to go back into the auction
6 with the papers in his hand walking around.
7 Everybody in the world was asking me what was going
8 on. Him and Steve. And he said, There will be no
9 court, about seven times. And I said, We'll see
10 about that.
11 (Defendant's Exhibit No. 6 was marked for
12 identification.)
13 BY MS. BRIDGES:
14 Q. Mr. Penland, I'm handing you a document
15 that's been marked as Exhibit 6. Actually, will you
16 hand me that back? I might have given you the wrong
17 piece of paper. No, I apologize, I had the wrong one
18 in my hand.
19 You can take a minute and review it. Do
20 you recognize this document?
21 A. Yeah, that's what he handed me.
22 Q. And when you say handed you, who handed it
23 to you?
24 A. Dan.
25 MR. IMHOFF: Hold on a minute.

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1 THE WITNESS: Is this the one he handed
2 me?
3 MS. BRIDGES: Did I give you the wrong
4 one?
5 MR. IMHOFF: What document are you trying
6 to use as Exhibit 6?
7 MS. BRIDGES: Did I give you the wrong --
8 MR. IMHOFF: I don't know.
9 MS. BRIDGES: October 8th, 2020 letter.
10 MR. IMHOFF: I just marked --
11 MS. BRIDGES: I think I may have handed
12 you the wrong copy, Jason. I had the right one, my
13 apologies. If you'll hand me that one back. I'll
14 take that one back.
15 MR. IMHOFF: I wrote on it.
16 MS. BRIDGES: That's all right. I can
17 scratch it off. I apologize, Jason.
18 MR. IMHOFF: Do you want to start that
19 over?
20 MS. BRIDGES: Yes.
21 BY MS. BRIDGES:
22 Q. All right. Mr. Penland, I've handed you
23 what has previously been marked as Defense Exhibit 6.
24 It's a letter dated October 8th of 2020. Do you
25 recognize it?

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1 A. Uh-huh.
2 Q. Is that a yes?
3 A. Yes.
4 Q. What is this?
5 A. It's some letter Dan handed to me saying I
6 was in default of something.
7 Q. And was this what you received on -- did
8 you receive this at the auction?
9 A. Yeah, in front of 200 people.
10 Q. Did -- was there anybody with Mr. Haight,
11 at this time?
12 A. Yes. Some big guy name -- tall guy named
13 Steve.
14 Q. Had you ever --
15 A. Never seen him before.
16 Q. Let me finish my question.
17 A. All right.
18 Q. Have you ever met --
19 A. No.
20 Q. -- Steve? Had you ever had any
21 conversations with him --
22 A. No.
23 Q. -- to your knowledge? Did he say anything
24 in your conversation?
25 A. Hello.

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1 Q. Did he say anything else?
2 A. No. He was very quiet. Dan was doing all
3 the talking.
4 Q. Did you have any further conversations
5 with Mr. Haight or Mr. Lanzl at the auction that day?
6 A. Dan said, You want the cars back? You
7 want the cars back? I said, No, we're going to let
8 the courts decide. You repossessed my cars. And
9 we're going to let the courts decide. I don't even
10 think -- I said, You don't even have a contract.
11 He said, There will be no court. There
12 will be no court. There will be no court. I said,
13 We'll see about that. And I walked off. He
14 proceeded to walk back into the auction, holding the
15 papers, walking around.
16 Q. Did you see Mr. Haight speak to anybody
17 else at the auction?
18 A. Yes.
19 Q. Who?
20 A. I don't know who they are. There's 200
21 people there.
22 Q. Did you hear what the nature of any
23 conversations he had was?
24 A. No, I didn't. But he didn't put the
25 papers away. The papers were in his hands, his copy,

Page 82 1 I guess. 2 Q. Do you know anybody that can identify 3 anybody that -- 4 A. Yeah, Ed Andrews -- 5 Q. -- saw Steve -- 6 A. Ed Andrews was there. Darryl -- Ed 7 Andrews was there and Darryl Jeter was there. Ed 8 Andrews came up to me and said, What the hell's going 9 on? I said, You wouldn't believe it, if I told you. 10 Of course, then it went to -- it spread 11 through like wild fire. I got about all these -- I 12 got a lot of phone calls. Then I had to do a lot of 13 explaining. 14 Q. Who is Ed Andrews? 15 A. He's another car dealer. 16 Q. And was he someone you said you saw 17 Mr. Haight or Mr. Lanzl speak to? 18 A. Yeah. 19 Q. Do you -- did you hear what their 20 conversation was -- 21 A. Oh. 22 Q. -- between Mr. Andrews -- 23 A. Wait a minute. I must have -- 24 Q. Okay. I -- 25 A. Did Mr. Andrews hear the conversation?	Page 84 1 Q. Did you see Mr. Haight and Mr. Lanzl 2 specifically speak to anybody at the auction? 3 A. Yeah, they were inside talking to 4 everybody. 5 Q. Do you -- can you tell me who or any 6 names -- 7 A. I don't -- 8 Q. -- of anybody? 9 A. I don't know. 10 MR. IMHOFF: Object. 11 THE WITNESS: There's 200 people there. 12 BY MS. BRIDGES: 13 Q. Let me finish my question. 14 A. They were going -- I don't know all their 15 names. 16 Q. Was there anyone that you saw them speak 17 to that you could identify? 18 A. No. There's 200 people there. I don't 19 know them all. 20 Q. Did you ever hear any conversations -- 21 A. I stayed away from them. 22 Q. Let me -- let me finish my question. Did 23 you ever hear any conversations Mr. Haight or 24 Mr. Lanzl had with anybody? 25 A. No. I didn't.
Page 83 1 Q. Did you see Mr. Andrews speak with 2 Mr. Haight -- 3 A. Oh, no -- 4 Q. -- is what I was asking. 5 A. No, no, no. 6 Q. Okay. 7 A. No. But he was -- he was watching what 8 was going on. Because Dan got a little close to me, 9 a little too close to my personal space. 10 Q. But, and I apologize, I just want to make 11 sure I understand -- that we understand each other 12 here. You did not see Mr. Andrews speak to 13 Mr. Haight or Mr. Lanzl? 14 A. No, because they don't know each other. 15 But they knew there was trouble, because I was pinned 16 up against a wall. He had his head down and he just 17 kept repeating the same thing over and over. Ain't 18 going to be no court. Ain't going to be no court. 19 Do you want the cars back? Do you want the cars 20 back? That's all he kept saying. 21 Q. And did you respond to, "Do you want the 22 cars back?" What was your response to that question? 23 A. I was very, very angry, okay, 24 understandably. I said, No, we'll let the courts 25 decide. Because I felt like I was raped.	Page 85 1 MR. IMHOFF: Object to form. 2 BY MS. BRIDGES: 3 Q. Let me rephrase. Did you ever hear any 4 conversations that Mr. Haight had with anybody? 5 A. No. 6 Q. Did you ever hear any conversations that 7 Mr. Lanzl had with anybody? 8 A. No. I stayed away from them. But I got 9 eyes and I can see. They stayed there at the auction 10 for approximately 30 minutes, while the auction was 11 going on inside. 12 Q. A few moments ago you indicated you 13 received phone calls from other people. Who did you 14 receive phone calls from? 15 A. Matt Mew. 16 Q. Will you spell that? 17 A. M-a-t, M -- M-e-u or something like that. 18 Q. And who is -- okay. I'll let you give the 19 list and then I'll ask you about each one. 20 A. He's a wholesaler. I got -- I got phone 21 calls from -- of course, Ed Andrews. I can get you 22 the list. 23 Q. Is that -- can you give that list of names 24 to your attorney -- 25 A. Yes, I will.

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1 Q. -- who can then provide it to me? Okay.
2 For any of these -- what were the nature of any of
3 these conversations? If you want to go one by one
4 with Matt.
5 A. Well, they was all the same thing. What
6 happened?
7 Q. And what did you tell them?
8 A. I said, They came and took my cars for no
9 reason.
10 Q. To your knowledge, had any of these -- are
11 you aware of any conversations any of these
12 individuals who called you had with Mr. Haight?
13 A. No.
14 Q. Are you aware of any conversations these
15 individuals had with Mr. Lanzl?
16 A. I assume that's Steve?
17 Q. Yes. Steve Lanzl.
18 A. Oh, no. My two other floor plan companies
19 found out about it.
20 Q. And who were the two other floor plan
21 companies?
22 A. Charna. In fact, they actually put the --
23 they put her name on one of the letters. I'll have
24 to get that.
25 Q. And who's the other one?

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1 A. Auto Lenders.
2 Q. Oh, is that Charna?
3 A. No. Auto Lenders is Glenn Hall. I had to
4 do a lot of explaining.
5 Q. Following that day at the auction, did you
6 personally have any further -- any other
7 communications with Mr. Haight?
8 A. No.
9 Q. Did you have any further, following that
10 day of the auction, any further communications with
11 Steve Lanzl?
12 A. No.
13 Q. Did you have any further communications,
14 following that day at the auction, with John Bethea?
15 A. No. He vanished.
16 MS. BRIDGES: Off the record for just a
17 minute.
18 (Off-record discussion.)
19 (Recess was taken from 12:23 p.m. to 12:43
20 p.m.)
21 BY MS. BRIDGES:
22 Q. Mr. Penland, what time, approximately, did
23 Mr. Haight and Steve Lanzl arrive at the auction, to
24 your knowledge?
25 A. I'm going to say 9:30, 10:00. Between

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1 9:30 and 10:00.
2 Q. And how long was your discussion?
3 A. Less than a minute.
4 Q. And approximately, to your knowledge, what
5 time did you see them leave, if you saw -- if you do
6 know?
7 A. I think I went ahead -- after 30 minutes I
8 left.
9 Q. I believe you mentioned that Mr. Jeter was
10 standing with -- nearby --
11 A. Right next to me.
12 Q. -- during the conversation with
13 Mr. Haight --
14 A. Yes.
15 Q. -- and Mr. Lanzl. Was anybody else, to
16 your knowledge, nearby?
17 A. Seven, eight feet away was a buddy of mine
18 named Ed Andrews.
19 Q. Did Mr. Andrews tell you whether or not he
20 heard the conversation?
21 A. No. He -- no, he said something was
22 wrong, but he didn't want to, you know, get close.
23 Q. You mentioned earlier that there was one
24 vehicle with Mr. Yarger as of October 8, 2020; is
25 that correct?

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1 A. That's what -- yes.
2 Q. Why did Mr. Yarger still have that
3 vehicle?
4 A. He wouldn't bring it back.
5 Q. Had you requested it be returned?
6 A. Yes.
7 Q. What, if any, response did you receive?
8 A. Nothing.
9 (Defendant's Exhibit No. 7 was marked for
10 identification.)
11 BY MS. BRIDGES:
12 Q. Mr. Penland, I'm handing you a document
13 that has been marked Defense Exhibit 7. Do you
14 recognize this document?
15 A. I have not read it.
16 Q. Why don't you take a minute and read it.
17 A. (Witness peruses document.) Can I mark on
18 this?
19 Q. What?
20 A. Can I mark on this? No?
21 Q. Sure. Uh-huh.
22 A. Yes?
23 Q. Yeah. But I will ask you what you marked,
24 when we go through that.
25 A. (Witness peruses document.) Okay.

Page 90 1 Q. Have you had an opportunity to read it? 2 A. I just now did. 3 Q. Okay. Is there anything within this 4 Affidavit with which you disagree? 5 A. Everything. 6 Q. Okay. Looking at paragraph 8, then, on 7 page 2. It says -- and I'll -- 8 A. On page what? 9 Q. Page 2, paragraph 8. 10 A. Uh-huh. 11 Q. It says, "DFH provided floor plan 12 financing to Penland Automotive pursuant to a loan 13 and security agreement dated November 21st, 2016," 14 and goes on from there. Is that incorrect? 15 A. Well -- 16 MR. IMHOFF: Object to form. 17 THE WITNESS: That's -- that part is 18 correct in '16, that I did sign that contract in '16. 19 BY MS. BRIDGES: 20 Q. And I'll finish reading this. For 21 completeness I'll read all of paragraph 8. So, "DFH 22 provided floor plan financing to Penland Automotive 23 pursuant to a Loan and Security Agreement dated 24 November 21st, 2016, (the "credit agreement"). Under 25 the credit agreement, DFH would make advances to or	Page 92 1 paragraph, where it says -- goes -- there are words. 2 And then it says, "accept on unfavorable terms." Is 3 that what you're referring to? I just want to make 4 sure I'm in the same spot. 5 A. Yeah. 6 Q. Okay. 7 A. The -- the only way I would consent to 8 this was if they matched the no interest and no 9 curtailments until the car was sold, like my other 10 ones. My other floor plans. I never knew about 11 Mr. Haight declined to match these terms. That's new 12 to me. 13 Q. And when you say that, are you referring 14 to paragraph 13? 15 A. When it says, "I contact," that's Tim? 16 Q. Yes. 17 A. Okay. I'm not aware of that because I was 18 told that they were going to match it. So I 19 totally -- I'm unaware of number 13. That is the 20 reason why I left. 21 Q. I'm sorry, what are you -- when you say 22 the reason why you left, I know you're -- you're 23 pointing at something, and I just want to make -- 24 A. Okay. I left -- 25 Q. -- sure the record is clear.
Page 91 1 for the benefit of Penland Automotive for the purpose 2 of purchasing used car inventory for the dealership. 3 And Penland Automotive was required to repay those 4 advances in accordance with the terms of the credit 5 agreement. 6 Those terms required Penland Automotive to 7 make periodic" -- "periodic interest payments and 8 principal curtailments to DFH, whether or not the 9 financed vehicles had been sold." 10 Did I read that correctly? 11 A. That is correct. 12 Q. Was that -- is that paragraph -- 13 A. That paragraph's correct. I stand 14 corrected. I'm sorry. 15 Q. So what within this Affidavit do you 16 disagree? 17 A. Well -- 18 MR. IMHOFF: Object to form. 19 THE WITNESS: Number -- 20 BY MS. BRIDGES: 21 Q. If there's anything. If there's anything 22 further that you disagree with, what would it be? 23 A. Number 12. Unfavorable terms. 24 Q. And just to make sure I'm where you are, 25 are you in paragraph 12, third line of that	Page 93 1 A. -- because of the curtailments and the 2 interest. 3 Q. Is there anything else in this Affidavit 4 with which you disagree? 5 MR. IMHOFF: Object to the form. 6 MS. BRIDGES: What's your objection? 7 MR. IMHOFF: You're asking him to read an 8 entire 17 paragraph Affidavit and identify each 9 sentence or paragraph that he disagrees with. 10 BY MS. BRIDGES: 11 Q. We'd be happy to -- he can take as much 12 time as you would like. 13 A. Then I, like I say, I disagree with all of 14 it. Except for 13. Everything else. Or -- yes, 13. 15 Well, and 5. He said I, meaning Tim, withdrew from 16 the partnership. 17 Q. Paragraph 5? 18 A. Yeah. 19 Q. I'm looking at it. What do you -- 20 A. He said, "I withdrew from the partnership 21 or resigned my position as General Manager," which I 22 don't agree with that because he was fired. So I 23 disagree with that, also. He said he withdrew, I 24 fired him. So how would you interpret that? 25 Q. That's what --

Page 94 1 A. Is that a disagreement? 2 Q. If you say you disagree with it, then that 3 is what I'm asking, is... 4 A. But I fired him. He said he quit. 5 Q. In your opinion, is that a disagreement? 6 A. Yes. 7 Q. Okay. Did you obtain any floor plan 8 financing after October 8th of 2020? 9 A. Yes. 10 Q. From who? 11 A. Kinetic Advantage. 12 Q. Did you obtain -- or did Penland 13 Automotive obtain any financing from anybody else? 14 A. (Shakes head.) I assume you're meaning 15 floor plan? 16 Q. I'm asking any -- any -- did Penland 17 Automotive receive financing from anyth- -- anyone 18 else since October 8, 2020? 19 A. Are you referring to floor plan? 20 Q. I'm asking if there's any financing. I'm 21 not restricting it to anything specific. You said 22 Kinetic Advantage was one floor plan. 23 A. That's a floor plan, yes. 24 Q. Did you receive finan- -- did Penland 25 Automotive receive financing --	Page 96 1 confusing, just because of the way the documents 2 print. So bear with me and we'll make sure we're 3 both on the same page together. 4 So if you can put the first page just to 5 the side, because that's sort of summary page. Just 6 so that you can you still see it while looking at the 7 rest of the document, I think that should help us all 8 stay on the same page. 9 All right. In looking at the -- what is 10 the second page of the packet I handed you, the first 11 page of -- that has UCC-1 on it. 12 A. Uh-huh. 13 Q. Are you familiar with what the UCC 14 financing statement is? 15 A. Yeah, that means they got a lien on you or 16 something. 17 Q. Uh-huh. And just to make sure we're 18 specifically on the right page. Down in the bottom 19 right corner is the page that says 3441. Do you see 20 that? 21 A. Yes. 22 Q. And that's the page you're on? 23 A. Uh-huh. 24 Q. In looking at this financing statement, 25 who was the secured party on this?
Page 95 1 A. From them, yes. 2 Q. Any other -- 3 A. No. 4 Q. -- entities, non-floor plan financing -- 5 A. No. 6 Q. -- from anything that's not a floor plan 7 financier? 8 A. No. 9 Q. Mr. Penland, are you aware of what UCC-1 10 filings are? 11 A. Yep. 12 (Defendant's Exhibit No. 8 was marked for 13 identification.) 14 BY MS. BRIDGES: 15 Q. How much was the -- before I go to this. 16 How much was the floor plan financing from Kinetic? 17 A. It started out at 150-. I think ended up 18 at 275-. That's a guess. I can get you the correct. 19 Q. Uh-huh. Would you be able to get the 20 floor plan financing documents to your attorney to 21 get -- give to us? 22 A. Sure. 23 Q. Mr. Penland, I've handed you what has been 24 marked as Defense Exhibit 8. And I want to go 25 through these. There's -- it's going to be a little	Page 97 1 A. I guess that would be up here in C? 2 Q. So I guess in part 3, secured party. So 3 down about two-thirds of the way -- half, two-thirds 4 of the way down the page. 5 A. Corporation Services Company. 6 Q. Yes. 7 A. A Representative. 8 Q. Do you know who Corporation Service 9 Company is? 10 A. No. 11 Q. Do you see where it says -- describes the 12 collateral. And I'll read it, "Security interest in 13 and to all of merchants present and future accounts, 14 chattel paper, deposits accounts, personal property, 15 assets and fixtures, general intangibles, 16 instruments, equipment, inventory wherever located 17 and proceeds now or hereafter owned or acquired by 18 merchants." 19 Did I read that correctly? 20 A. Yes. 21 Q. Do you know what this entity was that had 22 this UCC-1 on your business? 23 A. No, I don't. 24 Q. Okay. 25 A. Do you?

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1 Q. Well, I'm asking -- your business. That's 2 why I was asking you. 3 A. I didn't know if you knew. 4 Q. That's why I wanted to ask, since it's 5 your business. 6 A. A lot of these things they don't -- they 7 don't take off. Like what happened here. A year and 8 a half they kept it on. And it was closed. 9 I don't know what this is, but I'll find 10 out. Does it say when it was put on? Is there a 11 date? 12 Q. So looking at the -- if you turn the page 13 to the side, it looks like a receipt -- I'm sorry, 14 turn the paper to the side. It's almost like a 15 receipt in the top. It says, "Date, September 23rd, 16 2015 and lapse date of September 23rd, 2020." 17 Do you see that? 18 A. Yeah. Unless -- I don't know if this is 19 Kinetic Advantage or not. I don't -- I don't know. 20 Q. Did you use Kinetic Advantage back in 21 2015? 22 A. No. 23 Q. Okay. 24 A. Where does it say 2015? 25 Q. Oh, I'm sorry. So you see it says, "lapse	1 Do you see that? 9 is towards the bottom. 2 And then "Continuation" is about -- 3 A. Yes. 4 Q. -- part way down there. Okay. 5 Flipping then to 34 -- the next page which 6 is 34444 -- 3444. Are you on the next page? 7 A. Yes. 8 Q. Okay. This is dated -- if you see up in 9 the top right it says, November 15th of 2017. Do you 10 see that? 11 A. Uh-huh. 12 Q. And it has a lapse date of November 15 of 13 2022 right above it? 14 A. I saw that. 15 Q. Okay. So that is a correct reading of the 16 lapse date? 17 A. Yes. I'm trying to find -- who is it? 18 Q. So if you look under number 3, it said, 19 "Automotive Dealers Finance, Inc.," and it has an 20 address of -- in Roswell, Georgia. 21 Do you see that in number 3? 22 A. Yes. 23 Q. Who is Automotive Dealers Finance? 24 A. I have no idea. 25 Q. Do you see under "Collateral" -- I won't
Page 99	Page 101
1 date," and it says, "9-23-2020." And then underneath 2 it says, "Date of" -- "November" -- "September 23rd, 3 2015." 4 MR. IMHOFF: Can I say something? 5 MS. BRIDGES: Yeah. If you just want to 6 point. 7 MR. IMHOFF: I assume the date is when it 8 was filed and I assume the lapse date, because it's 9 almost exactly five years later, is when it lapses, 10 if it's not removed. 11 THE WITNESS: Yeah, because I don't know 12 who this is. 13 BY MS. BRIDGES: 14 Q. Okay. All right. Going to the next page, 15 which is 3442, another UCC filing. This would be a 16 UCC filing, if you look under 3, that says the 17 secured party's name is New York Financials Holding, 18 LLC. 19 Do you see that? Under number 3, "Secured 20 Party." 21 A. Yes. 22 Q. Okay. And then flipping to the next page, 23 3443. If you look under number 4, there's a box 24 that's checked, "Continuation." And then number 9 25 says, "Dealer Financial Holdings."	1 read it all -- but the description under the word 2 "Collateral"? 3 A. Yes, I see it. 4 Q. Okay. You can read it. All -- it says, 5 "All vehicle inventory, parts and accessories, 6 inventory, equipment, fixtures, accounts, hold-back 7 reserves, manufacturer rebates, and incentive 8 payments, accounts, payment intangibles, instrument, 9 securities and accounts receivables, and note 10 receivables and general intangibles of the borrower 11 now owned and hereafter required, wherever located 12 all accessions to, substitutions for and all 13 replacements of any of the foregoing, all chattel 14 papers, documents, instruments, monies, residues and 15 property of any kind related to any of the foregoing, 16 all books and records of borrower related to any of 17 the foregoing, including without limitation, computer 18 programs, printouts, and other computer hardware and 19 software materials, and records pertaining to any of 20 the foregoing, together with all proceeds and 21 products of the foregoing, including without 22 limitation proceeds of insurance policies insuring 23 any of the foregoing, ("Collateral"). 24 Did I read that correctly? 25 A. I don't know who this is either.

Page 102 1 Q. Do you see -- 2 A. This says the lapse date is on 11-15 of 3 '22. 4 Q. Yes. 5 A. I don't know who this is. 6 Q. And who are the -- sorry. Is Penland 7 Automotive, LLC listed as a debtor on here under 8 number 1? 9 A. Yes. 10 Q. And are -- is that you listed under number 11 2 as a debtor? 12 A. Yes, but I don't know who it is. 13 Q. Is that your -- is that your current 14 address, the -- 15 A. No. No. 16 Q. Have you ever lived at that address? 17 A. Yes. 18 Q. When did you move from that address? 19 A. Year and a half ago. 20 Q. Okay. 21 A. I don't do business with these people. I 22 don't know who they are, but I'll find out. 23 Q. Turning to 3445. UCC's name and in the 24 top right it says date of October 26, 2018, and then 25 lapse date of October 26 --	Page 104 1 Q. -- a floor plan with them. And this -- 2 their UCC was already filed prior to obtaining any 3 financing from Dealer Financial. I'm sorry, this UCC 4 statement had already been filed prior to your 5 obtaining any financing from -- 6 A. Yes. 7 Q. -- Dealer Financial? 8 A. Yes. 9 MR. IMHOFF: Object to the form. 10 BY MS. BRIDGES: 11 Q. In looking at 3446, would you agree that 12 this, based on the date, appears to be page 2 of the 13 prior page? 14 A. Oh. Yes. 15 Q. Okay. Looking at page 3447, the date is 16 July 4th of 2020 and has a lapse date of July 4th of 17 2025. Do you see that at the top of -- on page 3447? 18 A. Yes. 19 Q. And the secured party is listed as the 20 U.S. Small Business Administration? 21 A. Yes. 22 Q. Are you familiar with this UCC filing? 23 A. Yes. 24 Q. When did you obtain this one and for what 25 purpose? When did you obtain it, I guess, financing?
Page 103 1 A. I know who this one is, this is 2 Spartanburg Auto Auction. 3 Q. Okay. 4 A. I'm open with them now. 5 Q. So this says -- it's dated October 26, 6 2018. Do you see that? 7 A. Uh-huh. 8 Q. So had you obtained floor plan financing 9 from them -- 10 A. Yes. 11 Q. -- in 2018? 12 A. Uh-huh. 13 Q. Was there ever a point in time after 14 October of 2018 you did not have any floor plan 15 financing with them? 16 A. No, I went to get -- went to get it 17 increased. 18 Q. When did you get it increased? 19 A. I said I went to get it increased. 20 Q. Oh, I apologize. 21 A. And I was denied because of the UCC filing 22 from them. "Them," meaning Dealer Financial. 23 Q. But prior to any relationship you had with 24 Dealer Financial, you had -- 25 A. I had a floor plan with them.	Page 105 1 A. I need to find out if this is... 2 MR. IMHOFF: Can I point to him? 3 MS. BRIDGES: Yes. Uh-huh. 4 MR. IMHOFF: (Indicating.) 5 THE WITNESS: Is that -- that's the 6 government, right? Is that the government? 7 BY MS. BRIDGES: 8 Q. It's listed as the small -- there is a 9 governmental entity that's a small business 10 administration. I guess I'm asking is -- 11 A. See, I had a -- 12 Q. -- was this -- was this with the 13 government? 14 A. -- I had a -- this probably is because I 15 had a -- but I had one with another company and I 16 paid it off. 17 Q. Okay. We'll keep going through what we 18 found in our records, but we're still looking at this 19 one. Did you obtain financing or a loan from the 20 government? 21 A. Yes. 22 Q. What was -- when and what was its purpose? 23 A. \$150,000. 24 Q. What was the purpose for obtaining that 25 amount?

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1 A. It was during COVID. They were giving out
2 the COVID loans.
3 Q. Was this a PPP loan?
4 A. What does PPP stand for again? Gotcha.
5 Q. May I Google?
6 (Laughter.)
7 MR. HAIGHT: Payroll Protection Plan.
8 THE WITNESS: I would assume, yes.
9 BY MS. BRIDGES:
10 Q. The Payroll Protection Plan.
11 A. Yes, that's it. Yes.
12 Q. And what is the purpose of the Payroll
13 Protection Plan loan, to your knowledge?
14 A. They were giving out loans and they told
15 everybody to apply, and I did.
16 Q. Do you know whether this loan has been
17 paid back?
18 A. I haven't even started paying on it yet,
19 because there's no -- there's no set date to pay.
20 Q. Do you know whether any portion of this
21 loan has been forgiven or waived?
22 A. No, I do not know that. I hope it all
23 gets waived.
24 Q. Looking at the next page, 3448. Are you
25 on that page?

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1 A. Uh-huh.
2 Q. Okay. At the top this is dated June 8th
3 of 2021 with a lapse date of June 8th of 2026. Do
4 you see that?
5 A. Yep.
6 Q. And is this the Kinetic Advantage floor
7 plan finance that you mentioned earlier?
8 A. Yes, it is.
9 Q. And how much -- I apologize. How much did
10 you obtain from them for floor plan financing?
11 A. I think I told you 275-.
12 Q. Okay. Has that been increased in --
13 A. Started out at 150- or 120- -- it was
14 either 125- or 150-, and they increased it. I'm
15 pretty sure it's 275-, but I can make sure that you
16 get the correct number.
17 Q. Okay. In looking at the next page, again,
18 it -- these -- page 3449 and 3450, I believe, are
19 pages 1 and 2, UCC statement?
20 A. That's Charna again -- or Spartanburg Auto
21 Auction, again. For transferring it to the new
22 company, 100 Fleming Street. They changed the
23 address from Wade Hampton to here. There was no
24 increase. It was just changed because the location
25 changed.

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1 Q. How much is the financing with Spartanburg
2 Auto Auction?
3 A. 150-.
4 Q. And then looking at 3451, this just
5 has -- I don't know that I see a file date, but it
6 has a lapse date -- oh, let's see. If you look back
7 at 3440, the first page that I gave you that sort of
8 had the summary on it.
9 A. 30- --
10 Q. 3440 at the bottom. It should be to your
11 right, I believe. That has the little chart. The
12 one to your right. The one with the little chart on
13 it, that page.
14 A. Down here (indicating)?
15 Q. Yeah. So looking at 3451, but to your
16 immediate right, there's a paper that has a chart on
17 it.
18 A. Oh.
19 Q. Yeah.
20 A. Sorry.
21 Q. No, no, no, no. So this UCC filing that
22 we're looking at doesn't look like it has a date on
23 it, but do you see the lapse date of January 12th of
24 2027 on 3451? In the bottom --
25 A. I know, but I'm trying to see what

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1 floor -- what is this, Lien Solutions. I never -- I
2 never opened this. I never --
3 Q. So looking at --
4 A. Westlake.
5 Q. -- secured party --
6 A. I never opened a floor with them. I don't
7 know what the hell this is. I don't have a floor
8 with these people.
9 Q. And in looking at the chart on 3440 it
10 says -- for one that has a lapse date of January 12,
11 2027, January 12th of 2022. Do you see that on
12 the --
13 A. Yes, I do. But I don't have a floor with
14 these people.
15 Q. Do you know who they are?
16 A. Westlake Financial. I can explain now
17 what -- I remember. They said that if I opened up a
18 floor plan with -- I do business with these people,
19 as far as calling in loans to them and they approving
20 the loans for the customers.
21 By opening up a floor plan, even though I
22 don't use it, I get a 25 percent more advance on the
23 check. But I don't use this at all. I have never
24 used it. Not once. It was strictly a business move
25 to get more advancement on the check.

Page 110 1 Q. When you say you do business with these 2 people -- and let's back up to that. In what way do 3 you do business with Westlake? 4 A. I call in -- like if a customer comes on 5 the lot, sees the car, we call it in to Westlake 6 Financial Services, they fund the deal. 7 Q. So is their relationship directly with the 8 customer or is it with you? 9 A. I'm representing Westlake, but Westlake 10 ACH issues the check into my account. It's not a 11 floor plan. This is a lender. 12 Q. Uh-huh. 13 A. They offer a floor plan. But if you just 14 sign up with them, you get 25 percent more 15 advancement on your check, that's why it was done. 16 But I have never used it. 17 Q. So with -- I'm just trying to understand 18 the arrangement. So with using them, so are you then 19 funding the purchase price of the cars, the customer 20 borrowing money from you to finance? 21 A. The customer is borrowing money from them. 22 Q. Okay. 23 A. Okay. But they -- because I have -- if I 24 just -- the guy told me, if I just sign this thing, I 25 get a 25 percent more advance on the dealer check.	Page 112 1 she could be taken care of. So my brother takes care 2 of her now instead of me. I was forced to do that. 3 I lost -- I don't know, I would -- just in 4 that one year in revenue, 2.5 million. And I can get 5 you the breakdown of that, which I promised you I 6 would. My reputation, Penland Automotive's 7 reputation. I don't know. I mean... 8 Q. What is your basis for saying you had to 9 sell your home? 10 A. Because I had -- there was -- I 11 wasn't -- the business, after he took the cars, the 12 lenders got spooked. It took -- it took probably six 13 months to get everything straightened back out to 14 where they would believe me that I had no wrongdoing 15 in this. 16 And who knows what the customers thought. 17 You know, I don't know. I just know the business 18 went down. I was doing fine before that. I was 19 keeping the lights on, everything was fine. I was 20 going to make it through COVID and everything. 21 Now -- now I'm in a little tiny town in 22 Laurens, in a tiny little car lot. I had a big car 23 lot. 24 Q. What lenders do you allege -- 25 A. We had to call --
Page 111 1 So that's why I did it. But I have never used it. I 2 never plan on using it. Their rates are too high. 3 Q. So you don't -- I'm saying -- Westlake 4 would have the contract with the customer, not you, 5 with the customer? 6 A. Not me. 7 Q. Did they offer any amount of floor plan 8 financing for you, as part of your signing up? 9 A. They might have, but it was a while ago so 10 I don't -- you know, I just did it strictly to get a 11 bigger advancement on the check. And that's the 12 check to me for the car. 13 Q. Okay. What amount of damages are you 14 asserting -- alleging you are owed in this case? 15 A. You want me to break it down? 16 Q. (Indicating.) 17 A. I was -- well, to start with, I was forced 18 to sell my home, which was -- I had to give it away. 19 I sold it for 450,000, it's worth \$600,000 now. I 20 was forced to sell my land at Penland Automotive for 21 500,000. It was worth 9-. 22 Since my mother lived with me 23 downstairs -- and she's 84 years old -- I had a 24 mother-in-law suite downstairs. So I had to go 25 purchase her a trailer on my brother's property, so	Page 113 1 Q. -- got spooked? 2 A. -- every one of our lenders because every 3 one of our lenders heard. I'll get you the list of 4 them. There's many. 5 Q. Can you name any of those today? 6 A. I'll get you the list of every one of them 7 with the phone numbers. 8 Q. Can you tell me, just off the top of your 9 head, who you can remember right now? 10 A. There's Truliant, that's just the one 11 that -- one of the main ones we use. I will get you 12 all the -- the lenders and everything with the phone 13 numbers and everything. 14 Q. What is your basis for saying you were 15 forced to sell land? 16 A. Because I wasn't doing that well there and 17 I believed that it was because of the cars being 18 repossessed and all the bad publicity I got. All the 19 people calling me. You know, it was terrible. 20 Q. Who called -- 21 A. Also -- also, I had just enough -- I had 22 enough cars, they took the cars. I mean, then I had 23 to go replace the cars. It took a long time. 24 You know, I know Dan calls it a hobby, but 25 it's not a hobby. It's a real business. I have to

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1 go out and spend four hours to buy cars. It's not a
2 hobby. You've got to know what you're doing or
3 you're dead.
4 Q. How many cars were removed from you by --
5 A. Seven. But I had about 20 -- 20 to 22,
6 roughly in there. It looks pretty bad on a car lot
7 that holds 150 cars. But I was doing okay until that
8 happened.
9 Q. Who called you?
10 A. What do you mean, who called me?
11 Q. When you said a moment ago you were
12 fielding phone calls. From who?
13 A. My lenders, my floor plan companies. Word
14 spread like wild fire.
15 Q. Did you ever -- personally ever receive
16 notice from Dealer Financial or anyone else that
17 there was going to be any foreclosure on your home?
18 A. No.
19 Q. Did you ever receive notice from Dealer
20 Financial or anyone else that there was a claim being
21 asserted against your personal property?
22 A. No.
23 Q. Did the sheriff or any other officer ever
24 come with a court order obtained by Dealer Financial
25 or anyone else --

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1 A. No.
2 Q. Let me finish my question -- that stated a
3 claim to your personal property?
4 A. No. Well, I mean, whatever that thing
5 here she handed me, but -- no, I'm going to -- I'm
6 going to say no.
7 Q. Between February of 2019 and June of 2020,
8 did you ever receive notice from anyone at Dealer
9 Financial or anyone else that there were claims being
10 asserted against your personal property?
11 A. No.
12 Q. How did you search for the documents that
13 you produced in this case?
14 A. I don't know. I don't quite understand.
15 Q. So, we, you know, asked questions to your
16 attorney for discovery asking you to produce
17 documents. How did you conduct that search to
18 find --
19 A. My --
20 Q. -- those documents?
21 A. -- comptroller did that for me. Karen
22 Willis.
23 Q. Do you know what she searched, whether it
24 was file folders, electronic, anything like that?
25 A. No, I don't know.

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1 Q. Anything like that? Did you perform any
2 searches yourself?
3 A. No.
4 Q. Do you know whether or not any -- there
5 were any internal Penland Automotive e-mails that
6 were searched?
7 A. You'd have to ask Karen. I don't -- I
8 don't think so. I mean, I don't know.
9 Q. Did you produce or search any of your
10 personal text messages to anyone that was involved in
11 this matter?
12 A. No.
13 Q. Could you search your text messages to see
14 whether there were any texts involved with anybody in
15 this matter?
16 A. Anybody, meaning who?
17 Q. Anyone related to, you know, Mr. Yarger,
18 Dealer Financial, anyone that you allege has
19 information about this case?
20 A. I'll go back and check.
21 Q. I think we'll need to verify that any sort
22 of electronic search was performed on text messages
23 and those types of communications.
24 A. I'll -- I'll go back and check.
25 Q. Do you know whether Mr. Yarger and

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1 Ms. Willis ever used e-mail for communication?
2 A. I'm not sure.
3 Q. Do you know whether or not that was
4 searched, specifically searched?
5 A. I'm not sure.
6 Q. Is that something that you can check and
7 figure out and determine whether or not there are
8 any --
9 A. Yes.
10 Q. -- written -- those kind of written
11 communications?
12 A. Yes.
13 MS. BRIDGES: May we have a couple -- you
14 can run to the restroom, look over a couple things.
15 MR. IMHOFF: Yeah, off the record a
16 minute.
17 (Recess was taken from 1:30 p.m. to 1:50
18 p.m.)
19 (Defendant's Exhibit No. 9 was marked for
20 identification.)
21 BY MS. BRIDGES:
22 Q. Okay. Mr. Penland, I'm handing you an
23 e-mail. And I recognize your e-mail address is not
24 on here. But I wanted you to review this e-mail and
25 see if you were told the information --

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1 A. Okay.
2 Q. -- that was in it.
3 A. (Witness peruses document.) Okay.
4 Q. Have you had a chance to --
5 A. Yes.
6 Q. -- read it? Were you -- looking at the
7 contents of it, were you -- was this information told
8 to you?
9 A. Yes. And that's when I had Karen send off
10 an e-mail.
11 Q. In response -- was the e-mail in response
12 to this or was it --
13 A. It was in response to this.
14 Q. And what did you ask or say?
15 A. I don't have the exact e-mail in front of
16 me, but the gist of it was I'm not supposed to pay
17 curtailments and interest until the car is sold.
18 Q. Do you know whether or not that was
19 communicated to Dan Haight or anybody at Dealer
20 Financial?
21 A. After the e-mail went out, I don't know.
22 Q. What was your reaction to receiving this
23 infor- -- the information contained in this? Did you
24 have -- let me stop that and rephrase that.
25 Did Ms. Willis tell you the information

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1 that was in this e-mail?
2 A. Yes.
3 Q. What was your reaction to -- upon learning
4 that, upon learning about this information?
5 A. Let's just say I was angry.
6 Q. What did you do?
7 A. I did a lot of cussing.
8 Q. Following that?
9 A. Uhm, I told you I had her send an e-mail
10 and was going to wait for a response.
11 Q. Did you --
12 A. I don't know.
13 Q. I'm sorry?
14 A. I don't know what happened with the
15 response. I can't remember.
16 Q. After receiving the information that's in
17 this, did you call Mr. Haight?
18 A. Again, I never called Mr. Haight.
19 Q. Did you call Mr. Bethea after learning --
20 A. Yes.
21 Q. And what did you -- what was that
22 conversation?
23 A. He didn't answer his phone. And I think
24 he came by. He usually came by twice a week. And I
25 brought this up to him again. And I told him, I

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1 said, This ain't right. This ain't what we agreed
2 on. And he said -- he kind of made a hasty -- he
3 left pretty quick. I guess my voice was a little bit
4 louder than it should have been.
5 Q. What did he -- did he say anything to you?
6 A. He just really kept on going.
7 Q. Did you have any conversations with
8 Mr. Yarger about this information?
9 A. Yes.
10 Q. What were those conversations?
11 A. I said, You know this ain't -- this ain't
12 the way it's supposed to be. Where's the contract,
13 da-da-da. He just kind of blew me off a little bit.
14 Q. When you say blew you off, what do you --
15 A. Didn't respond a lot. Just was hee-hawing
16 around, pretending he was busy, so... Because he --
17 I think John Bethea and Tim were in cahoots on this
18 stuff.
19 But I thought I was fine because I never
20 signed anything. And I was waiting for the contract,
21 so I knew I -- I knew I was safe until I signed a
22 contract. Because if the new contract came in with
23 that stuff on it, I was just going to flip into
24 another -- to another floor.
25 Q. Did you ask Mr. Yarger to get in touch

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1 with Mr. Haight or Mr. Bethea following this
2 information?
3 A. Not that -- not that exact time, no. It
4 was -- I was yelling at John going -- as he was
5 getting out the door. I think I told John, I said,
6 You better handle this bullshit. And I never saw him
7 again after that, I don't think. I don't think he
8 came back.
9 Q. I'm sorry, would you repeat that? I
10 didn't hear you.
11 A. I don't think he came back after that.
12 Q. So, when in your recollection was the
13 last time you saw Mr. Bethea?
14 A. I think that was it, when I was yelling at
15 him.
16 Q. So would that have been shortly after the
17 date of this message, Sunday, December 6?
18 A. He was going out the door, I'm pretty
19 sure.
20 Q. I'm sorry, we just interrupted each other.
21 So let's make sure --
22 A. I'm sorry.
23 Q. No, no, no. I understand.
24 A. I'm pretty sure that that -- it was either
25 a day or two -- I got this and then he might have

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1 come in two days later. And then I addressed it, and
2 I got a little loud, and he kind of took off out the
3 door and that was it.
4 Q. Earlier you mentioned various entities
5 calling you following October 8th of 2020. And I
6 know you indicated you'd be getting us --
7 A. I'll get them for you.
8 Q. -- get that list for us.
9 A. I will.
10 Q. Oh, yes. For -- what was the
11 typical -- how did those conversations typically go?
12 A. What happened?
13 Q. And that was from the entity that was
14 calling you?
15 A. Uh-huh.
16 Q. And what was your response?
17 A. I'll get you all that, okay?
18 Q. Do you remember what you said --
19 what -- you know, from one conversation that you
20 remember?
21 A. It's not something you can just say in a
22 couple of sentences. It takes hours of trying to
23 explain. I'll get you the gist of it all.
24 Q. When you say -- did you record these
25 conversations?

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1 A. No. But I'm going to -- I'll get with my
2 attorney and I'll put -- I'll try to put it all on
3 this thing. I've got to get all my lenders. I got
4 to get -- I don't even know who half of them are. I
5 have to get with Joey, because Joey also did some of
6 the talking. He knew them very well. Joey Ladwick
7 (sic). Am I saying his last name right?
8 MS. WILLIS: Ladewig.
9 THE WITNESS: Ladewig.
10 BY MS. BRIDGES:
11 Q. Don't -- don't even respond. How do you
12 spell that?
13 A. I don't know.
14 Q. Okay.
15 A. L-a-d-a-w-a -- I don't know. Ask her.
16 MS. BRIDGES: Off the record for a minute.
17 (Off-record discussion.)
18 (Recess was taken from 1:57 p.m. to 2:00
19 p.m.)
20 MS. BRIDGES: Okay. Back on the record.
21 BY MS. BRIDGES:
22 Q. Mr. Penland, I know you said that you'll
23 get a list. Can you give me any names of any of the
24 lenders that called you and any entities that called
25 you?

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1 A. I told you Truliant. And I have to go
2 back and get the rest of the -- that's -- I don't do
3 this. Joey does this part, okay? I'll go back and
4 get all the lenders and their names and their phone
5 numbers for you.
6 Q. And if that's the case, then this is part
7 of why we're here for you to answer these types of
8 questions and do that with me. If that you're not
9 able to tell me their names and not able to describe
10 the conversations that you had with them, we'll need
11 to come back here so I can ask you questions about
12 them --
13 A. That's fine.
14 Q. -- at a later date. And I think, Jason,
15 would you stipulate that would be something -- we
16 would need to leave this part open?
17 MR. IMHOFF: Yes. If you can't identify
18 who called you and what was said during those
19 conversations, then she's right. She has the right
20 to those answers. And so you may end up right back
21 here. And if that's okay with you, that's fine.
22 But if you can answer it today, don't
23 delay. You should answer her question today, if you
24 can. If you can't, just understand that you've got
25 to come back and answer at some point.

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1 THE WITNESS: How can I get the list of
2 all the lenders without asking -- Karen knows them.
3 Can I ask and get the names?
4 MS. BRIDGES: Go off for just a second.
5 (Off-record discussion.)
6 (Recess was taken from 2:03 p.m. to 2:19
7 p.m.)
8 BY MS. BRIDGES:
9 Q. Mr. Penland, we were talking a minute ago
10 about the entities that called you and you indicated
11 you'd put -- be able to put together -- a list
12 together?
13 A. Uh-huh.
14 Q. I know there were a couple that you
15 mentioned that I want to talk about. You said
16 Truliant, I believe, correct?
17 A. Uh-huh.
18 Q. Who at Truliant called you after October
19 8? Do you remember their name?
20 A. No.
21 Q. Was it somebody you had spoken with
22 before?
23 A. It was somebody that Joey -- Joey's the
24 F&I person. They were very close. And I don't know
25 the name. But, again, I can get you the list.

Page 126 1 Q. Do you recall anything about what was 2 discussed in that conversation? 3 A. Well, Tim Yarger, when he left -- I 4 explained to him that he is no longer with us and 5 they heard some rumors about the cars getting picked 6 up. And it was pretty much explained that we were 7 not at fault. And we were in trust, just stuff of 8 that matter. But as soon as Joey gets back from 9 vacation, I can get all the rest of the details. 10 Q. You said "they." Did they tell you from 11 where they heard any of the information -- 12 A. No. 13 Q. -- they were questioning you about? 14 A. No, they wouldn't tell. Most of them 15 won't. 16 Q. Did they mention any name as to who they 17 heard information from? 18 A. They're not -- they're not going to tell 19 me that. 20 Q. Did you ask? 21 A. I asked, but they won't tell me. 22 Q. Did Spartan -- is it Spartan Automotive? 23 A. Spartan who? 24 Q. Spartan, uhm -- Charna, I believe her name 25 was, at Spartan. Is it --	Page 128 1 Lenders? 2 A. Yes, Glenn Hall. 3 Q. Did Mr. Hall call you or did you initiate 4 it? 5 A. I initiated the -- to go to him, but he 6 had already told me that a guy named Matt Mew had 7 already called him. But he doesn't really -- he 8 didn't hold a lot of faith in it, cause he was going 9 to call me anyway. We're personal friends. But I 10 went and showed him everything. 11 Q. Do you know who Mr. Mew is employed by? 12 A. He's just a wholesaler who does a lot of 13 talking. 14 Q. Was any of your financing with Auto 15 Lenders reduced, at this time? 16 A. No. It wasn't increased either. 17 Q. But it was not reduced? 18 A. (Shakes head.) 19 Q. Did you speak with anybody -- I think 20 Westlake was somebody else we discussed. Did 21 West- -- 22 A. No. I think Joey did. Joey has a real 23 personal relationship with all the lenders because 24 he's the one -- that's his job. 25 Q. For the record, just to be clear, you had
Page 127 1 MR. IMHOFF: Auto. Sorry. 2 BY MS. BRIDGES: 3 Q. Auto. Yeah, Spartan Auto. 4 A. All right. I -- I went to her. 5 Q. Okay. Did she ask about -- did she call 6 you? 7 A. I went to her because at the top of the 8 letter that -- that I received, it had her name on 9 it, too. At the top of -- at the top of the letter, 10 which I have no idea why that would be. 11 So I immediately got in my car and drove 12 to Charna, talking to her on the way and telling her 13 I was coming to talk to her about something. And I 14 sat there for a couple hours and told her what 15 happened and got that handled real quick. 16 Because the letter -- her name was on the 17 top of the -- of the letterhead. And, again, I don't 18 have no -- no idea why. 19 Q. Did she or her company reduce any of your 20 floor plan during this time? 21 A. I didn't get the -- I didn't get the 22 advancement because of the UCC filing. She didn't 23 reduce me, no. But she didn't advance me either. 24 Q. Did any individual from Auto Lenders -- 25 did you speak with any of them -- anyone at Auto	Page 129 1 indicated you will get a list of individuals to us, 2 correct? 3 A. Correct. 4 MS. BRIDGES: Jason, I would like that we 5 will stipulate that the deposition will be held open 6 on this topic, so that -- pending receipt of that 7 information. We will be able to question Mr. Penland 8 about those conversations, at the point of receiving 9 the information that he has indicated he will provide 10 to you, to us. 11 MR. IMHOFF: Can you clarify exactly what 12 you want and what you want in the deposition? 13 Because you said you'll get that list of people. 14 Just make sure to clarify exactly -- 15 MS. BRIDGES: To clarify, the list of 16 entities and individuals that either Mr. Penland 17 contacted or he was contacted by following the events 18 of October 8th and 9th of 2020. That those entities 19 or individuals that contacted him, who they were, how 20 these conversations took place, the nature of these 21 conversations, the results of these conversations, 22 all having to do -- that type of information. Is 23 that -- 24 MR. IMHOFF: Yes. With -- with one 25 addition. Some of the calls came to Penland, but not

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1 necessarily Billy.
2 MS. BRIDGES: Yes, that were to Penland
3 Automotive.
4 MR. IMHOFF: But, yes, we'll stipulate to
5 that. We'll try to get you the information and then
6 you have the right to reopen his deposition, take his
7 deposition on that topic, that list and that
8 question.
9 MS. BRIDGES: Uh-huh.
10 MR. IMHOFF: Agreed.
11 MS. BRIDGES: Okay.
12 BY MS. BRIDGES:
13 Q. Earlier in your deposition you stated that
14 you had a belief that Mr. Yarger and Mr. Bethea were
15 in cahoots. What did you mean?
16 A. John Bethea knew that this contract wasn't
17 coming, even though I asked him about it every day.
18 This is my opinion. I don't have proof. You're
19 asking my opinion, correct?
20 Q. What your basis for that statement was.
21 A. Well, that's still an opinion.
22 Q. Yes.
23 A. My opinion is that they both knew that
24 this contract wasn't coming.
25 MS. BRIDGES: All right. Let me look at

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1 one more thing. I may only have one or two things
2 more. I may be done. Let me just look at one thing
3 real quick and I'll -- I should be back with you very
4 shortly. Should be very short break. So we'll go
5 off the record.
6 (Recess was taken from 2:27 p.m. to 2:31
7 p.m.)
8 (Defendant's Exhibit No. 10 was marked for
9 identification.)
10 BY MS. BRIDGES:
11 Q. All right. Mr. Penland, I'm handing you a
12 document that's been designated as Defendant's
13 Exhibit 10. Do you need to read it? I'll give you a
14 minute to familiarize yourself with it.
15 A. (Witness peruses document.) Is this
16 letter disposing of the collateral?
17 Q. This is the -- I want to say -- are you
18 familiar with this letter?
19 A. No, I just saw it now first time.
20 Q. So when you mentioned a letter a few
21 minutes ago, where you said that Spartan Automotive
22 was listed at the top, was this not the letter that
23 you were referring to?
24 A. Spartan?
25 Q. That, uhm, Charna's company was...

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1 A. Oh, there it is. Yeah. Right here
2 (indicating).
3 Q. So is this the letter --
4 A. Yes.
5 Q. -- that you're referring to?
6 A. Yes. That's the letter I'm referring to.
7 Q. So you have seen that letter before?
8 A. Yes.
9 Q. Okay.
10 A. I'm sorry.
11 Q. No, that's -- I just wanted to make sure.
12 A. Yes, this is --
13 Q. Clarify.
14 A. Yeah, only -- yeah. See her name is right
15 here at the top.
16 MR. IMHOFF: Uh-huh.
17 BY MS. BRIDGES:
18 Q. How did you receive this letter?
19 A. I can't remember.
20 Q. Do you know whether --
21 A. It might have been hand delivered. I
22 don't remember. But that's how I knew about the
23 Lewis C. Mason on the...
24 Q. And do you know what the purpose of this
25 type of document is?

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1 A. To inform people that they took the cars.
2 Q. Do you know whether or not it is required
3 under statute or other regulations or laws?
4 A. There's one sent -- then where's Glenn's
5 name on it?
6 Q. Do you know whether or not it was --
7 A. No, I don't. But there's -- if it is law,
8 then there's a name missing off of it.
9 Q. Is it your belief that this letter forms
10 the basis for any damages that you assert in this
11 case?
12 A. Well, when you added the Lewis Mason, I
13 had to go over there and fix that.
14 Q. That's not answering my question. Is it
15 your belief that this letter is -- forms part of the
16 basis for your claims and damages in this case?
17 A. This whole case is my claim for damages,
18 but it's part of it, yeah.
19 MS. BRIDGES: Okay. All right. That is
20 the questions that I have. I appreciate your time --
21 THE WITNESS: Thank you.
22 MS. BRIDGES: -- Mr. Penland. And if your
23 attorney has any questions for you, please answer
24 him honestly, and truthfully, and to the best of your
25 knowledge.

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1 MR. IMHOFF: I'll move away, so I'm not
2 yelling at you.
3 THE WITNESS: (Witness chuckles.)
4 EXAMINATION
5 BY MR. IMHOFF:
6 Q. All right. But I am going to try to be
7 brief, but it might be a little bit longer than --
8 than we want it to be. But I'm going to pick up -- I
9 want to go backwards because I want to pick up right
10 where we left off, all right?
11 Exhibit No. 10, in front of you, is a
12 letter from Dealer Financial to you; is that right?
13 A. Yes.
14 Q. Okay. And did you receive this letter?
15 A. I don't -- I received it, but I don't
16 remember how I got it.
17 Q. Fine. All right. Dated October 9th,
18 2020; is that correct?
19 A. Yes.
20 Q. Okay. That's the day that Mr. Haight and
21 Mr. Lanzl came to the auction; is that right?
22 A. Yes.
23 Q. The day after they repossessed your cars;
24 is that right?
25 MS. BRIDGES: Object to form.

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1 THE WITNESS: Right.
2 BY MR. IMHOFF:
3 Q. Okay. Who were copies sent to, according
4 to this letter?
5 A. To Mason, which would be Charna,
6 Spartanburg Auto Auction.
7 Q. Okay. Who else?
8 A. Uh...
9 Q. It says, "With copies to."
10 A. Penland Automotive, Automotive Dealer
11 Finance. Oh, I didn't even see that. Automotive
12 Dealer Finance, Corporation Services Company, and
13 Lewis Mason.
14 Q. Do you have any reason to believe that
15 they didn't send those copies to those lenders?
16 A. I'm sure they did.
17 Q. Okay. Any reason to believe they didn't?
18 A. No, no.
19 Q. They said they did, right?
20 A. They said they did.
21 Q. Okay. I want to show you something with
22 the South Carolina Secretary of State. So look at
23 Exhibit No. 8, if you will, please. 8.
24 A. These ain't marked.
25 THE REPORTER: They are at the bottom.

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1 THE WITNESS: Oh.
2 THE REPORTER: And 8 will be way back
3 because they're in order right now.
4 THE WITNESS: Okay.
5 MR. IMHOFF: It looks like this
6 (indicating).
7 THE WITNESS: All right.
8 THE REPORTER: Some of the pages are right
9 here (indicating).
10 THE WITNESS: Thank you so much. All
11 right.
12 BY MR. IMHOFF:
13 Q. Let me start here. In June of 2020, did
14 you believe that you had any contract or outstanding
15 contract or relationship with Dealers Financial?
16 A. Did I believe I had any when? What date?
17 Q. In June of 2020?
18 A. Well, no, because I didn't have a
19 contract.
20 Q. Had you closed your account with Dealer
21 Financial?
22 A. Yes.
23 Q. Had you assumed that your relationship
24 with them, any contractual obligations you had with
25 them were over?

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1 A. Yes.
2 Q. Canceled, closed, deleted, put away?
3 A. Done.
4 Q. Okay. Was it your assumption, then, also
5 that any liens, UCC liens, secured filing liens had
6 been removed and were no longer valid?
7 A. Yes, I did.
8 Q. All right. So I want to show you
9 something. I don't know if you noticed this or not.
10 But in Exhibit No. 8, okay, they're actually listed
11 in chronological order from the time that they were
12 filed. And then they follow behind, okay?
13 So the first lien that was filed against
14 Penland Automotive, which is the second page, was
15 done by Corporation Service Company on 9-23-2015,
16 okay?
17 A. Uh-huh.
18 Q. I want to show you this on Dealer
19 Financial's letter of October 9th. Corporation
20 Service Company is listed here on the October 9th,
21 2020 letter on Exhibit 10. Do you see that?
22 A. Yes, I do.
23 Q. Okay. So in chronological order, the next
24 one that had been filed was on behalf of Dealer
25 Financial Holdings, do you see that?

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1 A. Yes, I do.
2 Q. Okay. And they filed their lien, their
3 UCC-1 lien in November of 2016. Do you see that?
4 A. Yes, I do.
5 Q. Okay. Because you signed an agreement
6 with Dealer Financial in November of 2016, does it
7 make sense then that they would have filed their
8 UCC-1 lien at about that same time?
9 A. No.
10 MS. BRIDGES: Object.
11 BY MR. IMHOFF:
12 Q. When did you execute the agreement and
13 contract with Dealer Financial? When you agreed.
14 A. That was in '16.
15 Q. Okay. And they filed their UCC file in
16 '16 --
17 A. Right.
18 Q. -- right?
19 A. Right.
20 Q. Okay. You're fine with that, right?
21 A. Yes, I'm fine with that.
22 Q. Okay. But you canceled that account --
23 A. Yes.
24 Q. -- in February 2019; is that correct?
25 MS. BRIDGES: Object to form.

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1 THE WITNESS: Yes.
2 BY MR. IMHOFF:
3 Q. Did you know that they had not withdrawn
4 their UCC-1, when you canceled the account in
5 February 2019?
6 A. No.
7 Q. Okay. Having --
8 A. I thought it was done.
9 Q. Okay. Mr. Penland, if they did not cancel
10 their account in 2019, they are now second in
11 chronological order, in filing order, the first being
12 Corporation Service Company, the second being Dealer
13 Financial, right?
14 A. Right.
15 Q. When you went to Charna, to Spartanburg
16 Auto Auction in the summer of 2020, why wouldn't
17 Spartanburg Auto Auction, also called Lewis C. Mason
18 Enterprises Trust, expand your -- your floor plan,
19 according to them?
20 A. Because they said there was a UCC filing
21 still open with Dealer Financial.
22 Q. That's right. And according to this
23 document, the Secretary of State printout at Exhibit
24 No. 8, Dealer Financial was still in second position,
25 weren't they?

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1 A. Yes.
2 Q. Okay. Did you ask them to remove their
3 UCC-1 lien before you agreed to take money from
4 Dealer Financial?
5 A. Yes.
6 Q. Did they?
7 A. No.
8 Q. Now, we've already gone over all the
9 events that happened between July and September of
10 2020. Let's go back to 10. Dealer Financial sent a
11 letter on October 9, 2020 to Lewis C. Mason
12 Enterprises Trust. Or at least sent a letter to you
13 and copied them.
14 A. Right.
15 Q. Do you see that? Do you agree with that?
16 A. Yes.
17 Q. Okay. And what did they name the letter?
18 A. Notification --
19 MS. BRIDGES: Objection.
20 THE WITNESS: -- of
21 Disposi- -- Disposition of Collateral.
22 BY MR. IMHOFF:
23 Q. Letter says they have your cars, they have
24 your property, and they're selling it, right?
25 MS. BRIDGES: Object to form.

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1 THE WITNESS: Right.
2 BY MR. IMHOFF:
3 Q. And do you know if they're allowed to sell
4 it and collect the money before Spartanburg Auto
5 Auction because they're in second place
6 chronologically?
7 A. Repeat the question one more time.
8 Q. Do you know if Dealer Financial has the
9 right to sell your collateral, your company's
10 collateral, and collect the money because they're in
11 second place ahead of Charna's company?
12 A. No, Charna would be first, right?
13 Q. Would Charna be in front of Dealer
14 Financial, if Dealer Financial had --
15 A. No, Dealer Financial --
16 MS. BRIDGES: Object to form.
17 BY MR. IMHOFF:
18 Q. Hold on.
19 A. All right.
20 Q. Would Dealer Financial be first in
21 chronological order in front --
22 A. Oh, no --
23 Q. -- of Charna --
24 A. -- no, no.
25 Q. -- if Dealer Financial had removed

Page 142 1 their -- 2 A. Yes, now I -- 3 Q. -- UCC when you canceled -- 4 A. Yes. I -- 5 Q. -- your contract? 6 MS. BRIDGES: Object to form. 7 MR. IMHOFF: You've got to let me finish 8 my sentence. 9 THE WITNESS: Sorry. 10 MS. BRIDGES: Object to form. 11 MR. IMHOFF: Because she can't do it. 12 THE REPORTER: Right now there's three of 13 you talking, so I need you to -- 14 MR. IMHOFF: Let me do it again. 15 THE REPORTER: -- finish. 16 THE WITNESS: Okay. 17 MR. IMHOFF: Let me finish. Okay? 18 THE WITNESS: Yes, I will. I'm sorry. 19 BY MR. IMHOFF: 20 Q. Would Dealer Financial have been in front 21 of Charna's company chronologically in their UCC-1 22 filings in October of 2020, if Dealer Financial had 23 withdrawn their UCC-1 filing -- 24 A. No. 25 Q. -- in February of 20 --	Page 144 1 A. No. 2 Q. Did you ever put \$275,000 in, in 3 compliance with this document for this partnership 4 agreement? 5 A. No. 6 Q. Okay. Did you ever act as if you were 7 partners in any way in -- in the business of Penland 8 Automotive? 9 A. No. 10 Q. Did Mr. Yarger ever take partner 11 distributions? 12 A. No. 13 Q. Did he ever take profits? 14 A. No. 15 Q. Did he ever sign checks on behalf of 16 Penland Automotive? 17 A. No. 18 Q. Okay. Was he able to enter into contracts 19 on behalf of Penland Automotive? 20 A. No. 21 Q. Was -- did you, Mr. Yarger, Penland 22 Automotive, ever act in any way that this partnership 23 agreement had been consummated? 24 A. No. 25 Q. I want you to flip to -- they don't have
Page 143 1 A. Okay. 2 Q. -- 20? 3 MS. BRIDGES: Object to form. 4 THE WITNESS: No, Charna would be first. 5 BY MR. IMHOFF: 6 Q. So isn't what happened or was threatened 7 to happen on this October 9, 2020 letter, exactly 8 what Charna told you she didn't want to happen when 9 she wouldn't expand your credit limit -- 10 A. Yes. 11 Q. -- in the summer of 2020? 12 A. Yes. 13 MS. BRIDGES: Object to form. 14 BY MR. IMHOFF: 15 Q. And Mr. Haight sent this letter to at 16 least three of your lenders, Automotive Dealers 17 Finance, Corporation Service Company, and Lewis C. 18 Mason Enterprises Trust, right? 19 A. Yes. 20 Q. Are those three lenders that then you had 21 to talk to? 22 A. Oh, yeah. 23 Q. All right. I'm going to go way, way back, 24 okay? Let's start Exhibit No. 2. Did Mr. Yarger 25 ever pay you \$150,000 for the partnership?	Page 145 1 page numbers, right? 2 A. Uh-huh. 3 Q. Okay. I'm going to read this. 4 MS. BRIDGES: I'm sorry. Where are -- 5 where are you? 6 MR. IMHOFF: It's -- 7 MS. BRIDGES: Okay. 8 MR. IMHOFF: The top of it says, "Tim 9 Yarger, 25 percent." 10 THE WITNESS: (Witness peruses document.) 11 BY MR. IMHOFF: 12 Q. That paragraph says, "The partners' 13 authority will be defined by the following unless 14 otherwise stated in the agreement: All partners will 15 have an equal vote. No partner is authorized to act 16 on their own in obtaining contracts, financial or 17 other obligations to the partnership." 18 Did I read that correctly? 19 A. Yes. 20 Q. Even if you were partners with Tim Yarger, 21 does this allow Tim Yarger to enter into contracts 22 without you? 23 A. No. 24 Q. Did you ever allow Tim Yarger to enter 25 into a contract?

Page 146 1 A. Never. 2 Q. Did Tim Yarger ever tell you that he was 3 entering into an agreement with Dealer Financial, 4 whereby they would renew the 2016 agreement? 5 A. Never. 6 Q. Did you ever agree to that? 7 A. Never. 8 Q. Did you ever enter into an agreement with 9 any -- any financial institution that was in an oral 10 agreement, not in writing? 11 A. No. 12 Q. Any ever? 13 A. Ever in my life. 14 MS. BRIDGES: Object to form. 15 BY MR. IMHOFF: 16 Q. Go ahead and grab No. 7, if you will. 17 A. All right. 18 Q. Let's go through this one. Let's go 19 through this line by line. Number 2, okay? 20 A. Uh-huh. 21 Q. You understand that Exhibit No. 7 is the 22 Affidavit of Tim -- Timothy Yarger? 23 A. Do I? Yes. 24 Q. Do you understand that? 25 A. Yes.	Page 148 1 were Dan Haight and John Bethea." 2 Is the first sentence, that he was 3 responsible for handling the dealer's relationship 4 with Dealer Financial Holdings, is that true? 5 A. No, because everything had to go -- he had 6 to ask me for everything. 7 Q. Was he allowed to talk to dealers, whether 8 it be lenders, wholesalers, financial institutions? 9 Was he allowed to talk to those folks? 10 A. No wholesale. He was allowed to, like if 11 the lender came in -- what I'm trying to mean by a 12 lender, not a floor plan company, a lender, and -- 13 like just Westlake Financial, we'll use them. I 14 would come into the office with him, we would sit 15 down, negotiate a contract. And if there was 16 something, I would sign it. And if I didn't like it, 17 I wouldn't sign it. 18 Q. Right. So at the end of the day he could 19 talk to anybody that he wanted, negotiate anything 20 that he wanted, but he had to bring it to you first? 21 A. Exactly. 22 Q. Is that right? 23 A. Exactly. 24 MS. BRIDGES: Object to form. 25 BY MR. IMHOFF:
Page 147 1 Q. Number 2, was Mr. Yarger a 25 percent 2 owner of Penland Automotive? 3 A. No. 4 Q. He attaches that same partnership 5 agreement. Is that a true and correct copy of a 6 partnership between you and him? 7 A. No. 8 Q. Number 3, it says that he is the General 9 Manager. The next sentence says, "In my position as 10 the General Manager, I had complete responsibility 11 for managing the dealership and was responsible for 12 day-to-day business operations." Is that true? 13 A. No. 14 Q. Number 4, the second sentence, 15 "Mr. Penland assumed little or no responsibility for 16 the operation of the dealership." Is that true? 17 A. No. 18 Q. 5, "I withdrew from my partnership and 19 resigned my position as General Manager of Penland 20 Automotive in September 2020." Is that true? 21 A. No. 22 Q. Number 6, "During my time at Penland 23 Automotive, I was responsible for handling the 24 dealership's relationship with Dealer Financial, a 25 floor plan lender. My main points of contact at DFH	Page 149 1 Q. So was he allowed to talk to Dealer 2 Financial? 3 A. He was allowed to talk to them, but I -- 4 but there was nothing that he could do without my 5 approval. 6 Q. And as a matter of fact, he talked to 7 Dealer Financial before 2016, before you were 8 presented with a contract, right? 9 A. Yes. 10 Q. Okay. But who did the ultimate decision 11 lie with, whether or not you were going to enter into 12 an agreement or sign a contract with any type of 13 vendor? 14 A. Me. 15 Q. The time -- did Tim Yarger at any time 16 have any authority to enter into any kind of 17 contract, agreement or relationship with any kind of 18 vendor without your approval? 19 A. No. 20 Q. Number 7 -- I'm going to skip that one. 21 Let's go down to number 11. Is it true, in February 22 2019, you decided that you would close the DFH credit 23 line? 24 A. Yes. 25 Q. Okay. And you wanted your reserve money

Page 150 1 back, right? 2 A. Yes. 3 Q. Okay. Do you agree with Mr. Yarger's 4 position that, "DFH's terms were more favorable than 5 what we were getting from Penland Automotive's other 6 floor plan lenders"? 7 A. No. 8 Q. The last thing he says is, "But we went 9 ahead and paid off the balance owed under the credit 10 agreement and closed the DFH credit line" -- 11 A. Correct. 12 Q. -- is that true? 13 A. That's true. 14 Q. Did you close the DFH credit line? 15 A. Completely. Paid them off and closed 16 them. 17 Q. Paragraph 12. "Later when Penland 18 Automotive's other lenders, Auto Lenders, decided to 19 dramatically reduce its credit limit" -- is that 20 true? 21 A. Yes. 22 Q. "And Penland Automotive's only remaining 23 lender, Upstate Auto Auction" -- is that Charna? 24 A. Yes. 25 Q. "Would not agree to increase its credit	Page 152 1 BY MR. IMHOFF: 2 Q. What -- what was the reason she wouldn't? 3 A. UCC filing from Dealer Financial. She 4 wanted to be first. I was increasing my credit line 5 all the way to like over 500,000. And she said, No 6 problem. She said, Even 6-, but I have to have the 7 UCC filing removed. 8 Q. I want to go down to 14. "Thereafter, DFH 9 and Penland Automotive" -- 10 A. What number are you on? Sorry. 11 Q. 14. 12 A. Go. 13 Q. "Thereafter, DFH and Penland Automotive 14 agreed to reopen the DFH credit line on the same 15 terms as before." Is that true? 16 A. No. 17 Q. Did you ever sign anything to that effect? 18 A. No. 19 Q. Did you ever get an e-mail to that effect? 20 A. No. 21 Q. Did you ever send an e-mail to that 22 effect? 23 A. No. 24 Q. Was there anything in writing to that 25 effect?
Page 151 1 limit, except on unfavorable terms." Is that true? 2 A. No. 3 Q. Okay. What part of that is true? 4 A. The only part is -- why she wouldn't 5 increase it was because of the UCC filing that was 6 still in place by Dealer Financial. 7 Q. Okay. 8 A. She said, Get it removed and I'll give you 9 whatever you want. 10 Q. Okay. So it's -- it is correct that 11 Charna -- why is it called Upstate Auto Auctions, 12 Spartanburg Auto Auctions, Lewis Mason, instead of 13 Charna? 14 A. I don't know. I don't have a clue. I 15 don't get it either. 16 Q. Okay. But Upstate Auto Auction is Charna? 17 A. Is Charna. 18 Q. Is part of it true that Charna would not 19 increase its credit limit? 20 A. Yes. 21 Q. Okay. But not because of unfavorable 22 terms? 23 A. No. 24 MS. BRIDGES: Object to form. 25 THE WITNESS: No.	Page 153 1 A. No. 2 Q. Did Tim -- did Tim Yarger have authority 3 to agree to that on behalf of Penland Automotive? 4 A. Absolutely not. 5 Q. "Rather than executing a new set of 6 documents with identical terms, we agreed that the 7 original credit agreement would continue to govern." 8 Do you know who "we" is? 9 A. No. 10 Q. Based on the deposition testimony of 11 Mr. Haight yesterday, do you have a suspicion who we 12 is? 13 A. I guess it -- 14 MS. BRIDGES: Object to form. 15 THE WITNESS: -- would be Tim and him. 16 BY MR. IMHOFF: 17 Q. Did you ever agree to the original credit 18 agreement documents continuing to govern? 19 A. Never. 20 Q. Was that ever presented to you? 21 A. Never. 22 Q. Was it ever presented to you as an option? 23 A. Never. 24 Q. Did anyone at any time ever tell you that 25 before October 8, 2020?

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1 A. No.
2 Q. Had you asked for a contract from Dealer
3 Financial?
4 A. Over a hundred times.
5 Q. Okay. Who, specifically, did you ask for
6 a contract from?
7 A. John Bethea.
8 Q. Did you also ask your staff to contact
9 Dealer Financial for the contract?
10 A. Yes.
11 Q. Who did you ask?
12 A. Karen.
13 Q. And anyone else?
14 A. John Bethea.
15 Q. Okay. What about Tim Yarger?
16 A. I did, yes. I did tell him to, you know,
17 get a hold of John and find out what the hell's going
18 on here.
19 Q. And did Dealer Financial, as far as you
20 know, ever respond in any way to any of your requests
21 or your staff's requests, either telling you that
22 they were using the 2016 agreement or that there was
23 an agreement or that a new agreement was coming?
24 MS. BRIDGES: Object to form.
25 THE WITNESS: No.

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1 BY MR. IMHOFF:
2 Q. Number 16. "To my knowledge, Mr. Penland
3 never communicated with Mr. Haight, Mr. Bethea or
4 anyone else at DFH about reopening the credit line."
5 Is that true? Did you ever talk to anyone at DFH
6 about --
7 A. No, never.
8 Q. "Or the terms of the renewed lending
9 agreement between DFH and Penland Automotive," is
10 that true?
11 A. No.
12 Q. That's not true or you never talked to
13 them?
14 A. I never talked to them.
15 Q. So that's true?
16 A. Oh, I'm sorry. Okay. I said it wrong.
17 My bad. Yeah, that's true.
18 Q. Well, sir, go ahead and pull out the
19 Exhibit No. 3 for me. Do you recognize this as the
20 2016, November 21st Loan and Security Agreement
21 between Dealer Financial --
22 A. Yes.
23 Q. -- Penland Automotive, LLC, yourself,
24 Charles W. Penland, Jr., and Penland Properties II,
25 LLC?

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1 A. Yes.
2 Q. Who -- are you the sole owner of Penland
3 Automotive, LLC?
4 A. Yes.
5 Q. Are you the only person authorized to
6 enter into contracts and execute agreements on behalf
7 of Penland Automotive, LLC?
8 A. Absolutely.
9 Q. Are you the sole owner of Penland
10 Properties II, LLC?
11 A. Yes.
12 Q. Are you the only person authorized to
13 execute and enter into agreements on behalf of
14 Penland Properties II, LLC?
15 A. Yes.
16 Q. Okay. Does anyone else have a power of
17 attorney or any other legal authorization from you to
18 enter into and execute contracts on behalf of
19 yourself, Charles W. Penland, Jr.?
20 A. No.
21 Q. Did you cancel this agreement?
22 A. Yes.
23 Q. Did you cancel this agreement on behalf of
24 Penland Automotive, LLC?
25 MS. BRIDGES: Object to form.

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1 BY MR. IMHOFF:
2 Q. Did you cancel this agreement on behalf of
3 Penland Automotive, LLC?
4 A. Yes.
5 Q. Did you cancel this agreement on behalf of
6 Penland Properties II, LLC?
7 MS. BRIDGES: Object to form.
8 THE WITNESS: Yes.
9 BY MR. IMHOFF:
10 Q. Did you cancel this agreement on behalf of
11 Charles W. Penland, Jr.?
12 A. Yes.
13 MS. BRIDGES: Object to form.
14 BY MR. IMHOFF:
15 Q. 14, 15, if you would, please.
16 A. All right.
17 Q. Who created these documents?
18 A. Dealer Financial.
19 Q. Did you create these documents?
20 A. No.
21 Q. Did you make any modifications or changes
22 to these documents, other than changing the schedule
23 on page 6?
24 A. No. That's it.
25 Q. Okay. Do you know -- do you know if you

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1 were allowed to make any modifications or changes?
2 A. No, I'm not allowed to do that.
3 Q. Do you know who created what we call a
4 signature block with the different places for folks
5 to sign?
6 A. That would be Dealer Financial.
7 Q. Did you have anything to do with that?
8 A. No.
9 Q. Okay. So when Dealer Financial created
10 their document, did they have three different places
11 for three different Penland entities to sign?
12 A. Yes.
13 Q. Okay. And were you required to sign in
14 three different places?
15 A. Absolutely.
16 Q. Okay. Were you required to sign on behalf
17 of Dealer Financial, LLC -- I'm sorry, on behalf of
18 Penland Automotive, LLC?
19 A. Yes.
20 Q. Okay. And did it have a place for your
21 title?
22 A. Yes. It says, "President."
23 Q. Okay. Were you required to sign on behalf
24 of Penland Properties II, LLC?
25 A. Yes.

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1 Q. Okay. And what was your title?
2 A. President.
3 Q. Okay. And were you also required to sign
4 a third time on behalf of yourself as guarantor and
5 grantor?
6 A. Yes.
7 Q. And did you sign it all three times?
8 A. Sure did.
9 Q. And were you required to sign it all three
10 times by Dealer Financial?
11 A. Yes.
12 Q. Were you ever presented with another
13 document, such as this --
14 A. No.
15 Q. -- in 2020, where you had to sign a
16 document to enter into a new contract in relationship
17 with Dealer Financial?
18 A. Never.
19 MS. BRIDGES: Object to form.
20 BY MR. IMHOFF:
21 Q. Would you have signed it on behalf of
22 yourself as guarantor and grantor and Penland
23 Properties II, if you had been presented with a
24 document like this --
25 A. No.

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1 Q. -- in 2020?
2 A. Never.
3 MS. BRIDGES: Object to form.
4 BY MR. IMHOFF:
5 Q. Is this contract valid after February
6 2019, in your opinion?
7 A. No.
8 MS. BRIDGES: Object to form.
9 THE WITNESS: It was canceled.
10 BY MR. IMHOFF:
11 Q. Okay. Did Tim -- I can't remember his
12 last name -- Tim Yarger have authority to sign or
13 enter into agreements or obligate you in any way
14 personally, Mr. Penland?
15 A. No.
16 Q. Was Tim Yarger a member of Penland
17 Properties II?
18 A. No.
19 Q. Was he ever a member, owner, shareholder,
20 director of Penland Properties II?
21 A. No.
22 Q. Did he ever have any authorization, power
23 or approval from Penland Properties II to enter into
24 or execute documents on behalf of Penland Properties
25 II?

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1 A. No.
2 Q. Okay. And we've already established that
3 Mr. Yarger didn't have any authorization to enter
4 into any obligations or contracts and execute any
5 documents on behalf of Penland Automotive; is that
6 right?
7 MS. BRIDGES: Object to form.
8 THE WITNESS: That is correct.
9 BY MR. IMHOFF:
10 Q. Okay. Is there any way, in your mind,
11 that Tim Yarger could have obligated yourself and
12 your two companies to an agreement or contract with
13 Dealer Financial in 2020?
14 MS. BRIDGES: Object to form.
15 THE WITNESS: No.
16 BY MR. IMHOFF:
17 Q. Can you think of any rational, reasonable
18 basis that Mr. Yarger could obligate yourself and
19 your two companies to a contract and agreement with
20 Dealer Financial in 2020?
21 A. (Shakes head.)
22 MS. BRIDGES: Object to form.
23 THE WITNESS: No.
24 BY MR. IMHOFF:
25 Q. Anything at all?

Page 162 1 MS. BRIDGES: Object to form. 2 THE WITNESS: No. 3 (Off-record discussion.) 4 BY MR. IMHOFF: 5 Q. When you were doing business with Dealer 6 Financial between November 2016 and February of 2019, 7 did the terms of the agreement change at all? 8 A. They dropped out the mortgage. 9 Q. Okay. Did the actual interest change over 10 time, either interest or curtailments or -- 11 A. No. 12 Q. -- timing? 13 A. No. 14 Q. Mr. Penland, I can show you the documents 15 that I have from yesterday, where there are 16 amendments to the 2016 -- 17 A. Oh, okay. 18 Q. -- agreement. There were e-mails changing 19 some of the terms. 20 A. Okay. 21 Q. Do you remember that? 22 A. Yeah, now I do. 23 MS. BRIDGES: Object to form. 24 THE WITNESS: Yeah, I do remember that 25 now.	Page 164 1 Q. November 2018. Were you doing business 2 with Dealer Financial in '18? 3 A. Oh, in '18, yes. I'm sorry. Yes, yes. 4 Q. Do you recognize this as an e-mail from 5 Daniel Haight of Dealer Financial to several people, 6 but including Tim Yarger and Karen Willis? 7 A. Yes. Yes, I do see that. 8 Q. Read that first line for me, if you will. 9 A. This line (indicating)? 10 Q. No, the first sentence. 11 A. "Greetings. Tim and I have agreed that 12 curtailments going forward will be 7.5 percent 13 beginning at the day -- at 90-day mark and continuing 14 each month until the vehicle is paid off." 15 Q. Is that a change to the 2016 terms of the 16 agreement -- 17 A. Oh, yeah, has to be. 18 Q. -- between Penland Automotive, Penland II, 19 yourself, and Dealer Financial? 20 A. Yes, that's a really big one. 21 (Exhibit No. 9 previously marked for 22 identification.) 23 BY MR. IMHOFF: 24 Q. I hand you Exhibit No. 9 from yesterday's 25 deposition. Do you recognize that as an Amendment to
Page 163 1 BY MR. IMHOFF: 2 Q. And I -- 3 A. Take your time. That's all right. 4 Q. It's moving fast. That's right. 5 MR. IMHOFF: I don't have all the copies 6 from yesterday, Emily, but this is No. 10 yesterday, 7 November 13, 2018 e-mail. 8 MS. BRIDGES: One second. I'm sorry, what 9 number did you say? 10 MR. IMHOFF: It's Exhibit 10. It's DFH 11 715. Are you good? I'm going to use the ones before 12 that, too, 9 and 8. 13 (Exhibit No. 10 previously marked for 14 identification.) 15 BY MR. IMHOFF: 16 Q. Okay. Have you seen that e-mail before? 17 A. Yeah. 18 Q. What's the date of it? 19 A. November 13th of '18. 20 Q. We're still doing business with Dealer 21 Financial then -- 22 A. No. 23 Q. -- in 2018? 24 MS. BRIDGES: Object to form. 25 BY MR. IMHOFF:	Page 165 1 the Loan and Security Agreement and other related 2 agreements? 3 A. Yes. 4 Q. Okay. Can you flip the page for me? 5 A. (Witness complies.) 6 Q. What's -- what's the date on that? 7 A. April 2018. 8 Q. Okay. Do you understand that that's an 9 amendment or a change to the November 2018 Loan and 10 Security Agreement? 11 A. Yes, it is. 12 MS. BRIDGES: Object to form. 13 BY MR. IMHOFF: 14 Q. Were you asked to agree to that and sign 15 that change? 16 A. Oh, yeah. 17 Q. Were you asked to sign it three times on 18 behalf of yourself, Penland II Properties -- 19 A. Yeah. 20 Q. -- and Penland Automotive? 21 A. Yes. There's three signatures there. 22 Penland Automotive, Penland Properties II, and me 23 personally guarantying it. 24 Q. Okay. Change the page, please. All 25 right. What is changed from the November

Page 166 1 '16 -- strike that. 2 What has changed from the November 2016 3 agreement, according to this amendment? 4 A. Uhm, the credit facility increased from 5 200- to 500-. 6 Q. Okay. Does that change the 2016 7 agreement, also? 8 A. Oh, yeah. Of course. 9 (Exhibit No. 8 previously marked for 10 identification.) 11 BY MR. IMHOFF: 12 Q. I'm going to hand you No. 8 from 13 yesterday's deposition. Just tell us what that is 14 and the date and who it's from. 15 A. All right. It's from Dan Haight to Karen 16 Willis and John Bethea's name is underneath that, 17 Dealer Financial, Penland Automotive, Amended 18 Commercial Agreement. 19 Q. What's the date of that? 20 A. I need my glasses. All right. January 21 22nd of '18. 22 Q. Okay. And does that also have terms 23 different from -- 24 A. Oh, yeah. 25 Q. -- amending the 2016 agreement?	Page 168 1 agreement? 2 A. I have no idea. 3 Q. The amendments to it? 4 A. I -- 5 Q. The e-mails, which one of these is the 6 terms that were agreed to in 2020? 7 MS. BRIDGES: Object to form. 8 THE WITNESS: Well, since -- you're 9 talking -- these are all the changes and you can't 10 change a contract without a signature, all right? 11 So -- and I never seen a contract for this 2020 or 12 2021, whenever the -- what was the date on that? The 13 new -- this allegedly new contract that never showed 14 up. 15 BY MR. IMHOFF: 16 Q. Isn't that -- 17 A. No, that's right. The '16 contract. 18 Q. Mr. Penland, isn't that the whole problem 19 in the case? 20 A. Well, yes, of course, it is. 21 MS. BRIDGES: Object to form. 22 BY MR. IMHOFF: 23 Q. Did you ever see what terms were going to 24 be used -- 25 A. I was waiting for the terms.
Page 167 1 A. Absolutely. 2 Q. All right. And were you asked to print 3 that out, sign it, and return it? 4 A. Yes. There it is right here. And -- and 5 sign and initial. 6 Q. All right. So my question originally, 7 Mr. Penland -- so my question originally was, were 8 the terms of the 2016 agreement amended and changed 9 over the course of your relationship with Dealer 10 Financial? 11 A. Yes. 12 Q. Okay. 13 A. I didn't understand your question at the 14 time. Yes. 15 Q. Okay. Do you understand it's Dealer 16 Financial's position that the 2016 agreement was 17 renewed and used as the agreement between Penland 18 Automotive, Penland II Properties, and yourself in 19 2020? You understand that's what they allege? 20 A. I understand that's what they allege, yes. 21 Q. Which of the amendments, modifications, 22 and terms do they mean? 23 MS. BRIDGES: Object to form. 24 BY MR. IMHOFF: 25 Q. Which -- which terms in the 2016	Page 169 1 Q. -- for curtailments, timing of 2 curtailments, interest on curtailments, fees? 3 A. The fees. 4 MS. BRIDGES: Object to form. 5 BY MR. IMHOFF: 6 Q. Did you -- were any of those ever 7 presented to you or explained to you -- 8 A. Never. 9 Q. -- in 2020? 10 MS. BRIDGES: Object to form. 11 THE WITNESS: No. 12 BY MR. IMHOFF: 13 Q. Did you ask for them to be presented to 14 you? 15 A. Yes. 16 Q. Did you ever get anything in writing 17 presented to you, what they were? 18 MS. BRIDGES: Object to form. 19 THE WITNESS: No. 20 BY MR. IMHOFF: 21 Q. Every other change or agreement you had 22 with Dealer Financial -- 23 A. Always had to sign it. 24 MS. BRIDGES: Object to form. 25 BY MR. IMHOFF:

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1 Q. Always had to be signed --
2 A. Always had to be signed like crazy.
3 Q. -- or was in writing, right?
4 MS. BRIDGES: Object to form.
5 THE WITNESS: Exactly.
6 MR. IMHOFF: What's your objection to
7 that?
8 MS. BRIDGES: Yeah, I can tell where the
9 end of the question was and then you're assuming
10 different things. And there's assumptions based in
11 there.
12 BY MR. IMHOFF:
13 Q. As we sit here today, and as you sat in
14 your office in September and August of 2020, do you
15 know what the terms were that DFH, Dealer Financial,
16 claimed you agreed to?
17 A. No.
18 Q. When Dealer Financial repossessed your
19 cars on October 8th, were you embarrassed?
20 A. Very much so.
21 Q. Did you suspect it was going to get out?
22 A. Oh, I knew it would.
23 Q. Did you suspect that people would believe
24 that you -- that you were incapable of doing your
25 work and paying your bills in your chosen profession?

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1 MS. BRIDGES: Object to form.
2 THE WITNESS: Yes.
3 BY MR. IMHOFF:
4 Q. Okay. And that day when Mr. Lanzl and Mr.
5 Haight came to an auction and followed you in an
6 auction with papers, were you embarrassed?
7 MS. BRIDGES: Object to form.
8 THE WITNESS: Extremely. And angry.
9 BY MR. IMHOFF:
10 Q. In your experience, how many -- how many
11 years have you been going to an auction?
12 A. 45 years.
13 Q. How many times have you have seen the
14 owners and principals of a lender come to an auction
15 to confront a dealer?
16 A. Never.
17 Q. You've never seen that happen before?
18 A. Never.
19 MS. BRIDGES: Object to form.
20 THE WITNESS: It doesn't happen.
21 BY MR. IMHOFF:
22 Q. You said you've talked to people who were
23 asking you what was going on?
24 A. Yeah.
25 Q. Did they express surprise that owners and

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1 principals of a lender came to a auction to confront
2 you?
3 A. Yes.
4 Q. How do you think that -- how do you think
5 that affected your professional relationship or your
6 professional reputation?
7 A. It hurt it.
8 Q. What does it say when you can't pay your
9 bills and your lenders have to come and repossess
10 your cars?
11 A. Run.
12 MS. BRIDGES: Object to form.
13 BY MR. IMHOFF:
14 Q. What does "run" mean?
15 A. Stay away from them.
16 Q. Why?
17 A. Because you might get burned.
18 Q. Why?
19 A. Because they can't pay their bills.
20 Q. Why can't they pay their bills?
21 A. They're out of trust. They're not paying
22 their -- they're selling the cars and not paying them
23 off. They ain't got no money.
24 Q. Is that important in your industry?
25 A. Yes, very much so.

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1 Q. For the lenders to trust you and believe
2 in you?
3 MS. BRIDGES: Object to form.
4 THE WITNESS: Yes.
5 BY MR. IMHOFF:
6 Q. Do the auctioneers have to trust and
7 believe in you?
8 MS. BRIDGES: Object to form.
9 THE WITNESS: Yes.
10 BY MR. IMHOFF:
11 Q. Do you -- do you --
12 A. It's the auctions, not the auctioneers.
13 The auctions.
14 Q. I'm sorry --
15 A. I just wanted to --
16 Q. No, no, no.
17 A. Auctions.
18 Q. Do the auctions have to trust and believe
19 in you?
20 A. Absolutely.
21 MS. BRIDGES: Object to form.
22 BY MR. IMHOFF:
23 Q. Would you prefer that your peers and other
24 professionals in your industry don't believe that you
25 are unable to run your business and pay your bills?

Page 174 1 MS. BRIDGES: Object to form. 2 THE WITNESS: Back then, you know, I 3 had -- I had a lot of people come up to me going, 4 What's going on? And, you know -- 5 BY MR. IMHOFF: 6 Q. It bothered you? 7 A. Bothered me. 8 MS. BRIDGES: Object to form. 9 THE WITNESS: Bothered me? It was 10 horrifying. 11 MR. IMHOFF: I don't have any other 12 questions. Thank you. 13 MS. BRIDGES: Couple of follow-up 14 questions based on what Mr. Imhoff discussed with 15 you. 16 EXAMINATION 17 BY MS. BRIDGES: 18 Q. Did Charna ever offer any comment or 19 objection to the US -- I'm sorry, the CSC UCC filing? 20 A. Explain that again. One more time. 21 Q. So looking at Exhibit -- oh, Exhibit 8. 22 If you'll pull out Exhibit 8. So the first one is -- 23 that was filed first. As Mr. Imhoff and I have 24 discussed with you, if you turn to the second page of 25 that 3441, was Corporation Service Company. If	Page 176 1 THE WITNESS: No, I'm okay. I'll make it. 2 BY MS. BRIDGES: 3 Q. And this is from -- 4 A. It's just small. 5 -- Corporation Service Company, subsection 6 3. If you turn it the correct way around, again. 7 About -- a little more than halfway down it says, 8 "Secured party's name, Corporation Service Company." 9 Do you see that? 10 A. Yes. 11 Q. Okay. Did Charna or anybody else at Lewis 12 Mason -- her company have any objection to this UCC 13 filing? 14 A. No, because I don't -- I don't even know 15 what this is. See, she probably called them. And I 16 don't know this for a fact, but I'm sure she called 17 them because she didn't mention this one at all. All 18 she mentioned was Dealer Financial's. 19 Q. She -- but you have no idea whether or not 20 she knew about this? 21 A. No, I don't. 22 Q. But she never offered an objection to you 23 or told -- or mentioned this? 24 A. Not this one. Only -- only Dealer 25 Financial. And I don't even know what this is.
Page 175 1 you'll flip to page -- the second page of that 2 document. Based on the date of this filing, 3 September 23rd, 2015, would you agree that it was 4 filed first? 5 (Off-record discussion.) 6 BY MS. BRIDGES: 7 Q. All right. If you'll flip to the second 8 page of Exhibit 8, 3441. You see that on the 9 bottom -- bottom right-hand corner? 3441, the page 10 number. 11 A. Yes. 12 Q. All right. And the date on this, if you 13 look in the upper right, was September 23rd, 2015. 14 If you'll look in the upper right-hand corner 15 sideways. 16 A. Yes, I got it. 17 Q. Okay. 18 A. I don't have my glasses. 19 MR. IMHOFF: You don't mind me pointing, 20 do you? 21 BY MS. BRIDGES: 22 Q. Okay. And then -- 23 A. Yeah, I don't have my glasses on. It's 24 kind of hard to see. 25 MR. IMHOFF: Do you need them?	Page 177 1 Q. In -- 2 A. Didn't this lapse in 2020? I mean, didn't 3 this lapse in 2020? 4 Q. According to the document, the lapse date 5 is September 23rd of 2020. 6 A. Okay. Well, that's history then, right? 7 It's expired. 8 Q. When -- 9 A. If it's expired, why would she care? 10 Q. Charna talked to you in June of 2020, 11 correct? 12 A. Well, she didn't -- she didn't 13 bother -- must have been already expired, because 14 it's done now. 15 Q. June comes before September? 16 A. Okay. But she didn't -- apparently she 17 called and it didn't bother her. Because I don't 18 even know what this is. 19 Q. You have no idea what she did? 20 A. No, but -- 21 Q. You don't know whether she called them? 22 A. -- but I do know she said I'm not -- I 23 can't increase your floor plan until this guy 24 releases the UCC filing. 25 Q. Mr. Penland, that's not my question. My

Page 178 1 question is, did Charna -- 2 A. She didn't mention this to me. 3 Q. And the lapse date was after your June 4 conversation with her? 5 A. Yes. 6 MS. BRIDGES: Okay. Let me go off the 7 record a second. 8 (Recess was taken from 3:21 p.m. to 3:29 9 p.m.) 10 MS. BRIDGES: That's it. Nothing. 11 MR. IMHOFF: Done. 12 (The witness, after having been advised of 13 his right to read and sign the transcript, does not 14 waive that right.) 15 (Deposition was concluded at 3:29 p.m.) 16 17 18 19 20 21 22 23 24 25	Page 180 1 I N D E X 2 Page Line 3 Examination 4 By Ms. Bridges 3 3 5 By Mr. Imhoff 134 4 6 By Ms. Bridges 174 16 7 Certificate of Reporter 179 2 8 9 REQUESTED INFORMATION 10 Page 26, Line 25 Profit and Loss Statements and numbers of cars sold. 11 Page 37, Line 10 12 Karen Willis and Tim Yarger's Independent Contractor Agreements 13 Page 86, Line 18 14 List of names of people at auction who asked about what happened. 15 Page 95, Line 19 16 Floor plan financing documents with Kinetic Advantage. 17 Page 113, Line 5 18 List of lenders who were spooked by repossession and provide narrative of conversations had with them. 19 Page 116, Line 13 20 Search for text messages for any you have regarding this matter. 21 Page 117, Line 6 22 Written Communications with anyone regarding this matter. 23 24 25
Page 179 1 CERTIFICATE OF REPORTER 2 I, MARY K. STEPP, Notary Public for the State of 3 South Carolina at Large, do hereby certify that the 4 foregoing transcript is a true, accurate, and 5 complete record. 6 I further certify that I am neither related to 7 nor counsel for any party to the cause pending or 8 interested in the events thereof. 9 Witness my hand, I have hereunto affixed my 10 official seal this 17th day of July, 2022, at 11 Campobello, Spartanburg County, South Carolina. 12 13 14 15 16 17 18 19 20 21 22 23 24 25 Mary K. Stepp, Notary Public My Commission Expires: March 1, 2028	Page 181 1 E X H I B I T S 2 Page Line 3 Defendant's Exhibits Marked for Identification 4 Exhibit 1 Notice 20 19 5 Exhibit 2 Partnership Agreement 30 1 6 Exhibit 3 Loan and Security Agreement 41 3 7 Exhibit 4 August 2020 E-mail Chain w/att. 59 15 8 Exhibit 5 7-6-20 Letter Haight to Penland w/att. 70 5 9 Exhibit 6 10-8-20 Letter Haight to Penland 78 11 10 Exhibit 7 Affidavit of Tim Yarger 89 9 11 Exhibit 8 UCC Filings 95 12 12 Exhibit 9 9-6-20 E-mail Haight to Yarger and Willis 117 19 13 Exhibit 10 10-9-20 Letter Haight to Penland Automotive 131 8 14 Exhibits Previously Marked for Identification 15 Exhibit 8 Amendment to Commercial Agreement 166 9 16 Exhibit 9 Amendment to Loan and Security Agreement April 2018 164 21 17 Exhibit 10 11-13-18 E-mail 163 13 18 (Previously marked exhibits were retained by counsel) 19 20 21 22 23 24 25

Charles W. Penland, Jr. - Indiv/30B6
Penland Automotive, LLC Vs. Dealer Financial Holdings, LLC

July 6, 2022

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1 Jason Imhoff 2 jimhoff@conlaw.com 3 July 19, 2022 4 RE: Penland Automotive, LLC v. Dealer Financial Holdings, LLC 5 7/6/2022, Charles W. Penland, Jr. - Indiv/30B6 (#5305882) 6 The above-referenced transcript is available for 7 review. 8 Within the applicable timeframe, the witness should 9 read the testimony to verify its accuracy. If there are 10 any changes, the witness should note those with the 11 reason, on the attached Errata Sheet. 12 The witness should sign the Acknowledgment of 13 Deponent and Errata and return to the deposing attorney. 14 Copies should be sent to all counsel, and to Veritext at 15 erratas-cs@veritext.com. 16 17 Return completed errata within 30 days from 18 receipt of testimony. 19 If the witness fails to do so within the time 20 allotted, the transcript may be used as if signed. 21 22 Yours, 23 Veritext Legal Solutions 24 25	1 Penland Automotive, LLC v. Dealer Financial Holdings, LLC 2 Charles W. Penland, Jr. - Indiv/30B6 (#5305882) 3 ACKNOWLEDGEMENT OF DEPONENT 4 I, Charles W. Penland, Jr. - Indiv/30B6, do hereby declare that I 5 have read the foregoing transcript, I have made any 6 corrections, additions, or changes I deemed necessary as 7 noted above to be appended hereto, and that the same is 8 a true, correct and complete transcript of the testimony 9 given by me. 10 11 _____ 12 Charles W. Penland, Jr. - Indiv/30B6 Date 13 *If notary is required 14 SUBSCRIBED AND SWORN TO BEFORE ME THIS 15 _____ DAY OF _____, 20__. 16 17 18 _____ 19 NOTARY PUBLIC 20 21 22 23 24 25
Page 183 1 Penland Automotive, LLC v. Dealer Financial Holdings, LLC 2 Charles W. Penland, Jr. - Indiv/30B6 (#5305882) 3 E R R A T A S H E E T 4 PAGE____ LINE____ CHANGE_____ 5 _____ 6 REASON_____ 7 PAGE____ LINE____ CHANGE_____ 8 _____ 9 REASON_____ 10 PAGE____ LINE____ CHANGE_____ 11 _____ 12 REASON_____ 13 PAGE____ LINE____ CHANGE_____ 14 _____ 15 REASON_____ 16 PAGE____ LINE____ CHANGE_____ 17 _____ 18 REASON_____ 19 PAGE____ LINE____ CHANGE_____ 20 _____ 21 REASON_____ 22 23 _____ 24 Charles W. Penland, Jr. - Indiv/30B6 Date 25	

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Jul 01 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellant Case No. 2023-001053
Lower Court Case No. 2021-CP-23-00244

Dealer Financial Holdings, LLC, Steve Lanzl, and Daniel B. Haight, Appellants,

v.

Penland Automotive, LLC and Charles W. Penland, Jr., Respondents.

**CONSENT SUPPLEMENTAL RECORD ON APPEAL
VOLUME II**

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

C.A. No.: 2021-CP-23-00244

Penland Automotive, LLC

and Charles W. Penland,

Plaintiffs,

v.

Dealer Financial Holdings,

LLC, Steve Lanzl and Daniel

B. Haight,

Defendants

Deposition of

DANIEL B. HAIGHT 30(b)(6)

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, a deposition was taken on the 5th of July, 2022 commencing at approximately 10:00 a.m. attended by counsel as follows:

Appearances:

EMILY BRIDGES, Esquire

Parker Poe Adams & Bernstein, LLP

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704 East McBee Avenue

Greenville, South Carolina 29601

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Attorney for the Defendants

Also Present:

Charles W. Penland, Jr., Plaintiff

Karen Willis, Penland Automotive, LLC

Steve Lanzl, Defendant (via telephone)

Deposition Reported By:

Bebe O. Norris, CR

Depositions And., Inc.

(864) 235-3518

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1 Pursuant to Notice and/or agreement to take depositions,
2 the within deposition was taken by the above reporter, a
3 Notary Public, as required under the South Carolina Rules of
4 Civil Procedure, Rule 30(b)(6), et al., by consent of all
5 parties at Parker Poe in Greenville, South Carolina.

6 WAIVER:

7 Counsel and the deponent agreed that both the reading over
8 and signing of the deposition are hereby NOT WAIVED.

9 **

**

**

10 The deponent was duly sworn to tell the truth, the whole
11 truth, and nothing but the truth concerning the matter herein.
12 DANIEL B. HAIGHT, being duly affirmed, testified as follows:

13 DIRECT EXAMINATION BY MR. IMHOFF:

14 Q. Good morning Mr. Haight, my name is Jason Imhoff, we just
15 met obviously. I don't think we've actually met in person
16 before, but I'm the attorney representing Plaintiff Mr.
17 Penland and his companies. I have noticed your deposition
18 and also the 30(b)(6) deposition of Dealer Financial,
19 which I'm sure that your attorney's talked to you about.
20 This morning's deposition or today's deposition it's my
21 attention to be a 30(b)(6) deposition, so, we have some
22 topics list, and I've already, my day is already sort of
23 falling apart, I've been given the wrong topics list and
24 my laptop's dead. So, we'll have to go over those topics
25 here in about 30 minutes and hopefully that shows up. In

1 the meantime, I'm gonna get some background information
2 out of the way. I understand that we have a little bit of
3 an agreement that we are going to try to do your
4 individual personal deposition, at least some of it during
5 the 30(b)(6) deposition with counsel's consent.

6 BY MR. IMHOFF (TO MS. BRIDGES):

7 At any time obviously you can object and say that's enough
8 get out of there.

9 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

10 Q. But we're gonna try to make this as efficient as possible.

11 So, some of my questions actually won't go to what Dealer
12 Financial knows but what Daniel Haight knows.

13 A. Okay.

14 Q. And those are things like where'd you go to high school or
15 where'd you go to college; okay? Some of those things are
16 gonna be individual questions and not Dealer Financial
17 questions. I'll try not to mix them up too much; okay?
18 But as we proceed through the deposition today, there are
19 some rules in South Carolina and really every judicial
20 jurisdiction in the United States. Have you ever had your
21 deposition taken before?

22 A. I have not.

23 Q. You have not, okay. All right, so, this is pretty much
24 it, it's formal but informal. The court reporter to my
25 right, to your left, who is recording everything that is

1 said in this room; okay? To do that, I've been told for a
2 very long time that the court reporter needs some kind of
3 a verbal response, yes or no, whatever the answer is
4 because they cannot record and then transcribe head nods
5 and uh-huhs and the non-verbal cues that we give in
6 everyday conversation; okay?

7 A. I understand.

8 Q. All right. So, as we ---

9 A. Question, would it be helpful if we provided you a list of
10 the topics that you sent to us, is that what you're
11 looking for?

12 BY MR. IMHOFF (TO MS. BRIDGES):

13 Have you already designated folks?

14 BY MS. BRIDGES:

15 I mean we just have the topics list, but I can print you
16 the topics list for you.

17 BY MR. IMHOFF:

18 That would be great, that would be great.

19 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

20 Q. All right, so, as we proceed, in almost every deposition
21 I've ever taken someone will say uh-huh, huh-huh or shake
22 their head; okay? I will say, "Is that a yes, is that a
23 no," and I just need you to confirm that it is whatever I
24 said or that it's not, it's the other thing so that it can
25 be recorded by the court reporter; okay?

1 A. Understood.

2 Q. I'm not picking on you, everybody does it, but I have to
3 make sure that the record is clear; okay?

4 A. No problem.

5 Q. And so, at the end of the deposition our court reporter
6 goes back, and I'm not sure how every court reporter does
7 it, but they make a transcript out of everything that's
8 said in the room; okay? So, I need to make sure that that
9 transcript is clear. Also, during the day I may ask you
10 an unclear question or a bad question, or frankly you're
11 thinking about the last question or the last answer or
12 lunch or whatever it is. If you don't hear my question or
13 you don't understand my question, please ask me to repeat
14 it or rephrase it; okay?

15 A. Yes.

16 Q. All right. If you don't ask me to repeat it or rephrase
17 it, I'll assume that you understood that question and
18 you're answering that question; is that fair?

19 A. Correct, sure, fair.

20 Q. All right. If you need a break for any reason, just let
21 us know, we'll happily take a break; okay? I'll try to
22 take a break every hour and a half or so anyway, but let
23 us know if you need to; okay?

24 A. Um-hum, yes.

25 Q. All right, if you have any questions during the

1 deposition, ask me and then Emily and I will get together
2 and we'll try to resolve whatever issue you have; okay?

3 A. Yes.

4 Q. All right, when we take breaks or you get on the phone,
5 when you do anything else, you're still under oath in this
6 deposition so you cannot talk about my questions or your
7 answers to those questions until the deposition is over,
8 or I get to ask you about those questions and what you
9 talked about; okay?

10 A. Understood.

11 Q. All right. I think that's it.

12 BY MS. BRIDGES:

13 Let me go get the printout then, if you don't mind taking
14 a quick pause.

15 BY MR. IMHOFF:

16 Okay, great, great.

17 (Off the record at approximately 10:05 a.m.; on the record at
18 approximately 10:06 a.m.)

19 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 1; ATTACHED TO
20 DEPOSITION)

21 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

22 Q. All right, Mr. Haight, I just handed you what I have now
23 marked as Plaintiffs' Exhibit Number 1 to this deposition.

24 It is a 30(b)(6) Notice to Dealer Financial Holdings.

25 Let me ask you, do you understand what a 30(b)(6) Notice

1 is in general?

2 A. Tell me.

3 Q. I don't know who in your company knows what okay, and so,
4 there are certain things that I need to know that would
5 come from within your company, but I don't know who in
6 your company can answer these things, so, instead of ---

7 A. Well, it's a small company, so.

8 Q. --- well, instead of hitting everybody and asking
9 everybody the same questions, what we do is we use this
10 Rule of Civil Procedure 30(b)(6) to take the deposition of
11 a company and ask the company to provide a designee to
12 talk about the things we want to talk about; ---

13 A. You bet.

14 Q. --- okay? All right, so, as you all see, attached to this
15 30(b)(6) Notice is, there are what I call Topics Lists,
16 but 30(b)(6) Areas of Inquiry Exhibit "A," and there are
17 28 of those topics; do you see those?

18 A. I do.

19 Q. Okay, have you seen this before?

20 A. I mean, this particular document, yes, I have.

21 Q. Okay, have you gone through these topics to determine if
22 you're the appropriate person to respond to those topics
23 or if someone else is the appropriate person?

24 A. I'm the appropriate person.

25 Q. Okay, so, all 28 of these topics, you are the guy?

1 A. Sure.

2 Q. All right. And you understand that you are testifying on
3 behalf of Dealer Financial?

4 A. I do.

5 Q. All right. All right, I told you I was gonna go through
6 your background a little bit, so, let's do that. What's
7 your full name, please?

8 A. Daniel Barrett Haight.

9 Q. Barrett? B-A-R-R?

10 A. E-T-T.

11 Q. E-T-T. What's your date of birth?

12 A. January 16, 1963.

13 Q. Where were you born?

14 A. Hawaii, Honolulu, Tripler Army Hospital; if that's
15 important.

16 Q. Nope. What's your Social Security number; we'll take it
17 off the record so it's not on the document.

18 (Off the record at approximately 10:15 a.m.; on the record at
19 approximately 10:15 a.m.)

20 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

21 Q. What's your present address?

22 A. One, personal address?

23 Q. Yeah.

24 A. 1065 Carolina Drive, Tryon, North Carolina 28782.

25 Q. How long have you lived there?

- 1 A. 2008, 2009.
- 2 Q. Who lives there with you?
- 3 A. My wife and two dogs, and a bunch of painters at the
- 4 moment.
- 5 Q. What's your wife's name?
- 6 A. Patricia Shafer.
- 7 Q. She has a different last name?
- 8 A. Correct.
- 9 Q. How long have you been married?
- 10 A. 1999.
- 11 Q. Do you have - - Tryon is in North Carolina; is that right?
- 12 A. That's correct.
- 13 Q. Is there any part of Tryon that's in South Carolina?
- 14 A. I mean, I can walk to South Carolina, but no, Tryon is a
- 15 North Carolina whatever that is.
- 16 Q. Well, that's what I thought, I just wanted to make sure
- 17 that you're not in some outlier part that happens to be in
- 18 Spartanburg County, South Carolina. All right, do you
- 19 have any relatives by blood or marriage who are 18 or
- 20 older in Greenville County, South Carolina?
- 21 A. Not that I know of.
- 22 Q. Okay. Do you go to church?
- 23 A. Not currently.
- 24 Q. Are you a member of any professional organizations?
- 25 A. I'm a member of the Independent Auto Dealers Association;

1 does that count?

2 Q. Sure.

3 A. Okay.

4 Q. Anything else?

5 A. I think that's it.

6 Q. Are you a member of any personal hobby organizations,
7 Shriners or hobby car collectors or anything like that?

8 A. I mean, no, I participate in the Tryon Auto, you know,
9 Show but I wouldn't say that that's an organization; I
10 park cars.

11 Q. Okay, all right. How long have you been with Dealer
12 Financial?

13 A. Since its inception in 2016.

14 Q. What is your title?

15 A. I'm the Managing Member and President.

16 Q. What'd you do before you went to Dealer Financial?

17 A. I've been an entrepreneur since 2008, and so, I was
18 involved in, you know, running another, purchasing and
19 running another small business, Daniel Scientific. I am a
20 private investor and have investments in a number of
21 startups, and prior, you want me to keep going backwards
22 or what would you like for me to do?

23 Q. Well, I want to go backwards chronologically.

24 A. Sure.

25 Q. So, what were you doing for work in 2015, 14, 13?

1 A. Okay, all right, so, 2015, you know, 2000, so, been
2 primarily involved with Dealer Financial. The current
3 Dealer Financial Holdings was formed in 2016, prior to
4 that, Dealer Financial operated as Dealer Financial, Inc.,
5 and I would say that we started, I made my first floorplan
6 investment in 2011. So, between 2011 and 2015, first as a
7 private investor, then as Dealer Financial, Inc. we
8 operated the floorplan.

9 Q. Okay. All right, and do I understand that you also had
10 other investments, memberships in other companies from
11 2011 to 2016?

12 A. Yes.

13 Q. Are any of them in the financial world, lending?

14 A. Hmm, I think the only one that might be is a company
15 called Car Pay, which I am invested through QC Fintech,
16 but it's a, you know, it's a miniscule investment as far
17 as the total capitalization of the company. But they are,
18 they more are a payment processor for the used car, or for
19 the, I'm not even, for the car sales world.

20 Q. All right, so, what was your role, I understand that you
21 were initially a private investor, but when you became an
22 employee or a fulltime participant or a parttime
23 participant in Dealer Financial, Inc. what were your
24 roles, different roles?

25 A. I was the, I formed it, I was the President.

1 Q. Of the corporation?

2 A. Yes.

3 Q. And then you became the Managing Member and the President
4 when Dealer Financial was created in 2016?

5 A. That's correct.

6 Q. What kind of company is Dealer Financial presently?

7 A. It's a LLC, South Carolina LLC.

8 Q. Who are the members?

9 A. They are roughly 50 members; I'm not sure I can rattle off
10 all their names.

11 Q. All right, who is the largest single shareholder?

12 A. I am, I am.

13 Q. What percentage do you have?

14 A. Hmm, greater than 10 less than 20, truthfully, yeah, so,
15 greater than 10, less than 20.

16 Q. Who's the second largest?

17 A. Steve Lanzl.

18 Q. All right, what did you do before you created Dealer
19 Financial, Incorporated in 2011?

20 A. So, I was the President of, I guess technically it would
21 be Ranger Scientific, but the doing business as was Daniel
22 Scientific. It was an ongoing concern here in Greenville,
23 South Carolina that I purchased, I purchased the assets of
24 it. It prepared environmental sample containers, so, it
25 was a kitting company, for the most part.

1 Q. How long were you there?

2 A. I believe I owned it for three, three and a half years.

3 Q. What were your titles or title there?

4 A. Chief bottle washer.

5 Q. Okay, what was your actual title?

6 A. President.

7 Q. Okay. All right, so, that's from about 2008 to 2011?

8 A. 2000, no, no, no, no, no, it would be from 2000, you know,

9 I owned that while we operated initially Dealer Financial,

10 ---

11 Q. Okay.

12 A. --- so, I would say that I - - 2010 through 2013.

13 Q. I mean, I understand you don't have a traditional work

14 history necessarily, so, just sort of help me work through

15 ---

16 A. Sure, ---

17 Q. --- some of it.

18 A. --- yeah, no, I get it, yeah.

19 Q. If they're overlapping, ---

20 A. You bet.

21 Q. --- any other kind of thing.

22 A. Okay.

23 Q. All right, so, what did you do while you were working, or

24 before you were working at Ranger Scientific/Daniel

25 Scientific?

1 A. Yeah, so, the, you know, I was, I guess the next job would
2 be for Resolute Force Products, which was the successor
3 company to Bowater here in Greenville. I worked in
4 Montreal, Canada, I was the Chief Operating Officer for
5 the Coded and Specialties Paper Division.

6 Q. Did you say Coded and Specialties?

7 A. Yes, sir.

8 Q. How long were you there?

9 A. I worked in the, I guess, in Canada or for Bowater?

10 Q. For Bowater.

11 A. Started working, Bowater acquired Avenor Paper, which was
12 a Canadian company that I worked for in, hmm, '96,
13 possibly, I mean, I'm not entirely sure on the year.

14 Q. That's fine. So, but you worked for Bowater from
15 approximately '96 until 2009 or so?

16 A. Yes.

17 BY MS. BRIDGES:

18 Jason, assistant just said somebody's, I think ---
19 (Off the record at approximately 10:17 a.m.; on the record at
20 approximately 10:17 a.m.)

21 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

22 Q. All right, so, with less specificity what'd you do before
23 '96?

24 A. Was still in the paper business, worked for, you know,
25 Avenor, prior to that it was Canadian Pacific Forrest

1 Products, prior to that it was Lake Superior Paper
2 Industry, prior to that it was Westvaco. I started in - -
3 yeah?

4 Q. What was the last one West?

5 A. Westvaco.

6 Q. Vaco?

7 A. W-E-S-T-V-A-C-O.

8 Q. Vaco.

9 A. They had a plant in Charleston that you may be familiar
10 with.

11 Q. Okay.

12 A. They were the largest landholder in South Carolina for a
13 significant period of time.

14 Q. What is the last grade of school that you completed?

15 A. Master's Degree.

16 Q. Okay, in what field?

17 A. Master's in Business Administration.

18 Q. From where?

19 A. Northwestern School, Kellogg.

20 Q. Northwestern in Evanston?

21 A. Yes. The Kellogg School of Business at, Graduate School
22 of Business at Northwestern University, I think is its
23 technical designation.

24 Q. What year was that?

25 A. Ooh, um, I think I graduated in '96.

1 Q. Okay, where'd you go to undergrad?

2 A. Clemson.

3 Q. What was your degree?

4 A. Bachelor's Degree in Economics with a minor in History.

5 Q. What year did you get your degree from Clemson?

6 A. '85.

7 Q. Did I ask you where, you were born in Hawaii that's right,
8 all right.

9 A. Can't you tell by my (makes a motion with his hand
10 circling his face and head).

11 Q. Yeah, yeah. Did you spend any time in the military?

12 A. Yes.

13 Q. What branch?

14 A. Army.

15 Q. What years?

16 A. Active duty 1985 to 1989, and I was in the Reserves
17 through, active in the Reserves through '99, resigned my
18 Commission in 2002 or 3.

19 Q. What was your rank at discharge?

20 A. Major.

21 Q. Did you have a specialty in the Army?

22 A. I was an Infantry Man, I was a Civil Affairs Officer, I
23 was a Psychological Operations Qualified Officer, I was
24 Airborne Qualified, I was Ranger Qualified; is that
25 enough?

1 Q. Probably. What were you doing when you left the military?

2 A. When I left the military, I was in the Individual Ready
3 Reserve, so, I had no assignment, ---

4 Q. Okay.

5 A. --- other than to the IRR.

6 Q. Have you ever been arrested or convicted of a crime?

7 A. Not that I'm aware of, no, I don't believe so, no.

8 Q. Have you ever been involved in a lawsuit previously,
9 either as a defendant or a plaintiff?

10 A. Hmm, I've been, so, I guess Dealer Financial has filed
11 suit, subsequent to you guys suing us, but prior to that,
12 no.

13 Q. Do you have - - let me make sure that I understand that.
14 Dealer Financial has filed a lawsuit subsequent to this
15 lawsuit?

16 A. That's correct.

17 Q. Okay, has Dealer Financial ever been sued before or after?

18 A. No.

19 Q. What lawsuit did you bring after?

20 A. We brought lawsuits against three dealers for, you know,
21 for default and deficiencies.

22 Q. Are they all in South Carolina?

23 A. No, in fact, none of them are in South Carolina.

24 Although, we participated in a bankruptcy in South
25 Carolina prior to this, but it was, actually, we didn't, I

1 don't think we'd bring the bankruptcy.

2 Q. All right. And you personally have never been involved in
3 a lawsuit as ---

4 A. I have not.

5 Q. --- a defendant or a plaintiff?

6 A. No. I mean, and, I guess, so, let me just, I will
7 clarify, been interviewed in an action with the Justice
8 Department, but that was an antitrust case that started in
9 Europe and we were a participating witness, Bowater was.

10 Q. Bowater, okay. Let's talk about Dealer Financial.

11 A. Sure.

12 Q. You created or Dealer Financial Corporation, Inc. was
13 created in 2011?

14 A. Thereabouts, yes, sir.

15 Q. South Carolina corporation?

16 A. North Carolina S-Corp.

17 Q. Public or private? Oh, ---

18 A. Private.

19 Q. --- it's private. What was the main focus of Dealer
20 Financial Corporation?

21 A. It was similar, materially similar to Dealer Financial
22 Holdings.

23 Q. Floorplan lending?

24 A. That's correct.

25 Q. Does either Dealer Financial, Incorporated or Dealer

1 Financial, LLC have any other products other than
2 floorplan lending?

3 A. We provide, you know, so, technically we provide, another
4 product would be we provide secured loans similar to the
5 floorplans to dealer, to select dealers who originate
6 retail installment contracts, but it is, the loan is to
7 the dealer, we don't touch the consumer.

8 Q. Let me make sure I understand that. So, does that allow
9 your customers to self-finance car sales?

10 A. It would be in the, you know, the nomenclature, we buy
11 here pay here. So, yes, they originate retail installment
12 contracts to the consumer, and we take a second lien
13 position to them on the vehicle, but we, our loan is to
14 the dealer, not to the consumer.

15 Q. All right, how long have you been offering that product?

16 A. Two or three years, probably more like three.

17 Q. All right, do you have any other products that Dealer
18 Financial offers?

19 A. No, sir.

20 Q. All right. Who were the shareholders in 2011?

21 A. Of Dealer Financial, Inc.?

22 Q. Yes.

23 A. Myself and Steve Lanzl. And for what it's worth, Dealer
24 Financial, Inc. remains in existence.

25 Q. Does it hold any assets?

1 A. Hmm, I mean, it's got a bank account, it's got an interest
2 in Dealer Financial Holdings, so, I guess the answer would
3 be yes, it does. It is the Manager of Dealer Financial
4 Holdings.

5 Q. Okay, all right. When you say, "Dealer Financial
6 Holdings," ---

7 A. That's who you sued.

8 Q. --- okay, Dealer Financial Holdings, LLC is the limited
9 liability company that there are 50 essentially members of
10 that you own somewhere between 10 and 20 percent?

11 A. Yes, sir.

12 Q. Okay, and was there a sale of Dealer Financial
13 Corporation's assets to Dealer Financial Holdings, LLC?

14 A. In essence, yes. It was an assumption of assets, so, yes,
15 we transferred the assets from Inc. to Holdings when we
16 created Dealer Financial Holdings.

17 Q. Okay, all right, so, does your, did your corporation
18 documents, are those filed publicly for the LLC?

19 A. I mean, I'm not sure how to answer that, but, I mean,
20 they're on this, you know, we're properly created in the
21 State of South Carolina.

22 Q. Do you have a Membership Agreement?

23 A. Yes, we do.

24 Q. And so, it's for dissolution, buying partners out, how
25 you're gonna manage the company, maybe who the officers

1 are; that type of thing?

2 A. Yes, sir.

3 Q. All right, who are the Officers of Dealer Financial
4 Holdings?

5 A. Myself and Steve Lanzl.

6 Q. Okay, you're the President, what does Mr. Lanzl do?

7 A. Chief Operating Officer.

8 Q. Are there any other officers?

9 A. No.

10 Q. All right, how many employees does Dealer Financial
11 Holdings have?

12 A. Zero.

13 Q. All right, so, I know of a couple of folks, John Bethea
14 and Kim Rusch (sounds like Rauch), I might not be saying
15 Kim's last ---

16 A. Rusch (sounds like Rush).

17 Q. Rusch?

18 A. Rusch.

19 Q. Rusch, okay. How is their compensation or relationship
20 with Dealer Financial setup?

21 A. Okay, so, they are actually independent contractors to
22 Dealer Financial, Inc. as Dealer Financial, Inc. is the
23 operating company of Dealer Financial Holdings, and they
24 have an independent contractor relationship with Dealer
25 Financial Inc.

1 Q. Where is Kim Rusch actually physically located?

2 A. She lives in Charlotte, North Carolina.

3 Q. Does Dealer Financial Holdings have an office in
4 Charlotte?

5 A. Dealer Financial, Inc. has an office in North Carolina, in
6 Charlotte, North Carolina.

7 Q. Okay, and where does, does Kim Rusch sit in Dealer
8 Financial, Inc.'s office?

9 A. She basically, she works remotely, everybody works
10 remotely. So, while we have to maintain an office because
11 of our wholesale dealer license, it is not used actively.

12 Q. All right. How many other independent contractors work
13 with Dealer Financial, Inc.?

14 A. That's a great question. Currently?

15 Q. Yeah.

16 A. And I'm not trying to flippant but ---

17 Q. No.

18 A. --- okay, I'll say seven, I want to say seven people.

19 Q. And all of them are independent contractors?

20 A. That's correct.

21 Q. They're all 1099s?

22 A. That's correct. And I guess technically Steve and I are,
23 would be, we receive 1099s periodically from Dealer
24 Financial, Inc. so, if you want to include us, that'd be
25 nine.

1 Q. So, your salaries are actually paid by Dealer Financial,
2 Inc.?

3 A. We don't take a salary.

4 Q. Do you take distributions?

5 A. We take, Dealer Financial Holdings does make distributions
6 to its members.

7 Q. All right, so, there are seven folks who are 1099
8 independent contractors, Dealer Financial Holdings has no
9 employees, Dealer, does Dealer Financial, Inc. have any
10 employees?

11 A. Independent contractor relationships.

12 Q. And independent contractor agreements with these seven
13 folks including Kim, John, are with Dealer Financial,
14 Incorporated?

15 A. Inc., yes, sir.

16 Q. All right. And how does Dealer Financial, Incorporated
17 direct Dealer Financial, LLC's business such that Dealer
18 Financial, Incorporated employee, I'm sorry, contractors
19 are doing Dealer Financial, LLC's business?

20 A. Dealer Financial, Inc. is the designated operating, you
21 know, designated operator of Dealer Financial Holdings;
22 does that answer your question?

23 Q. Sure.

24 A. Okay. I guess as the designated manager of Dealer
25 Financial Holdings, would be technically ---

1 Q. Is there an agreement between Inc. and LLC that sets forth
2 that, ---

3 A. There ---

4 Q. --- that arrangement?

5 A. It is specified in the Dealer Financial Holdings'
6 Operating Agreement; I don't believe there's an additional
7 agreement between the two.

8 Q. All right, does Dealer Financial Holdings have its own
9 office address?

10 A. I mean, there is a registered address in Landrum, South
11 Carolina, but that's a post office box, so, there is no
12 physical office.

13 Q. Okay, so, Dealer Financial Holdings does not have a
14 physical office apart from the office that is rented or
15 leased by the corporation?

16 A. Correct.

17 Q. Okay, does it have its own phone number, Dealer, does
18 Dealer Financial Holdings have its own phone number
19 separate from Incorporated?

20 A. No.

21 Q. Does Dealer Financial Holdings have a, an insurance
22 policy?

23 A. Dealer Financial Holdings maintains a garage liability
24 insurance as required by North Carolina, and I guess a
25 general business policy.

1 Q. When you say, "general business," like a commercial
2 general liability policy?

3 A. I think that's what it is, you know, but it, yes, it's a
4 general liability policy.

5 Q. Does Dealer Financial, Inc. have its own insurance policy?

6 A. No.

7 Q. Do either of those entities have either Errors or
8 Omissions or Directors' and Officers' coverage?

9 A. Not unless it's in the liability policy.

10 Q. All right, and then the liability policy that you're
11 talking about, that's with Dealer Financial Holdings; is
12 that right?

13 A. That's correct.

14 Q. All right, so, if you have those two insurance policies,
15 either Errors or Omissions or Directors' and Officers'
16 policies, they would cover yourself and Mr. Lanzl only
17 because you're the only two Officers or Directors of
18 Dealer Financial Holdings; is that right?

19 A. I'm, you know, I guess. I'm gonna answer I don't know but
20 I would imagine that would be the case.

21 Q. Let me make sure that I understand because it is a little
22 bit complicated. Dealer Financial Holdings, you're a
23 member of that?

24 A. That's correct.

25 Q. Are you also a named and/or designated officer or director

1 of that company?

2 A. I am the Designated Managing Member.

3 Q. Managing Member?

4 A. Actually, technically, the only designation I have is the
5 tax something partner or tax member or something like
6 that.

7 Q. That sounds like the worst one; that's a joke.

8 A. No, but it's, yeah, it's the truth.

9 Q. All right, so, ---

10 A. So, yes, so, you know, I, Dealer Financial, Inc. is the
11 Manager of Dealer Financial Holdings.

12 Q. Are you the President of Dealer Financial Holdings?

13 A. Yes.

14 Q. Okay, and where is that set forth?

15 A. I believe it's set forth in the Operating Agreement.

16 Q. And that's the agreement we're talking about, well, do you
17 have an Operating Agreement and also a Membership
18 Agreement; if you know?

19 A. We have, you know, so, with the PPM, Private Placement
20 Memorandum, there is a Subscription Agreement, but I
21 believe, so, the members sign the Subscription Agreement
22 and the Operating Agreement. And that would be, to my
23 recollection, the extent of the things that they sign,
24 members sign.

25 Q. And the Operating Agreement, is that the agreement we

1 discussed earlier that will have dissolution, ---

2 A. Yes.

3 Q. --- buying partners out; those type of things?

4 A. Yes.

5 Q. And are you designated as the President of that document?

6 A. Hmm, I don't recall.

7 Q. And I don't mean to repeat the questions again but I'm ---

8 A. Yeah.

9 Q. --- just trying to wrap my head around it, is there any
10 document that you're aware of that would designate you as
11 the President and Mr. Lanzl as, and I'll have to look back
12 at what he is, I think Chief Operating Officer?

13 A. I believe, you know, so, I would say this: I don't recall
14 that specifically, but I do know that it is detailed in
15 the Private Placement Memorandum; if that's helpful.

16 Q. And I think ---

17 BY MR. IMHOFF (TO MS. BRIDGES):

18 Emily, I may be outside my topics, I'm not sure, so, ---

19 BY MS. BRIDGES:

20 Yeah.

21 MR. IMHOFF CONTINUES:

22 --- thanks for giving me a little bit of leniency there.

23 BY MS. BRIDGES:

24 Yeah, I think they ---

25 BY MR. IMHOFF:

1 I didn't see that coming.

2 WITNESS RESUMES:

3 A. And what are you trying to solve for and maybe I can help.

4 Q. Well, I think it's a general topic of just how, or who
5 Dealer Financial is and how you're set up.

6 A. Okay.

7 Q. All right, so, Topic Number 1 is "Management and Company
8 structure,"

9 A. Um-hum.

10 Q. I think would generally cover what we just talked about.
11 We've got owners, members, directors, managers, employees,
12 representatives and shareholders. So, I think you said
13 that there are seven independent contractors with Dealer
14 Financial, Incorporated; right?

15 A. Dealer Financial, Inc.

16 Q. Inc.

17 A. And if you want to include Steve and I that's nine.

18 Q. Do you actually have independent contractor agreements
19 with Inc.?

20 A. You mean me personally, no.

21 Q. No, okay. Does Steve?

22 A. No.

23 Q. All right. All right, and so, those Independent
24 Contractor Agreements, are those executed at the time
25 those people are hired or are they executed every year or

1 how do you do that?

2 A. Basically, at the time we hired them; they do not, they
3 have not been re-executed.

4 Q. All right. Tell me generally what kind of independent
5 contractors you have, what do those seven people do?

6 A. You bet. So, we have people that do sales, John Bethea
7 calling on Billy Penland, calling on Penland Automotive,
8 we have auditors, people who go count cars, we have
9 customer, ah, increase one, we, so, there's either eight
10 or 10 independent contractors, we have customer service
11 that, you know, handle calls from Karen; those would be
12 the three generals of our independent contractors.

13 Q. All right, so, Kim is Customer Service?

14 A. Yes, sorry.

15 Q. John Bethea is Sales?

16 A. Correct.

17 Q. There's a gentleman's name that you listed in your witness
18 list I didn't recognize, and I can look for it or you can
19 try to tell me who would know about this issue other than
20 you, Steve, Kim and John, and he may be in the auditing,
21 he maybe in the auditing?

22 A. So, I'm not sure we listed anybody in our witness list
23 though, so, not that I don't want to give you the names,
24 but ---

25 Q. Do any of your independent contractors have the ability to

1 bind ---

2 A. Absolutely ---

3 Q. --- Dealer Financial ---

4 A. --- not.

5 Q. Let me finish my sentence.

6 A. Sorry.

7 Q. She's got to get it.

8 A. My apologies.

9 Q. Do any of your independent contractors have the ability to
10 bind Dealer Financial Holdings?

11 A. Absolutely not.

12 Q. Do they have the ability to bind Dealer Financial, Inc.?

13 A. Absolutely not.

14 Q. When you send them out into the world to do their customer
15 service or their auditing or their sales, are they
16 identified to your customers or the public in general in
17 any way that they are independent contractors and not
18 representatives of Dealer Financial Holdings or Inc.?

19 A. I'm not sure there's a, I'm not sure what you're, what the
20 difference would be to you.

21 Q. Well, I understand that you're not sure what I'm thinking,
22 but I'm not worried about what I'm thinking, I'm worried
23 about what your answer is.

24 A. Sure.

25 Q. Are your independent contractors identified as independent

1 contractors where, when they're out in the world doing
2 their work?

3 A. I don't know; I don't know how they identify themselves, I
4 guess.

5 Q. Are they given, for instance, does John Bethea get a card?

6 A. Yes.

7 Q. Does it say "Independent Contractor" on his card?

8 A. No.

9 Q. Does it say Dealer Financial on his card?

10 A. Yes.

11 Q. Okay, do the rest of your employees get cards?

12 A. I'm not, several of them have cards, I'm not sure
13 everybody has a card.

14 Q. Okay, would Kim Rusch have a card?

15 A. Yes.

16 Q. Rusch, I apologize, okay. Would your auditors have cards?

17 A. I don't know.

18 Q. Do you know, can you say one way or the other whether
19 those business cards indicate that those folks are
20 independent contractors?

21 A. I can fairly confidently say they do not specifically
22 identify them as independent contractors.

23 Q. All right, are your independent contractors given
24 vehicles?

25 A. They are not given vehicles but we provide, or wait, they

1 lease vehicles and we will pay for it. So, it depends on
2 how you want to ---

3 Q. As a stipend or the entire amount?

4 A. Generally, the entire amount.

5 Q. Tell me, all right, so, you've got - - let's talk about
6 Kim Rusch.

7 A. And not all the contractors have a vehicle, but the people
8 doing sales generally have vehicles, the lead auditor has
9 a vehicle, but not everybody has a vehicle.

10 Q. In your Independent Contractor Agreements, do you limit
11 your independent contractors from working for any other
12 companies?

13 A. No.

14 Q. Do you know if any of your independent contractors
15 actually do work for any other companies?

16 A. Yes.

17 Q. All right, tell me who.

18 A. You know, John Bethea has some independent business
19 interest, I'm not entirely sure what they are, but he has
20 aspirations of starting something related to the car
21 business. Marty Coates is another independent contractor
22 that does sales, and he's got several other independent
23 contract relationships, Auto Data Direct, a dealer
24 management system, Kim Rusch has an independent contract
25 relationship with Mothering Across Continents.

1 Q. Can you say that one more time, Mother ---

2 A. Mothering Across Continents. Muriel, the other person in
3 Customer Service, I want to say, I'm not sure whether she
4 has an independent contract relationship or a W2
5 relationship with a cheerleading gym. Is that enough or
6 you want me to keep going?

7 Q. Sure.

8 A. Okay.

9 Q. That's enough.

10 A. So, yeah, we don't preclude any of the independent
11 contractors from having other revenue sources.

12 Q. Let's talk about Kim Rusch's job.

13 A. Sure.

14 Q. She's a Customer Service Representative; is that right?

15 A. Correct.

16 Q. All right, and when it says, when you say, "Customer
17 Service," are the customers the dealers?

18 A. Yes.

19 Q. Okay.

20 A. Yeah.

21 Q. All right, and is she a main point of contact with the
22 dealers?

23 A. I'm not sure she's the main point of contact because the
24 sales person would be the main point of contact, but ---

25 Q. Okay.

1 A. --- she certainly gets a lot of phone calls.

2 Q. What is her role on a day-to-day basis? Let me ask it
3 this way: Does it say in her Independent Contract
4 Agreement what her role and duties are?

5 A. It's been a long time since I've looked at it, but I'm
6 sure it does, you know, but I don't recall specifically.

7 Q. Well, is there a written job description for her job,
8 anything?

9 A. I wouldn't say there's a written job description, no, but
10 there is bullet points likely in her independent contract
11 relation, you know, if one exists, there is likely bullet
12 points. Using Marty and Muriel who are the most recent
13 ones, no job description but bullet points.

14 Q. All right, you've already told me Kim can't bind the
15 company; is that right?

16 A. Correct.

17 Q. Can she make decisions on payments, payment timing,
18 interest, curtailments; anything like that?

19 A. No.

20 Q. How can she, does she just pass that information up to you
21 or Steve?

22 A. She calls me.

23 Q. She calls you. All right, and you said she's working from
24 home; is that right?

25 A. Correct.

1 Q. All right, so, do you ---

2 A. Largely, I mean, she goes to the office pick up stuff but
3 she works from home.

4 Q. Okay, so, do you text, talk, email all day every day?

5 A. I mean, the majority of the day certainly. I'm sure there
6 are days where we don't interact, but certainly
7 frequently.

8 Q. Are you working on anything on a day-to-day basis,
9 specifically in the 2019, 2020 timeframe, on any other
10 businesses or investments or are you fulltime with Dealer
11 Financial Holdings?

12 A. I mean, I would say the answer to that would be yes, I am
13 involved in other businesses.

14 Q. How many hours a week do you think that you dedicate to
15 Dealer Financial Holdings?

16 A. Hours a week, I probably work 100 hours a week and 40 of
17 them are Dealer Financial, and that's a broad estimate.

18 Q. And how do you split the workload with Steve Lanzl?

19 A. I would say I am the primary operator of Dealer Financial
20 Holdings, Steve is a resource, helps lead the audit group,
21 the two person audit group, and is a sounding board for
22 me. But as far as operating the company, that would be my
23 responsibility. But, yeah, I'll stop there.

24 Q. All right, so, anything that John Bethea has questions
25 about, new customers, old customers, changes in

1 agreements, have to go through you; is that right?

2 A. Ultimately, I mean, he may call Steve, he and Steve have a
3 good working relationship and talk frequently. They talk
4 frequently but the, you know, I would - - Steve generally
5 does not make independent decisions without consulting me.

6 Q. And Kim Rusch, anything that she has a question about or a
7 customer has a customer(sic) about, any changes, updates,
8 anything she can't handle at her level also goes through
9 you?

10 A. Yeah, I mean, she may call the sales guy to get
11 clarification, but if there is a financial decision to be
12 made, neither the sales people nor Kim are making them.
13 But I, you know, they're making, they may make customer
14 accommodation decisions, I don't know what that would be,
15 but if it's a material decision, it's coming to me.

16 Q. When you say, "customer accommodation decisions," if you
17 don't know what it means I can't know what it means.

18 A. Okay.

19 Q. So, what, give me ---

20 A. So, I'll just say, a ---

21 Q. --- an example.

22 A. --- dealer wants to floor a car non-auction purchase, Kim
23 will book it out. If it falls within the parameters that
24 we have set, which is 80 percent of average wholesale, she
25 can accept that as a floor. If it does not fall within

1 that parameter, it comes to me.

2 Q. Let's talk about John Bethea.

3 A. Sure.

4 Q. I think you called him Sales; is that right?

5 A. Yes.

6 Q. All right, so, what, let me ask it this way: Is there a
7 written description or definition of his job description?

8 A. Again, there's not a job description, no, if anything,
9 there's bullet points and a conversation.

10 Q. Okay.

11 A. We try and - - you know, it's a small group, so,
12 generally, it's handled with a, you know, "I prefer to do
13 this" talk.

14 Q. All right, what in general is John Bethea supposed to be
15 doing?

16 A. Yeah, John's supposed to be bringing on new customers and
17 servicing the existing customers.

18 Q. How is he compensated?

19 A. He has a stipend, you know, a set stipend and a incentive
20 opportunity based on revenue, and, hang on, the incentive
21 opportunity I guess technically is broken down into
22 revenue and customer defaults. And periodically, we'll
23 set what we call is a spiff, which is a special incentive,
24 but materially, it's around revenue generation and
25 customer defaults.

1 Q. And how is the revenue calculated?

2 A. It is calculated based on Dealer Financial, Inc.'s
3 revenue, so, not Dealer Financial Holdings.

4 Q. Let me make sure that I understand. Is it based on John
5 Bethea's sales or is it based on Dealer Financial ---

6 A. John Bethea's sales.

7 Q. --- Inc.'s? Okay.

8 A. As a percentage of Dealer Financial Inc.'s revenue. So,
9 in other words, may be giving one dollar of revenue to
10 Dealer Financial Holdings represents about 29 to 30 cents
11 for Dealer Financial Inc., John gets a percentage of that.

12

13 Q. Okay. Let me see if I can make sure that I understand
14 this. Let's say you have a half million dollar deal,
15 dealer floorplan; okay? Is John Bethea compensated in any
16 way by that half a million dollar floorplan?

17 A. Just to get the floorplan?

18 Q. Yes.

19 A. No.

20 Q. So, the dealer actually has to go out and use the
21 floorplan?

22 A. Correct.

23 Q. And then pay Dealer Financial interest, curtailments,
24 fees; whatever it is?

25 A. Interest, yeah, or fees. Yeah, they, we, he is not

1 compensated based on the curtailments, that's just a trade
2 of principal.

3 Q. All right, so, it is in John Bethea's best interest to
4 have has many dealerships signing up with Dealer Financial
5 Holdings and using that pool of money to buy cars; ---

6 BY MS. BRIDGES:

7 Object to form.

8 DIRECT EXAMINATION CONTINUES BY MR. IMHOFF:

9 Q. --- is that fair?

10 BY MS. BRIDGES:

11 Object to form.

12 BY THE WITNESS (TO MS. BRIDGES):

13 And so, do I answer or do I not answer, what do I do?

14 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

15 Q. Answer if you can.

16 A. Okay. He is compensated based on revenue.

17 Q. And the ---

18 A. Or his incentive is based on revenue.

19 Q. --- and the way that your company, Dealer Financial
20 Holdings, gets revenue is by offering loans and having
21 interest and fees paid back on those loans from dealers;
22 is that right?

23 A. That's correct.

24 Q. Very simplified version of that is that ---

25 A. Yeah, but ---

1 Q. --- generally right?

2 A. That's pretty, not really simplified, that's kind of what
3 it is, yeah.

4 Q. Right. What about Kim Rusch, what, how is she
5 compensated?

6 A. She is compensated fixed, you know, stipend based on
7 hours, or I guess an hourly rate based on hours, but no
8 incentive opportunity.

9 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 2; ATTACHED TO
10 DEPOSITION)

11 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

12 Q. All right, Mr. Haight, I've now handed you Plaintiffs'
13 Exhibit Number 2.

14 A. (Witness reviews Plaintiffs' Exhibit Number 2).

15 Q. I just watched you flip through it and thank you for doing
16 that. Can you, as we sit here today, say whether that is
17 a complete and accurate copy of the 2016 Loan and Security
18 Agreement between Dealer Financial Holdings and Penland
19 Automotive, LLC?

20 A. I believe it to be a complete Loan and Security Agreement
21 document, there would've been an accompanying mortgage
22 that went along with this.

23 Q. And what was that mortgage for?

24 A. I believe it was the dealership property that was held by
25 Penland Properties II.

1 Q. At the bottom of this page on the lefthand side there is
2 some numbers, P, starts with PPAB. Do you know where
3 those numbers came from?

4 A. You know, they came from, I guess, the attorney version, I
5 don't, you know ---

6 Q. Attorney, your counsel here at Parker Poe or your attorney
7 who actually created these documents?

8 A. Parker Poe created these documents.

9 Q. Parker Poe years ago created your Loan and Security
10 Agreement and other documents?

11 A. Sure, yes.

12 Q. Okay.

13 A. Yeah, I mean, no, no, they're, I mean, they, ---

14 Q. Okay.

15 A. --- this is, you know, this is materially the same form
16 that we've used the entire time, there had been, you know,
17 various tweaks to it over its history, but this is the
18 material form that we've used in all of our agreements.

19 Q. All right. And when you say all time, since Dealer
20 Financial Holdings was created or since the, since you
21 began the company and incorporated?

22 A. Inc. used the same set.

23 Q. You don't recognize where the, where this ---

24 A. Has no meaning to me.

25 Q. Okay. All right, let's go through this. This is a form

1 you use for all your dealers?

2 A. Correct.

3 Q. All right, and fill this in with whatever important
4 applicable information needs to be filled in?

5 A. Yes.

6 Q. Who does that?

7 A. I do.

8 Q. You do it personally?

9 A. I do it personally and then I send it for review to our,
10 to Chip Ford, a Parker Poe attorney.

11 Q. Okay. All right, tell me who this agreement is between.

12 A. This agreement is between Penland Automotive, Penland
13 Properties, Charles Penland and Dealer Financial Holdings.

14

15 Q. All right, I want to be a little more specific. It's
16 between Penland Automotive, LLC; correct?

17 A. Yes.

18 Q. Penland Properties II, LLC; correct?

19 A. Correct, yes, sir.

20 Q. Okay.

21 A. Yep.

22 Q. Charles W. Penland, Jr.; correct?

23 A. Correct.

24 Q. And Dealer Financial Holdings, LLC?

25 A. Yes, sir.

1 Q. All right, and Dealer Financial Holdings indicates that
2 it's located at 310 Arlington Avenue, Suite 303,
3 Charlotte, North Carolina; is that right?

4 A. Correct.

5 Q. All right, is that the office you were referring to
6 earlier?

7 A. Yes.

8 Q. All right, that you needed due to a North Carolina statute
9 or law?

10 A. No, that's where we get titles and all that kind of good
11 stuff, so, Dealer Financial Holdings is registered as a
12 foreign corporation in North Carolina.

13 Q. Tell me in general what you believe this document
14 accomplishes for Dealer Financial Holdings.

15 A. I believe it creates a secured lending agreement with the
16 dealer, allows us to claim purchase money security
17 interest in vehicles, and has a Personal Guaranty from the
18 dealer. And this particular also provides that Penland
19 Properties II is a party to the agreement as again, you
20 know, the property is a material asset to the dealership.

21 Q. Collateral?

22 A. Yes.

23 Q. What is a purchase money security interest?

24 A. Purchase money security interest, obviously, secured, you
25 know, a secured lending agreement; I'm not sure whether I

1 said that previously. So, in a secured lending agreement,
2 you file the UCC and in a general security arrangement,
3 it's the order of the UCC, the date sets the priority. My
4 understanding of how the purchase money security interest
5 works is if we do the proper things by notifying other
6 secured lenders that we have entered into this agreement,
7 that nobody has a superior claim on vehicles that we
8 finance to the dealer.

9 Q. When you're evaluating a potential new dealership, new
10 customer, you pull the UCC-1 liens?

11 A. Yes, we do.

12 Q. Why?

13 A. See who's out there.

14 Q. Okay, and does that affect your ability to secure the
15 collateral? And by "you," I'm talking about Dealer
16 Financial Holdings.

17 A. I mean, I would say that, obviously, generally, sure, you
18 know. You know, if I believe in Mr., or Penland
19 Automotive's case, there were senior secured lenders, so,
20 we wouldn't have a senior claim on the desk chairs and all
21 that kind of good stuff, but we by providing them a PMSI
22 notification, do have a senior claim on the automobiles
23 that we finance. In general, previous UCCs do not deter
24 floorplan lenders from making additional floorplan loans.

25 Q. But why do you look it up?

1 A. Why not?

2 Q. Well, do you, I mean, do you look in their waste can to
3 see what they had for lunch?

4 BY MS. BRIDGES:

5 Object to form.

6 WITNESS ANSWERS:

7 A. I do not look in their waste can.

8 Q. Is there a reason that you look up the UCC-1 filings
9 before you take on a new dealership or re-up an old
10 dealership?

11 A. It's part of general underwriting.

12 Q. General underwriting, okay, so, does it have some value to
13 your company?

14 A. Generally, in, with regards to new dealerships, it has
15 more weight than an established dealership.

16 Q. And why would it have weight with a new dealership where
17 it doesn't with an established dealership?

18 A. I mean, established dealers, I'm betting we have some
19 dealers with 20 UCCs filed prior to ours, and, you know,
20 as has happened at Penland Automotive, they have worked
21 their way through the floor planning world, and that's,
22 you know, the UCCs generally, generally-speaking, we have
23 not found that floorplan lenders are diligent about filing
24 UCC-3s or removing their UCCs when a relationship is, you
25 know, not active. And it could be because the contract

1 remains in place they've asked, they've been asked not to,
2 all that kind of good stuff, but a new dealer, you know,
3 in general, the independent auto dealer is
4 undercapitalized and it's a capital intensive business.
5 So, if we see a new dealer, and when I say, "new dealer,"
6 I'm talking about somebody with less than a year or so in
7 the business with four UCCs, we would probably be very
8 careful about finding out what's active and what's going
9 on.

10 Q. All right, you said it doesn't affect floorplan lending;
11 did you say that a moment ago?

12 A. That is my experience.

13 Q. And have you ever worked at any other floorplan lender
14 other than Dealer Financial?

15 A. No.

16 Q. And you said there's a Personal Guaranty from the dealer.
17 Explain that to me, please.

18 A. Well, the, on the application, we ask who the owners are,
19 and in 2016, you know, Mr. Penland was the sole owner, and
20 any material owner we, they have to guarantee the Loan and
21 Security Agreement.

22 Q. Personally guarantee it?

23 A. Correct.

24 Q. Okay, so, they put their bank account, house, whatever up
25 as collateral to secure these loans?

1 A. Unlimited Personal Guaranty. And that is the case in all
2 of our loans and I believe every floorplan loan in
3 existence.

4 Q. And when you say, "every one of our loans," every one of
5 your active loans now has a Personal Guaranty?

6 A. Yes.

7 Q. Okay, and the Personal Guaranty doesn't ever roll off
8 after a certain amount of time?

9 A. No. Name a bank who allows, that makes a loan without a
10 Personal Guaranty these days.

11 Q. Okay. All right, and then you said that Penland
12 Properties II, LLC is also a participant in this
13 agreement; is that right?

14 A. Yes, sir.

15 Q. Okay, and you put a mortgage on Penland Properties II,
16 LLC's property; is that right?

17 A. Yes. My understanding is the only way to secure property
18 is to place a lien or a mortgage, and I guess it depends
19 on the state what they call it. In South Carolina, my
20 understanding is it is called a mortgage on the dealership
21 property.

22 Q. At this time, were there any other mortgages or guarantees
23 on anything else?

24 A. In respect to this loan?

25 Q. Yes.

1 A. Ask the question again, please.

2 Q. Sure. Was anyone else personally guaranteeing it, was
3 there any other collateral, whether it be real estate,
4 personal property, anything else that you can think of?

5 A. I mean, I believe we had a claim on all of Penland
6 Property II's assets by nature of this agreement, but the
7 specific asset we were working to encumber was the
8 dealership property. But I guess I'm, I - - so, no, not
9 to my - - I believe that that covered it.

10 Q. Well, this could be a confusion of kind. I asked if this
11 a complete copy; that's what I wanted to be sure of that
12 this is a complete ---

13 A. Oh.

14 Q. --- copy and I'm not missing anything.

15 A. I understand. I mean, from as far as the loan and
16 security packet, excluding the mortgage, to the best of my
17 recollection this is it, but I guess I'd want to go back
18 and check the file, but I believe this to be a complete
19 copy.

20 Q. Okay. For - - I want to talk in two parts; okay? I want
21 to talk in general, but I want to talk to specifically
22 2016 Penland Automotive. What generally do you do when
23 one of your sales people or a new customer shows up, what
24 is the process you work through to audit and evaluate
25 whether this is someone you want to do business with and

1 how you're going to go about that?

2 A. Sure. The first thing we get is an application, along
3 with that application the sales guys know there's a - -
4 you know, we're gonna look for financial information. In
5 this particular instance, we got tax returns, we have now
6 moved to submitting a 4506-C to the IRS, ---

7 Q. Say that one more time, 45 ---

8 A. 4506-C, which is the request for, you know, tax
9 information from the IRS. In this, we didn't do that in
10 2016, we weren't set up with the IRS to do that, and so,
11 in this particular case, I believe Mr. Penland provided
12 either personal or business tax returns or both. I know
13 there's a Profit and Loss Statement and a Balance Sheet
14 from the business. So, we worked to establish the
15 financial where with all of the business and of the
16 guarantor.

17 Q. And did you come and physically audit the property?

18 A. I'm - - you know, certainly we do not do business with a
19 dealership we haven't been on the property, so, I don't
20 know what an audit means, but I would say that we
21 certainly work to visit the property, have a, you know,
22 some form of - - we don't take applications, or we don't
23 execute loans to dealers we don't know.

24 Q. Do you do a credit check?

25 A. At this point in time we did not do a credit check, we now

1 do a credit check and a background check. We didn't do a
2 background check at this point, we did that in 2018 when
3 we renewed the credit file, when we started doing it in
4 general.

5 Q. All right, look at Page 6 if you will for me.

6 A. (Witness complies). Okay.

7 Q. Looks like there's some modifications in Section (1) of
8 Section (e)?

9 A. Yep.

10 Q. Do you recognize the handwriting or the initials?

11 A. I, yes, I do.

12 Q. Okay, whose handwriting is this?

13 A. I'm betting it's mine and my initials and Mr. Penland's
14 initials.

15 Q. All right, do you remember this negotiation?

16 A. Yeah, so, it was at the time the document was executed,
17 you know, Billy was rightfully, you know, quite truthfully
18 72 hours after sale or disposition is pretty standard in
19 the industry, you know, a car is considered sold when it,
20 when the contract technically is signed with the retail
21 customer and then they may have to drive off the lot, I'm
22 not sure, but Billy was worried that he would not be able
23 to fund the deals in that timeframe ---

24 Q. Oh.

25 A. --- so, we modified it.

1 Q. When you say Billy "was not able," were you talking to
2 Billy Penland?

3 A. That was one of the three times that I spoke with Billy
4 Penland.

5 Q. Tell me about each time you've talked to Billy Penland.

6 A. First time, that I recall, first time was at this signing,
7 we were ---

8 Q. You were physically present when he signed this?

9 A. Physically present at Penland Automotive on Wade Hampton
10 Boulevard in, I believe, Tim Yarger's office.

11 Q. Okay, when was the second time that you talked to him?

12 A. The second time was when I called Billy Penland after I
13 received your threatening phone call.

14 Q. Okay, talked to him on the phone?

15 A. Briefly.

16 Q. What day was that?

17 A. The 8th of October.

18 Q. Okay, how long did you talk to him?

19 A. A minute.

20 Q. What did you say?

21 A. I introduced myself, told him I received a phone call from
22 you, and he said he was at an auction bidding on cars and
23 he'd call me right back.

24 Q. Okay, when was the third time you talked to him?

25 A. At the America's Auto Auction the next morning.

1 Q. What time you think you called him on the 8th?

2 A. It was the afternoon and I guess I don't know a specific
3 time. It was immediately after I asked you if it would be
4 okay if I called him and we hung up.

5 Q. What'd I say?

6 A. You said it was okay if - - I inquired because I know
7 there's some intricacies about attorneys calling other
8 people's clients and you said no it perfectly fine if you
9 call him.

10 Q. You thought my phone call was threatening?

11 A. Yes.

12 BY MS. BRIDGES:

13 Object to form.

14 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

15 Q. In what way?

16 BY MS. BRIDGES:

17 Object to form.

18 BY THE WITNESS (TO MS. BRIDGES):

19 You want me to answer it?

20 BY MS. BRIDGES:

21 Yes.

22 BY THE WITNESS:

23 Okay.

24 WITNESS ANSWERS:

25 A. Well, when the opening salvo from your dealer's lawyer is,

1 "You know you don't have a valid contract with Penland
2 Automotive," I'm not sure how you would interpret that but
3 I took it as threatening.

4 Q. Okay. In general, what was my request or my client's
5 request to Dealer Financial?

6 A. I'm not sure we had a robust conversation about that
7 because we were - - you know, it was apparent to me that
8 you were trying to set the stage for something and that's
9 - - and you seemed surprised that I had not spoken with
10 Billy Penland ever about this, and that's why I asked you
11 if I could call Billy.

12 Q. Okay, but my question was what was I requesting on behalf
13 of my client from Dealer Financial?

14 A. I don't know.

15 Q. You have no idea?

16 A. Well, I imagine you wanted - - well, I don't think we got
17 there quite truthfully. You know, I, and I'm sorry if I'm
18 not recalling specifically, but we had that conversation,
19 I said, "No, we do have a valid contract," we went back
20 and forth about that. You asked me if I had had a
21 conversation with Billy about the subject, I said no. I
22 stated something like "Do you mind if I call Billy to
23 engage in a conversation with him," you know, so, I'm sure
24 you wanted to talk about whatever the terms Billy wanted
25 but I don't think we got there, you know, so, it was

1 obviously a conversation about our business relationship.

2 Q. It was a conversation about the terms of your business
3 relationship; correct?

4 BY MS. BRIDGES:

5 Object to form.

6 WITNESS ANSWERS:

7 A. You stated we did not have any terms to our business
8 relationship.

9 Q. That's not the question I asked you. It was a
10 conversation about what were the terms of your business
11 relationship; ---

12 BY MS. BRIDGES:

13 Object to form.

14 DIRECT EXAMINATION CONTINUED BY MR. IMHOFF:

15 Q. --- right?

16 BY MS. BRIDGES:

17 Object to form.

18 WITNESS ANSWERS:

19 A. Your statement to me was, "We did not have a valid
20 contract."

21 Q. Okay, and thus from that, what are the terms if there's no
22 valid contract?

23 A. And I stated we ---

24 BY MS. BRIDGES:

25 Object to form.

1 WITNESS CONTINUES:

2 A. --- we have a valid contract.

3 Q. Okay, so, you did understand that it was about the terms,
4 and your position was you have a valid contract which
5 states the terms; right?

6 BY MS. BRIDGES:

7 Object to form.

8 WITNESS ANSWERS:

9 A. I mean, you know, I can only tell you what you said and
10 what I said, and what you said was we didn't have a valid
11 contract and what I said was we did have a valid contract.
12 So, I'm, you know, I'm not trying to be combative, but we
13 didn't have a in-depth conversation about daily rates or,
14 you know, any of that kind of good stuff, it was really
15 about your assertion that we did not have a valid
16 contract.

17 Q. Hmm. Did you understand that before that conversation,
18 that Penland Automotive was questioning where the contract
19 was and what the terms of the agreement were?

20 A. No.

21 BY MS. BRIDGES:

22 Object to form.

23 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

24 Q. You had no idea?

25 A. None.

1 BY MS. BRIDGES:

2 Object to form.

3 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

4 Q. Have you since reviewed multiple emails where Penland
5 Automotive and Karis(sic) Willis, I'm sorry, Karen
6 specifically asked for you yourself to call Penland
7 Automotive to talk about the terms of the agreement?

8 BY MS. BRIDGES:

9 Object to form.

10 WITNESS ANSWERS:

11 A. And you clearly didn't, you produced that email but you
12 did not produce the email that we sent to you where I said
13 to Karen, "Karen, I left you a message, please call me"
14 and a follow on email that laid out the exception we were
15 making to the contract terms for the first, for the, for,
16 through September. So, my negotiations were with Tim
17 Yarger. I mean, Karen in, you know, my experience
18 obviously handled a lot of the financial transactions but
19 was not somebody I negotiated terms with. And so, when
20 there was that, you know, when she would send an email
21 like that, I would call Tim Yarger, Tim Yarger would say,
22 "Let me handle it," and we'd go on. But I returned
23 Karen's phone call.

24 Q. Was that a yes?

25 BY MS. BRIDGES:

1 Object to form.

2 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

3 Q. Yes, you were aware that Penland Automotive was having
4 questions about what the terms of the relationship were
5 ---

6 A. No.

7 Q. --- with Dealer Financial?

8 A. I don't believe ---

9 BY MS. BRIDGES:

10 Object to form.

11 WITNESS CONTINUES:

12 A. --- Penland Automotive was, I believe Karen Willis was
13 asking a question. Penland Automotive was represented by
14 Tim Yarger on numerous occasions and that's who I was
15 negotiating with as far as the terms were concerned.

16 Q. I have all the emails here, we'll go over them in a
17 second.

18 A. Sure.

19 Q. Did Karen ever tell you, "Stop talking to Tim and talk to
20 me"?

21 A. After Tim was ---

22 BY MS. BRIDGES:

23 Object to form.

24 WITNESS CONTINUES:

25 A. --- after Tim left the company ---

1 Q. Okay, it was after ---

2 A. --- she informed us ---

3 Q. --- after Tim left the company?

4 A. That's correct.

5 Q. So, on the date of that phone call, did you have an
6 understanding that Penland Automotive was struggling with
7 the terms of the agreement between Dealer Financial and
8 Penland Automotive starting in July of 2020?

9 BY MS. BRIDGES:

10 Object to form.

11 WITNESS ANSWERS:

12 A. No.

13 Q. Did Karen Willis ever tell you or any representatives of
14 Dealer Financial to stop communicating with Tim Yarger and
15 only contact her?

16 BY MS. BRIDGES:

17 Object to form.

18 WITNESS ANSWERS:

19 A. I don't recall that.

20 Q. Did John Bethea ever tell you that Penland Automotive,
21 Karen and Billy specifically, were struggling to
22 understanding that the terms of the agreement that started
23 in July of 2020 between Dealer Financial and Penland
24 Automotive?

25 BY MS. BRIDGES:

1 Object to form.

2 WITNESS ANSWERS:

3 A. John Bethea did not say that.

4 Q. Did anyone tell you that?

5 BY MS. BRIDGES:

6 Object to form.

7 WITNESS ANSWERS:

8 A. No, not to my recollection.

9 Q. So, going back to the document, on this Page 6, ---

10 A. Um-hum.

11 Q. --- you were actually in person with Billy Penland when he
12 signed this document; is that right?

13 A. Um-hum.

14 Q. Okay, and was this change negotiated in person?

15 A. Right there.

16 Q. All right, and so, can the terms of this agreement be
17 negotiated and modified as shown by this negotiated and
18 modified change?

19 A. It's been amended in writing a couple of times.

20 Q. Is that a yes?

21 BY MS. BRIDGES:

22 Object to form.

23 WITNESS ANSWERS:

24 A. Yes. But by me.

25 Q. What does that mean?

1 BY MS. BRIDGES:

2 Object to form.

3 WITNESS ANSWERS:

4 A. In other words, I'm the person who amends it on Dealer
5 Financials behalf, no one else.

6 Q. Okay. All right, so, you have independent contractor
7 sales people out in the world trying to get business; is
8 that right?

9 A. That's correct.

10 Q. And they have conversations with those dealerships about
11 what Dealer Financials' products are and what Dealer
12 Financial can offer; is that right?

13 A. That's correct.

14 Q. All right, and then obviously, you're not part of those
15 conversations most of the time because that's what the
16 sales people are for; is that right?

17 A. That's correct.

18 Q. All right, and so, then when those people come back, your
19 sales people come back, and say, "Hey, I think I have 'X'
20 Dealership," do you then go through the audit process with
21 them, background checks; all that type of thing?

22 A. The sales people are not privy to that information.

23 Q. I know, but does Dealer Financial do that?

24 A. If we get a valid application from a dealership, yes.

25 Q. Okay, and does what the sales person independent

1 contractor, for instance, John Bethea, tell the dealership
2 obligate Dealer Financial to those terms at all?

3 A. No.

4 Q. Does Dealer Financial put the terms in writing so that the
5 dealership understands what the terms of the agreement are
6 separate from whatever the sales person had to say to the
7 dealership?

8 A. We make every effort to make sure that the dealer is not
9 surprised. We will provide, you know, depending upon the
10 under, depending upon the dealership and the underwriting,
11 our practice is, not in every instance, but provide an
12 underwriting letter where we're requesting additional
13 information. In that underwriting letter, there are - -
14 it doesn't probably cover everything covered in here, but
15 would have, you know, what I'll call draft terms in, you
16 know, credit lines, daily rates; that kind of stuff. So,
17 we'll provide an underwriting letter if we need to. The
18 next step would be a commitment letter, and in that
19 commitment letter we're making a firm commitment based on,
20 subject to the signing of, you know, binding legal
21 documents, and then the binding the legal documents. So,
22 we make, I think, significant efforts to provide the
23 dealer with information so that they're not surprised or
24 wondering what the terms and agreements are.

25 Q. Well, look at A1; if you will.

1 A. Sure. (Witness complies).

2 Q. Okay, is this part of the information you provide to the
3 dealer so they're not surprised?

4 A. At what point in time?

5 Q. Well, I don't know it's your company. Is this part of the
6 information, for instance, it says the, "Credit Limit", it
7 says, "Floorplan Factor," it says, "Default Floorplan
8 Factor;" you see all those?

9 A. It's part of the Loan and Security's documents, so, yes.

10 Q. Okay.

11 A. And, okay, go.

12 Q. And it's included in this Exhibit Number 2 in 2016; right?

13 A. Correct.

14 Q. Okay. So, the next page is A2; do you see that "Principal
15 Reduction Payments: Maturity Date"?

16 A. Yes.

17 Q. Is that also part of the agreement between the dealership
18 and Dealer Financial?

19 A. Yes.

20 Q. And information you would provide the dealership so they
21 understand their obligations?

22 A. Yes.

23 Q. A3, same thing, "Audits, Financial Statements, Fees" which
24 go onto A4 also a part of the relationship between Dealer
25 Financial and the dealership?

1 A. Yes.

2 Q. Okay, and information that you give the dealership so they
3 understand what they're expected to and what their
4 obligations are?

5 A. Sure.

6 Q. All right. And did those things change over time?

7 A. They can be amended, sure.

8 Q. Well, how do you set forth the amendment; is that always
9 in writing?

10 A. I believe so, yes.

11 Q. Okay, so, if you change a Floorplan Credit Limit, is that
12 another document that's executed?

13 A. I, yeah, I guess I've been told by counsel that we don't,
14 you know, the contract allows us to over extend, so, we
15 don't really need to if we want to increase it but we try
16 to. In Penland Automotive's instance, there was both a
17 email amendment and a formal amendment to the contract
18 prior, you know, prior to 2018.

19 Q. You've gone back and looked to see what modifications and
20 changes were made to the 2016 contract?

21 A. I've tried to refresh my memory, yes.

22 Q. Okay, did anyone else on behalf of Penland Automotive sign
23 this agreement other than Billy Penland?

24 A. No.

25 Q. Okay, could anyone else sign this agreement on behalf of

1 Billy Penland as a Personal Guarantor?

2 A. Could somebody else guarantee the loan? Sure. Would they
3 be silly enough to do it? I don't know.

4 Q. On behalf of Billy Penland?

5 A. No one else signed a Personal Guaranty on behalf of Billy
6 Penland, Billy Penland signed it.

7 Q. Could anyone sign a Personal Guaranty on behalf of Billy
8 Penland other than Billy Penland?

9 A. I'm not an attorney, I don't know.

10 Q. Would you accept a signature of any other person other
11 than the Personal Guarantor on the Personal Guaranty
12 document?

13 A. No.

14 Q. Here's a Demand Note ---

15 A. Um-hum.

16 Q. --- it's marked, it's here actually, DFH1420.

17 A. Okay.

18 Q. Tell me what this is.

19 A. It's an accompanying document to the Loan and Security
20 Agreement. You know, my understanding of it is it goes
21 hand-in-hand with the Loan and Security Agreement.

22 Q. It says, read along with me, if you will, "FOR VALUE
23 RECEIVED, the undersigned hereby promises to pay Dealer
24 Financial Holdings, LLC or its assigns on demand and
25 otherwise in accordance with the provisions of a Loan and

1 Security Agreement, dated November 21st, 2016;" does it
2 say that?

3 A. Yes.

4 Q. Okay. Says, "The principal amount of each advance from
5 time to time;" you see that?

6 A. I do.

7 Q. And, "2) the Floorplan Fee;" do you see that?

8 A. I do.

9 Q. And in the fourth paragraph it says, "THIS NOTE IS DUE AND
10 PAYABLE ON DEMAND;" is that right?

11 A. I see that.

12 Q. Who signed that?

13 A. Billy Penland.

14 Q. On behalf of who?

15 A. Penland Automotive, Penland Automotive, LLC.

16 Q. And we're gonna look at the Limited Guaranty.

17 A. It's an Unlimited Guaranty.

18 Q. You're right. And who is this Unlimited Guaranty between?

19 A. I believe it's between, you know, at the end of the day,
20 my, or Dealer Financial Holdings and Billy Penland.

21 Q. And who signed it?

22 A. Billy Penland.

23 Q. Next document, DFH1426; you see that?

24 A. And just out of curiosity, I just want to make sure, is it
25 okay if I refer to, you know, he signs it as "Charles W.

1 Penland Jr.," it's acceptable to you for me to refer to it
2 as Billy?

3 Q. Acceptable to me.

4 A. Okay.

5 Q. This next document is a "Power of Attorney;" do you see
6 that?

7 A. Yes, sir.

8 Q. Okay, and who is the power of attorney between?

9 A. It's between Dealer Financial Holdings and the parties to
10 the Loan and Security Agreement.

11 Q. Penland Automotive, LLC, Penland Properties II, LLC and
12 Charles W. Penland, Jr.; is that right?

13 A. Yes, sir.

14 Q. Okay, and who signed that?

15 A. Billy Penland.

16 Q. So, we'll probably come back to that later on. Did
17 Penland Automotive end their relationship with Dealer
18 Financial in approximately in February of 2019?

19 A. Yes.

20 Q. Did you ask Penland Automotive, Billy Penland, Penland
21 Properties II to execute any documents to end that
22 relationship?

23 A. No, because Penland Automotive requested that we leave the
24 documents in place.

25 Q. They did?

1 A. Yep.

2 Q. Who did?

3 A. Tim Yarger.

4 Q. Tim Yarger asked Dealer Financial to keep a mortgage and a
5 Personal Guaranty in place on behalf of Billy Penland?

6 A. The mortgage had been released prior to that as per an
7 agreement with Billy Penland.

8 Q. Okay.

9 A. But Tim's, and I'm paraphrasing, you know, "We'll be
10 back," you know, "Please leave the," you know, "please
11 leave the documents in place."

12 Q. How did you have that, how did you get that information?

13 A. I imagine it was a telephone call.

14 Q. To who?

15 A. Not to, from Tim.

16 Q. Okay, from Tim to who?

17 A. I mean, you know, Tim and I were having, Tim and I had a,
18 Tim and I were, you know, Tim and I, other than that one
19 modification, negotiated I want to say every commercial
20 term, you know.

21 Q. Who did Tim Yarger call to say leave it open?

22 A. I imagine it would've, it would've been me, so, I'm not,
23 and again, you know, when I say, "Tim Yarger called," you
24 know, we had numerous conversations around Billy's
25 misinterpretation of the return of the reserve and, you

1 know, when the decision was finally, you know, when the
2 decision finally came down that, "Nope I want my reserve
3 back," you know, we had a series of conversations about
4 what we were doing and how we were doing that.

5 Q. When did that conversation happen?

6 A. Prior to Karen's email. And I'm not trying to be vague
7 but, you know, there was a number of conversations both
8 explaining - - and I'll amend it, you know, Billy may have
9 been on the phone with Tim during one of those, but
10 anyway, it was, there were numerous conver, phone
11 conversations, you know, prior to Karen's email, in
12 essence, negotiating or discussing what the, what the, um,
13 not what the rules are, but what the, about the reserve;
14 I'll answer it like that.

15 Q. You don't know a date?

16 A. I don't. I was told not to bring notes.

17 Q. But it happened prior to February 20th, 2019?

18 A. It happened prior to Karen's email and I'm - - so, yes,
19 but before '20, you know, before that, yes, sir. And
20 maybe even afterwards quite truthfully, so, anyway it was,
21 it was ---

22 Q. It was what?

23 A. I'll wait for you to hand me the email. It could've taken
24 place after this email, but I don't specifically recall.

25 Q. Okay.

1 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 3; ATTACHED TO
2 DEPOSITION)

3 WITNESS CONTINUES:

4 A. Thank you.

5 Q. Now, you said it was a conversation on the phone with Tim
6 Yarger; is that right?

7 A. Yes.

8 Q. Okay, you're fairly certain of that?

9 A. I mean, I ---

10 Q. You're not certain of that?

11 A. No, well, no, no, I was, I am materially certain. It
12 could've been in person but I don't recall that being the
13 case. I mean, I didn't see Tim that often, so, most of
14 our communications were telephonic.

15 Q. Well, this is a pretty important part; don't you think?

16 A. (No verbal response).

17 Q. There's a multiple year lawsuit going on and the question
18 whether or not you were told to close that or not would
19 you agree is pretty important in this litigation?

20 BY MS. BRIDGES:

21 Object to form.

22 WITNESS ANSWERS:

23 A. Not really.

24 Q. Not really? Okay, all right, can you tell me whether it
25 was on the phone or not?

1 A. It was on the phone, my recollection is it was on the
2 phone.

3 Q. Can you tell me who was on the phone call?

4 A. I believe it was Tim and I.

5 Q. Can you tell me if it was before what I just now marked as
6 Plaintiffs' Exhibit Number 3, this February 20th, 2019
7 email from Karen?

8 A. I don't specifically recall; it was certainly around the
9 same time.

10 Q. Okay and tell me what was said exactly during that phone
11 conversation.

12 A. I'm, you know, again, it's three years ago, so, I'm not
13 sure I can give you in exact detail, but, you know, we
14 certainly were, you know, know that we knew that, you
15 know, Billy wanted his reserve back, he thought he got it
16 back if he just paid down the balance to zero. That is
17 not, you know, how it works; I won't editorialize. So, he
18 made the decision that he wanted it back, so, we said in
19 order to, you know, we can't floorplan more cars if he
20 wants it back, the decision was made to send the request,
21 the, you know, the firm request to send the reserve back
22 is made, we sent the reserve back, you know, during those
23 conversations, you know, Tim was sorry to see us go, he
24 didn't want to end the relationship and, you know, he
25 said, "We'll be back;" that's it.

1 Q. Did he say, "Do not close our floorplan"?

2 A. Yes.

3 Q. At that time, did you have any belief that Tim Yarger was
4 an owner of Penland Automotive or Penland Properties II?

5 A. At that time, no.

6 Q. Explain to me why Dealer Financial did not close the
7 account and release the UCC loan, UCC-1 when specifically
8 told to do it by Karen Willis on February 20th, 2019?

9 A. She didn't request ---

10 BY MS. BRIDGES:

11 Object to form.

12 WITNESS CONTINUES:

13 A. --- she didn't request us to release the UCC in February
14 of 2019.

15 Q. Okay, is it your standard practice to release a UCC
16 normally after you're done doing business with a company?

17 A. When we're done doing business, yes, but when we're told
18 "we'll be back" and to "leave the documents in place," we,
19 you know, we didn't.

20 Q. Tim Yarger didn't sign any of the documents; right?

21 A. You know that as well as I do.

22 Q. Tim Yarger didn't sign any of the documents in Exhibit
23 Number 2; ---

24 A. He did not.

25 Q. --- correct?

1 BY MS. BRIDGES:

2 Object to form.

3 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

4 Q. And in fact ---

5 BY MR. IMHOFF:

6 What's your objection?

7 BY MS. BRIDGES:

8 Well, ---

9 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

10 Q. Did Tim Yarger sign any of the documents in Exhibit Number
11 2?

12 A. Tim Yarger did all the negotiations except for that one
13 amendment.

14 Q. Whose question are you answering with that response
15 because that wasn't my question.

16 A. I'm sorry. Okay, please ask the question again; my
17 apologies.

18 Q. Did Tim Yarger sign any of the documents in Exhibit Number
19 2?

20 A. No.

21 Q. Would he have been an appropriate person, based on your
22 knowledge, up through February of 2019 to sign any of the
23 documents in Exhibit Number 2?

24 A. No.

25 Q. Explain again why you didn't close Penland Automotive's

1 Floorplan account and release the UCC-1 when told to do so
2 in Exhibit Number 3 by Karen Willis on February 20th,
3 2019.

4 A. Why does Karen have more weight than Tim?

5 Q. Well, again, you don't like my questions, you like your
6 own, but I'm gonna keep asking ---

7 A. Because Tim said not to.

8 Q. Okay, but what right does Tim have, in your knowledge, in
9 February of 2019 to tell you what to do with Billy
10 Penland's company Personal Guaranty and property?

11 BY MS. BRIDGES:

12 Object to form.

13 WITNESS ANSWERS:

14 A. Because Tim's the only one who did the negotiations up to
15 that point, Karen didn't.

16 Q. But you knew it was Billy Penland's Personal Guaranty;
17 right?

18 A. It doesn't, this email didn't come from Billy Penland.

19 Q. You knew that the Agreement in 2016 was Billy Penland's
20 Personal Guaranty?

21 A. Yeah.

22 BY MS. BRIDGES:

23 Object to form.

24 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

25 Q. His personal property, home, cars, bank account; right?

1 BY MS. BRIDGES:

2 Object to form.

3 WITNESS ANSWERS:

4 A. Then he probably should've picked up the phone and called
5 me.

6 Q. You knew it was Billy Penland's personal money and
7 Personal Guaranty on that Loan and Security Agreement;
8 correct?

9 BY MS. BRIDGES:

10 Object to form.

11 WITNESS ANSWERS:

12 A. That's correct.

13 Q. Okay, and you knew it was Billy Penland's Holding Company
14 for his property, Penland II, in that Loan and Security
15 Agreement; correct?

16 BY MS. BRIDGES:

17 Object to form.

18 WITNESS ANSWERS:

19 A. That's correct.

20 Q. So, again, explain to me why you took the direction of an
21 employee who isn't a Personal Guaranty and isn't an owner
22 in 2019 and did not close this account and remove the
23 UCC-1?

24 A. Because that's the individual that Billy Penland
25 apparently empowered to negotiate on his behalf because he

1 did all the negotiations.

2 Q. He was the person that came and negotiated and actually
3 signed these documents?

4 A. He didn't sign them but he was in the room when they were
5 signed.

6 Q. Right. He didn't sign?

7 A. He negotiated, he negotiated the terms, Billy Penland
8 didn't.

9 Q. Right. All right, were you ever asked to remove the UCC-1
10 lien before you started doing business with

11 ---

12 A. Two days before.

13 Q. Why is that funny?

14 A. Anyway.

15 Q. Why is it funny?

16 BY MS. BRIDGES:

17 Object to form.

18 WITNESS ANSWERS:

19 A. Why shouldn't it be funny?

20 Q. Why shouldn't it be funny?

21 A. Yeah.

22 Q. You think that leaving a UCC-1 lien on somebody's property
23 and leaving a Personal Guaranty in place on a man's
24 business and home and property is funny today, Mr. Haight?

25 BY MS. BRIDGES:

1 Object to form.

2 WITNESS ANSWERS:

3 A. Well, I find it interesting that we're negotiating
4 starting to do business and we get a request to cancel a
5 UCC.

6 Q. You find that funny?

7 BY MS. BRIDGES:

8 Object to form.

9 WITNESS ANSWERS:

10 A. Apparently I did.

11 Q. Okay. Who was starting to negotiate?

12 A. Well, Billy Penland signed, you know, a renewal
13 application so that we could, you know, refresh the credit
14 file prior to that. You know, we were talking with Tim
15 Yarger about, you know, what we were gonna do, terms, all
16 that kind of good stuff, and then we get an email,
17 actually, I didn't get the email, Karen sent it to, I
18 believe, Kim to start with, so, yeah, I find it - - and I,
19 so, I pick up the phone and call Tim and said, you know,
20 "We're getting a request to," he goes basically, "Forget
21 it." So, no, we did not remove the UCC because three, a
22 few days later we floored about \$148,000 worth of cars.

23 Q. How many times have you talked to Karen Willis?

24 A. A handful.

25 Q. Five, six?

1 A. Sure. I mean, I don't recall a specific amount, but not
2 frequently, but we certainly had a few conversations.

3 Q. It's been about an hour and a half, let's take a break. I
4 don't know if he's still on or if he got off but ---

5 A. Yeah, no, he's still there.

6 Q. All right, as I said, please don't talk to anybody, that
7 includes texting.

8 A. I'm gonna text Steve that we're taking a break just to
9 make sure he knows; is that okay?

10 (Off the record at approximately 11:37 a.m.; on the record at
11 approximately 11:51 a.m.)

12 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

13 Q. All right, look at Exhibit Number 3 for me; if you would.

14 A. Yes, sir. (Witness complies).

15 Q. All right, do you recognize this as an email dated
16 Wednesday, February 20th, 2019 at 3:44 p.m. from Karen
17 Willis at Penland Automotive?

18 A. I do.

19 Q. And at the time, did you understand that Karen Willis
20 worked for Penland Automotive?

21 A. Yes.

22 Q. Okay, and what was your understanding of her role at
23 Penland Automotive at that time?

24 A. That she handled the books, I mean, you know, I'm not sure
25 that's a eloquent - - I mean, she probably did what Kim

1 does, which is everything, so.

2 Q. All right. Well, it says, "Comptroller" down here for
3 Penland Automotive; ---

4 A. Okay.

5 Q. --- you see that?

6 A. I do.

7 Q. Okay, did you understand she was the Comptroller?

8 A. That, you know, I certainly knew she was, you know, she
9 handled the finances, so, I'll answer it that way. I'm
10 not sure I focused on the signature block prior to this.

11 Q. Did you receive this email?

12 A. I did.

13 Q. Did you see it went to yourself, John Bethea and Kim?

14 A. Yes, ma'am.

15 Q. Sir?

16 A. Rusch.

17 Q. Yes, ma'am, yeah, all right. Will you read it for us,
18 please?

19 A. "As of 2/20/2019 Penland Automotive request to close and
20 deactivate our floorplan. We no longer need the services
21 of Dealer Financial. Please forward all reserves fees to
22 Penland Automotive. Please call us if you have any
23 questions. Thank you."

24 Q. And you received this on February 20th?

25 A. I'm assuming yes.

1 Q. Did you believe it to be an accurate recitation of Penland
2 Automotive's intentions?

3 A. To deactivate, yes.

4 Q. No, it says, "close and deactivate;" right.

5 A. Okay, sure.

6 Q. Does it say that?

7 A. Yes, sir.

8 Q. Okay, and it says, "Forward all reserves to Penland
9 Automotive"?

10 A. Yes, sir.

11 Q. Okay. Did you take this to be an accurate recitation of
12 Penland Automotive's intentions on February 20th of 2019?

13 A. I believe in combination with my conversations with Tim to
14 be a part of that conversation, yes, sir.

15 Q. What does that mean, "in combination with my conversations
16 with Tim"?

17 A. So, you know, in discussions and negotiations with Tim, it
18 was very apparent that Billy wanted the reserve back but
19 that Tim wanted to continue to do business, and, you know,
20 we said we're not gonna do that, so, we sent the reserves
21 back. And a couple of times Tim asked if we could start
22 up again, you know, we kind of said, "No. If Billy's
23 willing to put the reserve back in place we can." And
24 then enough time had lapsed that we said okay. So, yes, I
25 believe in combination with the robust conversations I was

1 having with Tim Yarger that this was a request to send
2 our, the reserves back.

3 Q. And close and deactivate the plan?

4 A. That's what it says.

5 Q. Okay, when you sent, did you send the reserves back?

6 A. Yes, sir.

7 Q. And those reserves are, in fact, what it says, a reserve
8 in case something happens with one of the loans; is that
9 right?

10 A. It is used to cure defaults, yes, sir.

11 Q. All right. And so, you reconcile your books, Penland
12 Automotive's books, and if everything comes out clean and
13 clear then you send the amount back that you think that
14 you held and don't need from Penland Automotive; is that
15 right?

16 A. Yes.

17 Q. Okay, when you sent the reserves back, did Penland
18 Automotive owe Dealer Financial anything?

19 A. No, sir.

20 Q. Did Dealer Financial hold any money back?

21 A. No, in fact, we returned more reserves than they believe
22 they were owed.

23 Q. And you just testified that Dealer Financial would not do
24 business with Penland Automotive until some other
25 contingencies were put back in place like the reserves; is

1 that right?

2 A. I would say that the ongoing discussion with Tim involved,
3 you know, he asked if we could, you know, start up again
4 in a very short period of time, and I said, "If Billy's
5 willing to reinstate the reserves, you know, we can easily
6 start back up." But, you know, yeah, anyway.

7 Q. So, no, you would not do business without some
8 contingencies, including the reserves?

9 BY MS. BRIDGES:

10 Object to form.

11 WITNESS ANSWERS:

12 A. There was a conversation with Tim, so, I'm not, you know,
13 I'm not, again, not trying to be vague, but we had ongoing
14 conversations from, you know, this point forward and this
15 point in the history about, you know, Penland Automotive.

16 Q. Was Penland Automotive's account with Dealer Financial
17 closed?

18 A. It was deactivated.

19 Q. What's the difference?

20 A. I take it to mean based on what Tim said we were gonna do
21 business again.

22 Q. Okay. You returned the reserves; right?

23 A. Um-hum.

24 Q. Is that a yes?

25 A. That's a yes; my apologies.

1 Q. Okay, did you release the Personal Guaranty?

2 A. The, we left the existing, existing documents in place at
3 the request of Tim Yarger.

4 Q. Okay. So, is it your testimony that Dealer Financial
5 continued to hold a Personal Guaranty against Billy
6 Penland between February 2019 and July of 2020?

7 A. The Personal Guaranty would have no, you know, you know,
8 no value because there was nothing outstanding, but yes,
9 the existing document packet was left in place and the
10 UCC.

11 Q. That's right, and Dealer Financial left the UCC-1 lien in
12 place on Penland Automotive; is that right?

13 A. Yes.

14 Q. Okay, did you continue, did Dealer Financial continue to
15 have a Power of Attorney for Dealer Financial between
16 February 2019 and July of 2020?

17 A. I'll acquiesce that the entire document package was left
18 in place, so, if you want to go through them individual, I
19 mean, you know, but, yes, the document packet as signed in
20 2016 was left in place.

21 Q. Did Dealer Financial ever tell anyone at Penland
22 Automotive, other than Tim Yarger, that the entire packet
23 was still in place?

24 A. I don't recall, but we told Tim Yarger. It was actually
25 Tim Yarger's request.

1 Q. Tim Yarger's request to do what?

2 A. To leave the document, leave, you know, "Leave things in
3 place, we'll be doing business again," and that's a
4 paraphrase.

5 Q. Did he ever say to you, "Don't tell anyone else but leave
6 these documents in place"?

7 A. No, sir.

8 Q. Did you personally ever tell Karen Willis or Billy Penland
9 that you were continuing a Power of Attorney and a
10 Personal Guaranty and a Promissory Note in place against
11 Billy Penland and his companies between February of 2019
12 and June of 2020?

13 A. I don't believe I spoke with either of them during that
14 period of time.

15 Q. Did you put anything in writing?

16 A. Not that I recall.

17 Q. It says, in fact, "Please call us if you have any
18 questions. Thank you." Did you call and ask if you could
19 leave it open?

20 A. I didn't have any questions.

21 Q. Did you call and ask if it's okay if we keep this open
22 because Billy Penland has a Personal Guaranty?

23 A. At the direction of Tim Yarger, that's what I did.

24 Q. Okay, and at that time, what did you understand Tim
25 Yarger's position to be at Penland Automotive?

1 A. General Manager.

2 Q. Did he ever sign any documents with Dealer Financial?

3 A. Neither did Karen, so, no.

4 Q. Okay.

5 A. Hang on, let me see, did he sign any, no, I don't believe
6 he did.

7 Q. All right. So, you said earlier that you didn't close the
8 account, you deactivated it; is that right?

9 A. Sure, yes.

10 Q. So, if you had closed it, then what would you have done
11 differently?

12 A. Probably not much. I mean, I would say that we have
13 gotten requests from dealers, "Hey, please file a UCC-3,"
14 you know, quite truthfully, we don't lose that many
15 customers. But there have been some where if a dealer has
16 defaulted, we don't, you know, remove our UCC but we do
17 have a couple of instances where we have, you know,
18 stopped doing business and, you know, specific request
19 from the dealer at the time is to remove the UCC and we
20 will.

21 Q. Penland Automotive hadn't defaulted in 2000 and, February
22 of 2019; is that right?

23 A. Correct.

24 Q. Okay. And you returned all the reserves; is that correct?

25 A. That's correct.

1 Q. And why didn't you remove the UCC-1 lien?

2 A. Because Tim Yarger requested we leave everything in place.

3 Q. Okay, so, that's two things that are different between a
4 closing and a deactivation is you leave the UCC-1 and you
5 leave the documents in place; right?

6 A. I mean, I'll, let's just say that this is actually a
7 unique happening in our business relationships.

8 Q. It is unique because everything else is in writing; right.

9 BY MS. BRIDGES:

10 Object to form.

11 WITNESS ANSWERS:

12 A. I'm sorry, say that again.

13 Q. Everything else is in writing; correct?

14 BY MS. BRIDGES:

15 Object to form.

16 WITNESS ANSWERS:

17 A. There's a whole lot of conversations that aren't in
18 writing.

19 Q. But are those conversations enforceable like these
20 documents that you paid for from a lawyer?

21 BY MS. BRIDGES:

22 Object to form.

23 WITNESS ANSWERS:

24 A. Yes, they are, yes, they are, absolutely. My word is
25 certainly, can encumber the company.

1 Q. But nobody else because they don't actually for Dealer
2 Financial; right.

3 A. They're not officers of the company. So, what I'm hearing
4 you say is that, and I wasn't aware that Karen was an
5 officer of Penland Automotive, but an officer of the
6 company with constraints can encumber the company; true?

7 Q. Actually, no, you're wrong.

8 A. Okay; that's why I'm not a lawyer.

9 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 4; ATTACHED TO
10 DEPOSITION)

11 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

12 Q. Mr. Haight, I have handed you what I've now marked as
13 Plaintiffs' Exhibit Number 4.

14 A. Um-hum.

15 Q. As you can see at the bottom of that, it says, "Bates
16 Stamp DFH0332" at the bottom.

17 A. Um-hum.

18 Q. It's Karen Willis' February 20th, 2019 email; you see
19 that?

20 A. It - - what's a Bates Stamp?

21 Q. So, it's to keep attorney tracking of documents we
22 actually ---

23 A. Ah, okay.

24 Q. --- stamp the bottom.

25 A. Got it.

1 Q. This is yours, it's DFH ---

2 A. Understood, okay.

3 Q. --- and mine will be KDC.

4 A. Understood.

5 Q. All right. But anyway, do you see Karen's email?

6 A. I do, yes, sir.

7 Q. All right, and did you respond to that that same day?

8 A. It appears I did.

9 Q. Will you read what you wrote?

10 A. "Karen, I understand. As soon as the payoff ACH settles,"
11 because they had to pay off some cars, I guess, "(that
12 takes three days from today) we will return the Reserve
13 Balance. Assuming we process the payoffs for all the cars
14 tonight, that would initiate the return of the Reserve
15 Monday, should be in your account on Tuesday. Send it to
16 the regular account? Best Dan."

17 Q. Did you write that email?

18 A. Yes, sir.

19 Q. Did you send it?

20 A. I believe so.

21 Q. Did you mean what you said?

22 A. Sure.

23 Q. Did you put in there anywhere, anywhere that you were not
24 actually gonna close the account, you were gonna
25 deactivate it and leave the documents and the UCC-1 in

1 place?

2 A. Was I required to? So, no, I didn't.

3 Q. Why not?

4 A. Because those conversations weren't happening with Karen,
5 they were happening with Tim Yarger.

6 Q. Why wouldn't you write it back to Karen Willis?

7 A. Because I did zero negotiations with Karen.

8 Q. I don't understand that answer. What does negotiations
9 have to do with please do "X" and you responding, "I
10 understand."

11 A. So, and no disrespect to Karen, I got messages from Karen,
12 I negotiated with Tim.

13 Q. I hear what you're saying but it still doesn't make sense
14 to me. Why wouldn't you put Tim Yarger on a response
15 email and say, "Hey Karen, just so you know, we're not
16 closing the account, we're deactivating it and leaving the
17 documents and the UCC-1 in place" so that Karen, Dan, Kim
18 and Tim all have the same information and are on the same
19 page?

20 A. Why wasn't Billy or Kim copied on Karen's email? I mean,
21 you know, I don't know why but it wasn't done.

22 Q. You don't know why you didn't respond in any way telling
23 Karen Willis that you were not going to close the
24 floorplan and you were gonna deactivate it and leave the
25 documents in place?

1 BY MS. BRIDGES:

2 Object to form.

3 WITNESS ANSWERS:

4 A. I did not negotiate with Karen Willis.

5 Q. Okay.

6 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 5; ATTACHED TO
7 DEPOSITION)

8 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

9 Q. I'm gonna hand you what I've now marked as Plaintiffs'
10 Exhibit Number 5, I'd have to throw it at ya, I'm not ---

11 A. No, no, no worries, I just, I'm not sure whether I'm
12 supposed to reach across or not, but ---

13 Q. It depends on what you're reaching across for.

14 A. I understand. You're not driving a limo are ya?

15 Q. All right. I've now marked this Exhibit Number 5. Do you
16 recognize this document?

17 A. Yes, sir.

18 Q. Okay, can you tell me is your signature on this document?

19 A. It is.

20 Q. Okay, what date is it?

21 A. It looks like it's the 20th day of February, 2019.

22 Q. Okay, so, the day that Karen sent her email to close the
23 account, did you sign a document releasing the Mortgage,
24 Security Agreement, Assignment of Leases and Rents, and
25 Fixture Filing for Penland Properties II, LLC?

1 A. I do.

2 Q. You do what?

3 A. I do recognize that, yes.

4 Q. Did you do it?

5 A. I did because I had committed to do that quite a while
6 before.

7 Q. Did you do this in response to Karen Willis' email?

8 A. No.

9 Q. It just happens to be the same day of Karen Willis' email
10 that you signed this?

11 A. It appears so.

12 Q. Totally by happenstance?

13 A. Yes.

14 Q. But it's your testimony as you sit here today you did not,
15 you did not execute and release this Mortgage and Security
16 Agreement for the Penland Properties II, LLC in response
17 to Karen Willis' February 20, 2019 email?

18 A. No, technically, I guess based on a conversation with Tim
19 and, you know, I should've done it a while ago. So, it
20 had been pointed out to me by Tim Yarger that I hadn't
21 done it and so I did it.

22 Q. Did you do it in response to Karen Willis' email?

23 A. No.

24 Q. Did you do it after Karen Willis' email?

25 A. I don't know.

1 Q. Do you know why it wasn't filed for another two weeks?

2 A. I don't know. I imagine because I have to mail it to the
3 attorney and they gotta do something with it, so, no, I
4 don't know.

5 Q. Okay, so, at the time of the filing of this, did Dealer
6 Financial have a Mortgage, Security or Assignment of
7 Leases Mortgage on Penland Properties II, LLC?

8 A. I'm sorry, say that one more time; I was thinking about
9 the last question.

10 Q. I told you you would do that. When this was filed, did
11 Dealer Financial Holdings have a Mortgage, Security
12 Agreement or Assignment of Leases and Rents and Fixtures
13 on Penland Properties II, LLC?

14 A. At the time this was filed?

15 Q. Yes.

16 A. Sure, I believe so.

17 Q. Once it was filed did you have a, did Dealer Financial
18 Holdings have a Mortgage, Security Agreement, Assignment
19 of Leases and Rents and Fixtures Filing on Penland
20 Properties II, LLC?

21 A. I imagine not.

22 Q. Well, that's the intention of this document to release
23 that; correct?

24 A. I believe so, yes.

25 Q. Okay, and Penland Properties II, LLC was one of the

1 parties to the 2016 Agreement; correct?

2 A. That's correct.

3 Q. As of the filing of this document, did Penland Properties
4 II have any obligations to Dealer Financial Holdings at
5 all?

6 A. Yes. Penland Properties II remained a party to the Loan
7 and Security Agreement, but we released our specific claim
8 on, you know, we released the Mortgage and that was as a
9 result of a previous commitment, not as a result of
10 Karen's email.

11 Q. Okay. So, you get an email to close the account, you file
12 this Release of Mortgage and Security Agreement, and it's
13 your testimony here today that Penland Properties II, LLC
14 is still beholding to the 2016 Agreement?

15 BY MS. BRIDGES:

16 Object to form.

17 WITNESS ANSWERS:

18 A. As a general party to the Agreement, yeah.

19 Q. Did you ever tell anyone at Penland Properties II that
20 they were still beholding to that Agreement and it wasn't
21 closed?

22 A. No.

23 Q. As far as you know, did Tim Yarger have anything to do
24 with Penland Properties II?

25 A. He negotiated the general contract.

1 Q. As far as you know, did Tim Yarger have any management
2 responsibility, any financial interest or any ownership of
3 Penland Properties II?

4 A. I'm not aware of Tim's involvement in Penland Properties
5 II.

6 Q. So, did you have any reason to believe that Tim Yarger
7 could obligate or continue an obligation for Penland
8 Properties II in 2019?

9 A. Yes.

10 Q. What?

11 A. Tim Yarger did the negotiations on the general contact,
12 and this is a result of an agreement, a letter agreement
13 which we produced to you that we would release the lien at
14 the request of Billy Penland prior, after basically a
15 year. So, the way it went it down was we received the
16 commitment for the mortgage, we agreed to hold off on
17 filing the mortgage because Billy was supposedly
18 negotiating to get a mortgage with a mortgage company, we
19 held off on filing the mortgage, if you look at the date
20 the mortgage was filed it wasn't filed at the date the
21 contract was signed, and then the letter agreement was
22 that we would release at Billy's request a year
23 afterwards, which would've put that in 2018; I believe.
24 That request was made and we just failed to do it. It was
25 pointed out to us during this conversation, and so, I

1 followed through on that commitment.

2 Q. Your sales people cannot bind your company; is that right?

3 A. That's correct.

4 Q. In fact, they're not even employees, you made them
5 independent contractors; right?

6 A. That's correct.

7 Q. They can't bind your company; is that right?

8 A. I believe I already said that.

9 Q. Okay, and you have some other companies; is that fair?

10 A. That's correct.

11 Q. Okay, can those sales people bind not only Dealer
12 Financial but your other companies?

13 A. They don't have any involvement in the other companies.

14 Q. Right. How is it that Tim Yarger, nothing in writing,
15 never having signed anything, you have no belief that he's
16 an owner, is able to bind this gentleman, Billy Penland,
17 his unrelated properties and him personally and everything
18 he owns in your mind, when at the same time Dealer
19 Financial would never let that happen in their business?

20 BY MS. BRIDGES:

21 Object to form.

22 WITNESS ANSWERS:

23 A. That's a question for Billy Penland. I don't allow them
24 to negotiate for me, I negotiate.

25 Q. John Bethea doesn't negotiate?

1 A. Not really, he presents.

2 Q. The bottom line is even though you released this, you
3 still believe that Penland Properties II, LLC is obligated
4 to the terms of that 2016 Agreement?

5 A. I believe the 2016 Agreement remains in place.

6 Q. And do you have anything in writing that any signatory of
7 that 2016 agreed to that?

8 A. I have no, nothing in writing asking me to remove it.

9 Q. You hate my questions but you like your own. Do you have
10 anything in writing - - well, actually sir, that's not
11 true; is it? You got an email on February 19th, 2019, go
12 ahead and look at it, Exhibit Number ---

13 A. I don't need to look at it.

14 Q. Okay, do you have something in writing to close it?

15 A. Close and deactivate it ---

16 Q. Sir, yes.

17 A. --- and Tim Yarger who did all the negotiations asked us
18 to leave the documents in place.

19 Q. I asked you if you had anything in writing to close it or
20 that you weren't gonna close it and you said, "I don't
21 have anything in writing to close it" except that you do
22 and ---

23 A. Is there ---

24 Q. --- it's ---

25 A. --- anything in writing asking me to remove the UCC?

1 All's it's asking me to do really is to forward the
2 Reserves.

3 Q. Really, that's how you read that?

4 A. Kinda.

5 Q. You think that says deactivate and close?

6 BY MS. BRIDGES:

7 Object to form.

8 WITNESS ANSWERS:

9 A. Deactivate is an important word.

10 Q. Let me ask my question again.

11 A. Sure.

12 Q. Do you have anything in writing from anyone who actually
13 signed the 2016 Agreement to keep it open?

14 A. I don't believe I spoke with Mr. Penland after this
15 Agreement was signed until I called him after your phone
16 call. So, during that period, he may have been on a phone
17 call with Mr. Yarger, but, you know, so, he wasn't
18 involved before, he was involved to sign, he wasn't
19 involved after. He wasn't copied on the emails, he
20 basically wasn't involved.

21 BY MR. IMHOFF (TO THE COURT REPORTER):

22 Can you read my question back? No?

23 WITNESS CONTINUES:

24 A. I ---

25 Q. Do you have anything in writing ---

1 A. No.

2 Q. Let me finish my question.

3 A. I'm sorry.

4 Q. Do you have anything in writing between February 20th,
5 2019 and June of 2020 from any signatory to the 2016
6 documents that you should keep those documents open and in
7 place?

8 A. I don't have an email from the signator of the documents
9 ever.

10 Q. I will ask my question for the fourth time.

11 A. So, okay, so, no, I thought that - - is that not a
12 responsive answer? I don't have any emails from Billy
13 Penland, and he's the one who signed the documents.

14 Q. I didn't ask you that. Do you have anything in writing
15 ---

16 A. Okay.

17 Q. --- from any of the signators to the 2016 Agreement
18 confirming or asking you to keep those documents open and
19 in place between February 2019 and June of 2020?

20 A. And so, let me just be, since you seem to want a very
21 specific answer, you've used the word "signatories" in
22 plural. There's only one signature, signator to that
23 document, so, if I say no, ---

24 Q. Right.

25 A. --- you know, that's acceptable to you?

1 Q. Yes.

2 A. Okay, no.

3 Q. No. Okay, Billy Penland, on behalf of Penland Automotive,
4 Penland Properties II and himself personally never had a
5 conversation with you or exchanged anything in writing
6 with you to keep those documents in place between February
7 2019 and June of 2020; is that correct?

8 A. That's correct.

9 Q. Tell me again why you left the UCC-1 in place; was that
10 because of Tim?

11 A. Yes, sir. I mean, it's part of the, it's part of the
12 packet; if you will.

13 Q. All right, we're gonna move a little bit faster.

14 A. Okay.

15 Q. I think, I hope.

16 BY MS. BRIDGES:

17 What number are we up to?

18 BY THE COURT REPORTER:

19 This Exhibit 6.

20 BY MS. BRIDGES:

21 Thank you.

22 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 6; ATTACHED TO
23 DEPOSITION)

24 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

25 Q. I've handed you Exhibit Number 6 now.

1 A. Um-hum.

2 Q. Can you identify that as a letter from you to Mr. Penland
3 December 13th, 2016?

4 A. Yes.

5 Q. Okay. Tell me what this letter is talking about.

6 A. So, at the time we signed the documents, you know, Billy
7 was concerned about leaving the mortgage on the property
8 for an extended period of time, and so, we agreed that if
9 he requested and the account was in decent shape that we'd
10 probably take it off.

11 Q. Okay, so, you actually met with Mr. Penland in person?

12 A. I don't know whether we talked about this. My
13 recollection is the only time I physically saw Billy
14 Penland was those two times. I don't, I believe this may
15 have been part of the conversation initially, and then,
16 you know, the request came, "Hey, don't file the mortgage"
17 and there was some back and forth about that. So, we,
18 this was, this was, when we filed the mortgage, I believe,
19 this letter was also supplied to Mr. Penland.

20 Q. All right, so, the Loan and Security Agreement, Exhibit
21 Number 2 of 2016 is dated November 21st, 2016?

22 A. Um-hum.

23 Q. This letter is December 13, 2016?

24 A. Um-hum.

25 Q. Three or four weeks later; does that help you remember?

1 A. Well, no, at the time, you know, so, at the time, you
2 know, Billy signed the mortgage at the same time he signed
3 this Agreement. He asked us to hold it because he was
4 negotiating with a bank for a mortgage. This letter was
5 supplied, you know, because part of the discussion in the
6 office was my recollection, you know, as anybody would,
7 he's trying to secure as little as possible; got no
8 problem with that. And so, yes, I believe this was, that
9 was the outcome, and the request may have come from John
10 but I don't recall that specifically.

11 Q. Okay. But you did send the letter to Charles Penland?

12 A. I did.

13 Q. And directed it to Mr. Penland?

14 A. All of the respect he is due.

15 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 7; ATTACHED TO
16 DEPOSITION)

17 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

18 Q. I'm gonna hand you Exhibit Number 7.

19 A. Okay, thank you.

20 Q. This came from your file, do you recognize it?

21 A. Yes, sir.

22 Q. Okay. All right, it's signed by Tim Yarger and Charles
23 Penland on July 1st, 2017; you ---

24 A. Yes.

25 Q. --- see that?

1 A. Yes, sir.

2 Q. What is this?

3 A. My understanding of what this is is that it is a agreement
4 making Tim Yarger part owner of Penland Automotive.

5 Q. We will come back to that.

6 A. Am I ---

7 Q. This may be two different things, so, I'm gonna hand that
8 to ya before I mark it. And you see there's an email and
9 then there is an Agreement. Do these two things go
10 together?

11 A. I mean, they are amendments to the Loan and Security
12 Agreement that I agreed to; one is an email amendment, one
13 is a formal amendment.

14 Q. Yeah, so, let me make sure. This is the amendment to Loan
15 and Security Agreement is not an attachment to the January
16 22nd email; is that right? Or maybe it is, "Dealer
17 Financial Holdings and Penland Automotive Amended
18 Commercial Agreement."

19 A. No, because this was done in April, so, I don't believe, I
20 don't know how we could've attached this to that when this
21 was sent in January and this was done in April.

22 Q. Can you hand me ---

23 A. Sure.

24 Q. --- that back please

25 BY MS. BRIDGES:

1 Jason, which ones are you labeling which?

2 BY MR. IMHOFF:

3 So, 8 is January 22nd and then 9 will be April 2nd.

4 BY MS. BRIDGES:

5 Thank you.

6 (DOCUMENTS MARKED PLAINTIFFS' EXHIBIT NUMBERS 8 AND 9;
7 ATTACHED TO DEPOSITION)

8 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

9 Q. All right, the first is an email from you to Karen Willis
10 on January 22nd, 2018; is that right?

11 A. Yes, sir.

12 Q. Okay, did you send this email?

13 A. I did.

14 Q. Did you copy John Bethea?

15 A. I did.

16 Q. Is this an amendment to the Commercial Agreement of 2016
17 between Dealer Financial and Penland Automotive?

18 A. I believe it to be.

19 Q. Okay, who did you send it to?

20 A. I address it to Bill but I did not have his email address,
21 and so, they told me to send it to Karen.

22 Q. Who told you to send it to Karen?

23 A. I don't recall.

24 Q. But you sent it to Karen Willis?

25 A. At somebody's direction.

1 Q. Okay. So, in amending the Commercial Agreement and
2 including the terms of that amendment in your email, your
3 email went to Karen Willis; is that right?

4 A. You'll notice it's addressed to Bill. I did not have
5 Billy's email address, so, yes, it went to Karen.

6 Q. It went to Karen.

7 A. But it was addressed to Bill.

8 Q. All right, and you amended the terms of the 2016 Agreement
9 to these terms in this email in January of 2018; is that
10 right?

11 A. That's correct.

12 Q. All right, so, when you deactivated the documents, were
13 they deactivated to the 2016 terms that we went through in
14 Exhibit 2 earlier, or were they deactivated to the January
15 22nd, 2018 terms?

16 A. I don't understand the question.

17 Q. Well, you said that you put Exhibit Number 2, the Loan and
18 Security Agreement, you can look at it if you want; right?
19 You want to look at it?

20 A. Not really. I mean, if I need to I will; please continue.

21 Q. 2016 Loan and Security Agreement, ---

22 A. Yes, sir.

23 Q. --- right, you remember looking at that with me?

24 A. I do.

25 Q. Do you remember the terms that were in it?

1 A. Uh-huh.

2 Q. You remember the fees that were in it?

3 A. Uh-huh.

4 Q. The interest that was in it?

5 A. Yep.

6 Q. Okay, you said that you deactivated it but you didn't
7 close it; right?

8 A. Um-hum.

9 Q. Is that a yes?

10 A. That's yes, sorry, yes.

11 Q. Okay, so, were the terms, the interest, fees and terms in
12 the 2016 Agreement deactivated or were these terms from
13 January 22nd, 2018 the terms that were deactivated?

14 A. I guess it would be the entire document packet, you know,
15 was deactivated.

16 Q. What entire document packet?

17 A. This document packet. This is a, I mean, in my opinion,
18 this isn't even really, yeah, I guess a part of it is
19 covered in the contract. So, this was a commercial
20 accommodation to Billy Penland, to Penland Automotive.

21 Q. Which are the terms that you deactivated in 2019, the ones
22 that in this January 22nd email or the ones that are in
23 the 2016 document?

24 A. Well, I imagine because this is how we were doing business
25 that the deactivation would include, I mean, you know, so,

1 we deactivated the Agreements, we deactivated doing
2 business when we - - and I'll stop answering there because
3 I know you don't like it when I answer my own questions.

4 Q. Pull Number 2 for me; if you will.

5 A. Yes, sir. And you mean Number 2 or Number 9, I'm sorry
6 the second document here?

7 Q. We're gonna look at both of them together.

8 A. I'm sorry, so, we're looking at Number 2, okay.

9 Q. Two and 8.

10 A. All right. Okay, 2 and 8, got it.

11 Q. All right?

12 A. Um-hum.

13 Q. So, it says "Dealer Financial agrees to amend our current
14 arrangement as follows: Cars may be floored for up to 90
15 days." Do you see that on Exhibit 8?

16 A. I do, uh-huh.

17 Q. Okay, where is the, where is that section in Exhibit
18 Number 2?

19 A. It's my opinion that it would be the Principal Reduction
20 Payments and Maturity Date.

21 Q. Okay, where is that page?

22 A. "A."

23 Q. "A"?

24 A. Whatever, "A-11" the "A-ii;" I'm not sure how you fancy
25 lawyers say that.

1 Q. Help me, Floorplan Fees, ---

2 A. DFH1417, top of the page, Principal Reduction, you know,
3 that is intended to, in my recollection, alter that. So,
4 what the, you know, they were concerned about paying
5 curtailments, so, we our practice is that as long as a
6 dealer is paying curtailments, we will let them keep the
7 car on the floorplan as long as they're paying whatever
8 the established curtailment is. This Agreement, which
9 frankly was amended after this verbally, they wanted to
10 not pay curtailments but agreed to pay cars off at 90
11 days.

12 Q. All right, and so, that, first, "Cars may be floored for
13 up to 90 days" was an amendment of page A-1 of the 2016
14 Agreement at DFH01417?

15 A. I believe so.

16 Q. Second is, "No principal curtailments will be levied
17 during this 90-day period"?

18 A. Same part.

19 Q. Same section?

20 A. Yeah, the concern was they didn't want to pay
21 curtailments, so, we said okay, you don't have to pay
22 curtailment, we generally levy a curtailment, which is pay
23 down in principal, it's not a fee, it's not an expense,
24 it's a traded capital, you know, they - - beginning at 60
25 days and every invoice after that. They didn't want to

1 pay curtailments, so, we said okay, at 90 days you gotta
2 pay the car off.

3 Q. And Number 3, "We will continue to invoice floorplan fees
4 as per our usual every 30 days weekly invoice." Is that
5 changed at all from the original agreement?

6 A. No.

7 Q. Next, "One half of the weekly invoice will be paid the
8 week it is issued." Where is that in 2016 Agreement?

9 A. I'm not sure that's specifically, hmm, I'm not sure it's
10 specifically stated when invoices are due but it is stated
11 on the invoice.

12 Q. And it says, "One-half of the weekly invoice will be paid
13 two weeks later." Is ---

14 A. That was an accommodation. I'm sorry.

15 Q. Is that anywhere in this document, Exhibit Number 2?

16 A. No.

17 Q. Okay. Now, the next paragraph says, "Hopefully this will
18 take care of the majority of your cashflow goals." Here's
19 the next paragraph, can you read that next paragraph for
20 me, please?

21 A. "I don't think any of these adjustments require us to sign
22 new documents. If you agree, just print this out, sign
23 it, scan it back to me, you will have my original email
24 and I will have your response, that should cover us."

25 Q. Okay, and is, in fact, this Charles Penland's signature

1 down here on Exhibit Number 8?

2 A. I believe so.

3 Q. So, it was not only emailed, it was sent to Billy Penland
4 through Karen Willis' email, you asked him to sign it and
5 return it, he did and you received it back?

6 A. That's correct.

7 Q. Okay. Was Tim Yarger involved in that process other than
8 negotiating the terms that then you put into this email on
9 January 22nd, 2018?

10 A. Tim was the person I negotiated with, so, yes.

11 Q. Well, not - - I said - - yeah, on negotiating, but before
12 you sent this email, why didn't you send this to Tim
13 Yarger to sign?

14 A. Because I sent it to Bill.

15 Q. Why didn't you send it to Tim to sign?

16 A. Because Bill was the party to the documents.

17 Q. And you asked him, then you put in writing and asked him
18 to sign it and return it to you; right?

19 A. Yeah, but subsequent to this, we stopped doing this and I
20 didn't put it in writing.

21 Q. Amendments to the 2016 you asked him to print it, sign it
22 and return it to you; right?

23 BY MS. BRIDGES:

24 Object to form.

25 WITNESS ANSWERS:

1 A. This one yes, but subsequent to this, we stopped doing
2 this because they wanted to leave cars on the floorplan
3 for more than 90 days, and that was not done in writing.

4 Q. I want to look at Number 9 and we're gonna do the same
5 process with Number 9.

6 A. Yes, sir.

7 Q. Okay, Number 9 is an April 2nd, 2018 Amendment to Loan and
8 Security Agreement and Other Related Agreements. Would
9 you agree with me that it's in writing?

10 A. It is.

11 Q. Will you agree with me that it was sent to Mr. Penland?

12 A. I would.

13 Q. Okay, will you agree with me that it was signed by
14 yourself on behalf of Dealer Financial Holdings?

15 A. Yes.

16 Q. And it was signed by Charles W. Penland, Jr. on behalf of
17 Penland Automotive, LLC, Penland Properties II, LLC and by
18 Charles W. Penland as the Guarantor and Grantor?

19 A. Yes, sir.

20 Q. And is Tim's signature line anywhere on here?

21 A. It is not.

22 Q. You sent it to Billy Penland; right?

23 A. Yes, sir.

24 Q. All right. That's, well, don't put it back yet.

25 A. Okay.

1 Q. Number 1 says, "Amendments to the Existing Loan Agreement
2 are Schedule 1."

3 A. Okay.

4 Q. Is the only thing in Schedule 1 the credit limit for the
5 facility is increased from 200 to \$500,000?

6 A. Yes, sir.

7 Q. All right, and where is that section in Exhibit Number 2?
8 I've got it right here, ---

9 A. Sure.

10 Q. --- so, it's A-1 under, "Credit Limit," "The Credit Limit
11 for this facility is \$200,000"?

12 A. That's correct. I mean, you know, I - - it was originally
13 \$200,000, yes.

14 Q. So, an amendment to the Loan and Security Agreement of
15 November 21st of 2016 is executed in April of 2018 via
16 signed document, legal document signed by Charles Penland;
17 is that right?

18 A. Yes.

19 Q. All right, so, when you deactivated the plan in February
20 of 2019, which credit limit was on pause, was it this
21 document of April 2nd, 2018 or was it back to the original
22 2016?

23 A. Yeah, I mean, I imagine I hadn't considered that ever
24 before this point, but I imagine \$500,000.

25 Q. You've never considered it before this point?

1 A. Not really.

2 Q. You didn't know what the terms were that you deactivated
3 for a year?

4 A. I knew what the terms were but you're asking me questions
5 that truthfully don't come up in normal thought.

6 Q. Well, they're questions that are important to your
7 customers; aren't they?

8 BY MS. BRIDGES:

9 Object to form.

10 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

11 Q. "What are the terms of my agreement, what's my credit
12 limit, how much do I owe you," Mr. Haight?

13 BY MS. BRIDGES:

14 Object to form.

15 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

16 Q. Those are important to your customers; right?

17 A. I don't believe ---

18 BY MS. BRIDGES:

19 Object to form.

20 WITNESS CONTINUES:

21 A. --- those are vague. Yeah, sure. I'm not saying it's not
22 important, I'm just saying you're asking me a question I
23 hadn't necessarily contemplated.

24 Q. Had you ever discussed with Mr. Penland which of these
25 agreements and amendments you were gonna put back in place

1 in 2020?

2 A. That conversation took place with Tim Yarger.

3 Q. I asked if you talked to Mr. Penland about it.

4 A. I have already said I've only spoken with Mr. Penland
5 three times; to my recollection.

6 Q. So, you've never thought about what exactly the terms were
7 but you assumed that whatever you thought were the terms
8 that were beyond reproach and questions for Mr. Penland
9 about what are the terms in writing for us?

10 BY MS. BRIDGES:

11 Object to form.

12 WITNESS ANSWERS:

13 A. Mr. Penland was provided a commitment letter, Mr. Penland
14 I'm assuming was notified that we would use the existing
15 terms and agreement, and the only request that Tim Yarger
16 made was that we have a \$400,000 credit line and that we
17 leave the preferred daily rate in place.

18 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 10; ATTACHED TO
19 DEPOSITION)

20 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

21 Q. I'm gonna hand you Exhibit Number 10.

22 A. Yes, sir.

23 Q. And really I wish I had longer arms but not just for this
24 deposition just in general. All right, do you recognize
25 this as an email from you to Kim, Tim, Karen and John

1 Bethea in November of 2018?

2 A. I do.

3 Q. Okay, and again, is this a modification of the terms of
4 the 2016 Agreement?

5 A. I assume that, yes.

6 Q. Okay, and is it put in writing?

7 A. It is.

8 Q. And is Karen Willis on the email?

9 A. She is.

10 Q. Could Dealer Financial have executed against the Personal
11 Guaranty on Billy Penland between let's say March of 2019
12 and June of 2020?

13 A. Did we?

14 Q. Could you have?

15 A. There would've been nothing to, I mean, he didn't owe us
16 anything. So, it would have no value, I guess, would be
17 my answer. Oh, oh, hey in, no, 2018 to 2019?

18 Q. March of ---

19 A. I'm sorry, please.

20 Q. --- 2019, ---

21 A. Okay.

22 Q. --- after the email from Karen, ---

23 A. Yes, sir.

24 Q. --- through June of 2020.

25 A. I don't know why we would have.

1 Q. I understand that, I don't know why you would've either, I
2 don't know why you kept it in place, but my question is
3 could you have executed against it?

4 A. I doubt it.

5 Q. Why?

6 A. It would've had no value.

7 Q. Well, regardless, say that you believe that Billy Penland,
8 Dealer Financial believed that Billy Penland owed Dealer
9 Financial money, could you have executed against the
10 Personal Guaranty between March of 2019 and June of 2020?

11 A. If there was debt owed we could have, but there was no
12 debt owed, there was no balance.

13 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 11; ATTACHED TO
14 DEPOSITION)

15 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

16 Q. Handing you Exhibit Number 11.

17 A. Um-hum.

18 (Off the record at approximately 12:40 p.m.; on the record at
19 approximately 12:42 p.m.)

20 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

21 Q. I believe I handed you Exhibit Number 12?

22 A. Eleven.

23 Q. Yep, it's right here, you're right. All right, this is an
24 email from John Bethea to yourself and Steve Lanzl; do you
25 recognize that?

1 A. I do.

2 Q. Did you receive this email?

3 A. I did.

4 Q. June 23rd, 2020?

5 A. Yes, sir.

6 Q. Okay, I noticed that John Bethea has a dealerfinancial.com
7 email. Do all of your independent contractors have Dealer
8 Financial emails?

9 A. Um-hum.

10 Q. Is that a yes?

11 A. Sorry, yes.

12 Q. Okay, is that dealerfinancial email for Dealer Financial
13 Holdings or is it for the Incorporated?

14 A. I guess I, you know, I've never really thought about that.
15 It's a dealerfinancial.com email address.

16 Q. Does Dealer Financial, Incorporated have a different email
17 address ---

18 A. No.

19 Q. --- or different email server?

20 A. No.

21 Q. No to both?

22 A. We use a public, we use Go Daddy to host our email, we
23 have, you know, dealerfinancial.com is a domain that we
24 maintain. We, you know, dealerfinancial, yeah, so, I'll
25 answer it like that.

1 Q. All right. So, on June 23rd, John Bethea tells you and
2 Mr. Lanzl that, "Penland Automotive is applying for
3 \$750,000 floor plan line"?

4 A. Um-hum.

5 Q. Do you agree with that, says that?

6 A. I do, yes, sir.

7 Q. Okay, and it says, "Dealer Application and supporting
8 documents are in the New Dealer Acquisition-Dealer
9 Documents-Penland Automotive- 2020JB," John Bethea; I
10 assume?

11 A. Yes, sir.

12 Q. Is that an online folder or a server folder that your
13 independent contractors can access?

14 A. Yeah, we maintain a Dropbox account for everybody, and
15 they, I guess, at this point we didn't have an
16 underwriting email address, but now we either get them via
17 to the underwriting email address or they put them in the
18 new dealer, you know, Dropbox folder.

19 Q. All right, in response to this email, did you give Penland
20 Automotive a \$750,000 floorplan line?

21 A. We did not.

22 Q. Why not?

23 A. Because that was ultimately what was not requested.

24 Q. Did they have a \$500,000 ---

25 A. I believe ---

1 Q. Hold on, let me ---

2 A. Sorry.

3 Q. --- floorplan line?

4 A. I believe we opened it at \$400,000.

5 Q. Okay, so, in 2018, Penland Automotive had a \$500,000
6 floorplan line; is that right?

7 A. Yes, sir.

8 Q. Okay, and could they start asking you for money in June of
9 2020 for that \$500,000?

10 A. I imagine, if they would've not requested any changes,
11 sure.

12 Q. Okay, so, they could've just started using their \$500,000
13 floorplan line based on the documents?

14 A. We asked to refresh the credit file, that seemed to be
15 okay with them, because it had been while, so, we wanted
16 to make sure that everything was still okay. And so, we,
17 unlike the lawsuit said, we, you know, did a review of the
18 Credit File, and in conversations with Tim Yarger, when he
19 asked for 750 we said we'd do that but we have to put the
20 mortgage back in place and we've got to be the only
21 floorplan.

22 Q. The only what?

23 A. The only floorplan. My understanding was there was also
24 negotiations with another floor planner, Upstate Auto
25 Auction, and so, it went back and forth and we settled on

1 a \$400,000 line of credit, but we did not require them to
2 remove the other floorplan.

3 Q. Well, you had no right to ask them to remove the other
4 floorplan while they were doing business with you; right?

5 A. Sure, I do, I'm a lender, I can set requirements.

6 Q. Okay, based on the documents that you say are enforced
7 from 2016, did you have a right to limit Penland
8 Automotive to only do business with your floorplan
9 company?

10 A. Ultimately, that was not the request. So, in other words,
11 there was no need, you know - - do you want me to go
12 through the ---

13 Q. I want you to answer my question.

14 A. --- highlights? Okay, and I'm trying to.

15 Q. Based on the 2016 documents and the amendments thereto,
16 did Dealer Financial have the right to make Penland
17 Automotive only do business with Dealer Financial?

18 A. You know, at one point we had - - so, I don't believe so,
19 I'll say it like that, no, I don't think so.

20 Q. All right.

21 A. Go ahead.

22 Q. So, the new terms were being negotiated in June and July
23 of 2020 for the new relationship; is that right?

24 A. To the reopening of the line; I wouldn't necessarily call
25 it a new relationship.

1 Q. Okay, the reopening of the line; that's what you want to
2 call it?

3 A. What would you like to call it?

4 Q. I'll use your words.

5 A. Okay.

6 Q. Okay. Were the terms for the credit line the same as when
7 you had deactivated the line?

8 A. The answer is no, obviously, because it was requested, you
9 know, if you want to use Karen for good, we'll use her for
10 evil here, the email from Karen said please reopen the
11 line based, you know, per Billy Penland at \$400,000.

12 Q. Right. The point being that the terms that began in July
13 of 2020 were different than the terms with the amendments
14 based on the Agreement of 2016; right?

15 A. Tim asked for two things, a \$400,000 line and the
16 preferred, the 7.85 cents per hundred dollars per day.

17 Q. Is the answer yes?

18 BY MS. BRIDGES:

19 Object to form.

20 WITNESS ANSWERS:

21 A. So, if I'm, and I'm, so, please ask the question again
22 then if I'm ---

23 Q. Are the, is the, the floor line credit limit ultimately
24 different when you reopened the line in July of 2020 than
25 it was when you deactivated the line in February of 2019?

1 A. The credit limit was different.

2 Q. All right, the new Dealer Acquisition dealer documents ---

3 A. Sure.

4 Q. --- all right, is that a, I said that's a folder right, a
5 server folder?

6 A. It's a folder.

7 Q. Have you looked in that and produced all the documents to
8 us that are in there?

9 A. Yes, sir. That, you know, it's been sent, you know, it's
10 quickly moved out of there, but, yes, we produced all
11 those documents; we've produced both the 2016 folder and
12 the newer folder.

13 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 12; ATTACHED TO
14 DEPOSITION)

15 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

16 Q. I'm gonna hand you Exhibit Number 12. Get a chance to
17 review it?

18 A. Yes, sir.

19 Q. Okay. All right, this is an email from you on July 6th,
20 2020 to John Bethea and Steve Lanzl called, "Commitment
21 Packets Penland" and someone else; right?

22 A. Yes, sir, yep.

23 Q. Did you send this email?

24 A. I did.

25 Q. Did you attach two different commitment packages to it?

- 1 A. I did.
- 2 Q. All right, I assume the blacked out part is another
3 customer?
- 4 A. I, you know, I guess yes, the answer is there were two
5 commitment packets sent to John that day.
- 6 Q. All right.
- 7 A. And just, Jason, just to, it's Lanzl not, and, you know,
8 I'm not ---
- 9 Q. Lanzel versus Lanzl?
- 10 A. Yeah, so, I mean, it's, you know, only because you were
11 worried about Kim's name. Go ahead.
- 12 Q. I appreciate that, all right.
- 13 A. You bet.
- 14 Q. All right, so, you sent this, "John, let's make sure to
15 discuss the intricacies of both letters;" is that right?
- 16 A. That's correct.
- 17 Q. All right. Let's flip a couple of pages.
- 18 A. Okay. I'm assuming were going to 722?
- 19 Q. Yep.
- 20 A. Okay.
- 21 Q. 722 is a July 6th, 2020 letter to Charles Penland from
22 you; is that right?
- 23 A. That's correct.
- 24 Q. Was this letter ever sent?
- 25 A. Was it ever sent?

1 Q. Yeah.

2 A. Yes.

3 Q. It was sent to Billy Penland?

4 A. I'll be truthful, I don't know.

5 Q. Okay, "Dear Bill, thanks for giving Dealer Financial the
6 opportunities to supply your floor planning needs. John
7 and I very much appreciated the opportunity to work with
8 your team previously, and we hope our rekindled
9 relationship is long and productive." Did you write that
10 in July of 2020?

11 A. I did.

12 Q. Okay, "Pending execution of acceptable binding documents
13 and additional application information, Dealer Financial
14 is pleased to extend the commitment of \$750,000 for use as
15 a secured Floorplan;" did you write that?

16 A. I did.

17 Q. Okay, you were using \$750,000; is that right?

18 A. At this point in time, yes.

19 Q. And that's what John Bethea said that Tim wanted; is that
20 right?

21 A. This was, you know, I wouldn't have, no, I would've had
22 frankly intimate discussions with Tim as we got here;
23 that's what Tim said he wanted.

24 Q. The 750,000 number, where'd it come from?

25 A. The initial obviously came, you know, from John Bethea,

1 but there were multiple discussions with Tim Yarger
2 subsequent to that about the mortgage, about replacing
3 other floorplans; all sorts of stuff.

4 Q. Well, let's just finish it.

5 A. Sure.

6 Q. "We understand that Dealer Financial will replace all
7 current floorplans and be your sole floorplan" provider,
8 "supplier," I'm sorry; does it say that?

9 A. It does.

10 Q. Did you write that?

11 A. I did.

12 Q. "Please review the proposed terms and conditions. Given
13 your approval, I can have the appropriate documents
14 prepared and available for signature by the week of July
15 13th. You will be able to use your floorplan immediately
16 upon execution of the documents;" did you sent that?

17 A. I did.

18 Q. Did you prepare the documents?

19 A. Subsequent to this letter, Tim goes, "We want to move
20 fast," and he asked, "Let's just use the existing
21 documents." I called my attorney and asked if that was,
22 if there was any problem with that and he said no.

23 BY MS. BRIDGES:

24 Object, objection to privilege.

25 BY THE WITNESS:

1 Oh, sorry.

2 BY MR. IMHOFF:

3 I don't know what to do with that; I'm sorry.

4 BY MR. IMHOFF (TO THE COURT REPORTER):

5 This is 12; is that right?

6 BY THE COURT REPORTER:

7 This will be 13.

8 BY MR. IMHOFF:

9 But this is 12; right?

10 BY THE COURT REPORTER:

11 Yes, yes, the one you just marked.

12 WITNESS CONTINUES:

13 A. So, anyway, so, I'll just put it like this: Tim Yarger
14 and I agreed to use the existing document packet that was
15 in place, and that was actually Tim's request so that we
16 can move quickly.

17 Q. You sent this on July 6th?

18 A. Um-hum.

19 Q. To Steve and John?

20 A. Um-hum.

21 Q. Is that right?

22 A. Um-hum.

23 Q. Are these yeses?

24 A. I'm sorry, yes.

25 Q. Did you also send the documents to Steve and John on July

1 6th?

2 A. They would've been attached to the email, so, yes, sir.

3 Q. Okay, so the acceptable binding documents, ---

4 A. Oh.

5 Q. --- additional application information, proposed terms and
6 conditions?

7 A. This letter was attached to this email.

8 Q. But you had not gotten the acceptable binding documents
9 done yet?

10 A. We were gonna draw up a new document packet that looked
11 very similar to this ---

12 Q. Right.

13 A. --- with the amended credit limit. Tim said, "We need to
14 move fast" cause Billy wanted to get cars off his buddy's
15 floorplan, and so, they wanted to move faster than we
16 could prepare documents, so, Tim goes, "Well, can't we
17 just use the existing documents set," and I said, "Yes,"
18 and I'll leave it at that.

19 Q. So, the next page is the Proposed Terms and Conditions?

20 A. Um-hum.

21 Q. And the next page is the Floorplan Guidelines?

22 A. Sure.

23 Q. These are different generally than the 2016 Proposed Terms
24 and Conditions and Floorplan Guidelines; correct?

25 A. I would say that a lot of it is the same, a lot of it

1 might be different, you know, so, in other words, the
2 floorplan amount is different, the rates and fees were
3 different, but those were, you know, previously amended
4 and part of our, you know, ongoing business relationship.
5 Who knows about the working capital, but, you know, a lot
6 of it is very similar to the 2016 Terms and Conditions.

7 Q. Well, you know, it's subjective what "a lot" means, but
8 will you agree with me on this, the Floorplan amount is
9 different; is that right?

10 A. Yes.

11 Q. Okay, the Rates and Fees are different?

12 A. Yes.

13 Q. Okay, the curtailments are different?

14 A. No.

15 Q. Vehicles, curtailments is on the next page, "Vehicle
16 mature 120 days from the date financed"?

17 A. I'm not sure that's different.

18 Q. Different from 2016 or one of the amendments you did?

19 A. Yeah, I don't believe - - are you comparing Commitment
20 Letters or are you comparing, what are you comparing this
21 to?

22 Q. It is your testimony and position that the 2016 documents
23 were deactivated and then reactivated. We've gone through
24 several modifications, negotiations and amendments to the
25 2016 Agreements, including again the Floorplan amount, the

1 Rates Fees, the curtailments, etcetera.

2 A. Um-hum.

3 Q. Whatever you believe is the last version of the Terms and
4 Conditions and Floorplan Guidelines, does it match these
5 documents?

6 A. The Credit Limit is different.

7 Q. Okay, the Rates and Fees are different also; aren't they?

8 A. Rates and Fees were similar to when we ended the
9 agreement, so, that was verbally changed but was, you
10 know, on the portal, so, that was reduced.

11 Q. Are the curtailments different?

12 A. Well, you produced a, two emails that I believe are useful
13 to that, this one where we stopped charging curtailments
14 but made them, you know, pay cars off at 90 days.

15 Q. Okay.

16 A. Then in November, we went, you know, because they stopped
17 wanting to, they wanted to leave cars on the Floorplan for
18 lower than 90 days, we agreed, "Okay, but we'll reduce the
19 curtailments from 10 percent to 7.5 percent; ---

20 Q. Right.

21 A. --- okay? So, not everything was done, you know, not
22 every alteration necessarily was done with an email or
23 done in writing. So, what Tim Yarger requested as we
24 reinstated the line was that what was important was the
25 preferential daily rate because our account standard is

1 higher than what is charged here.

2 Q. And I get all that; okay? "Curtailments" on the last page
3 of Exhibit Number 12 says, "Vehicles mature 120 days from
4 the date financed."

5 A. Um-hum.

6 Q. Does it say that?

7 A. Um-hum.

8 Q. Is that a yes?

9 A. Sorry, yes.

10 Q. Okay, and that is different from the November 13th, 2018
11 where you say, "I have agreed that curtailments going
12 forward will be 7.5 beginning at the 90 day mark
13 continuing each month until the vehicle is paid off."

14 A. Okay.

15 Q. That's different; right?

16 A. Sure.

17 Q. Those are different terms?

18 A. Yes.

19 Q. Between Dealer Financial and Penland Automotive?

20 A. I mean, this is a, you know, this is a guideline ---

21 Q. Is that a yes or a no and then ---

22 A. You know, so, I guess, that's, I'll - - yes, that is
23 different, yes, sir.

24 Q. I understand I'm not in this business, and so, a lot of
25 this is confusing to me; okay? The only point being, you

1 don't want to have a lot of confusion with your customers,
2 you want them to know what their obligations are and you
3 want to know what your obligations are and never to have
4 anything confusing?

5 A. Um-hum.

6 Q. You even said you wanted to communicate with them so
7 there's no confusion; right?

8 A. Yes, sir.

9 Q. Okay. That's what I'm saying, is I'm looking at the two
10 different documents and they don't match to me.

11 A. Well, you weren't involved in the negotiations.

12 Q. All right, ---

13 A. There was no, I mean, ---

14 Q. --- let me go back to your letter.

15 A. Sure.

16 Q. You also say in the middle of the July 6th, 2020 letter to
17 Mr. Penland, "We understand that Dealer Financial will
18 replace all current floor plans and be your sole floorplan
19 supplier;" ---

20 A. Yes.

21 Q. --- did you write that?

22 A. I did.

23 Q. That was part of your requirement for these terms with
24 Dealer, I'm sorry, with Penland Automotive; correct?

25 A. Yes.

1 Q. Okay.

2 A. But that was later amended; if that's important. What are
3 you looking for and I might be able to point you to front
4 or back?

5 Q. Well, you're not gonna be able to point me to where it is
6 in here and that's really the problem.

7 A. Got it, okay.

8 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 13; ATTACHED TO
9 DEPOSITION)

10 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

11 Q. I'm handing you Exhibit Number 13.

12 A. Thank you.

13 Q. And I don't want dwell on this. Would you agree with me
14 that Karen Willis asked for a copy of the cancellation the
15 UCC file on July 7th, 2020 and that email was forwarded to
16 you by Kim Rusch?

17 A. Yes.

18 Q. Okay. Did you do anything to cancel the UCC-1 based on
19 this July 7th email?

20 A. No.

21 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 14; ATTACHED TO
22 DEPOSITION)

23 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

24 Q. I'm giving you Exhibit Number 14. Exhibit Number 14, have
25 you ever seen this email before?

1 A. Yes.

2 Q. All right, so, Kim Rusch says on Monday July 6th, 2020
3 about this UCC cancellation, "That's interesting... So,
4 looks like we're almost done with the underwriting for
5 Penland. If everything goes through, we'd just use that
6 same UCC. If not, we'll make sure it's get cancelled.
7 Does that work? Kim." You see where Karen Willis writes
8 Kim back on July 7th at 8:41?

9 A. Sure, yes.

10 Q. Okay, will you agree with me that Karen Willis asked Kim
11 to give details?

12 A. Sure, yes.

13 Q. You know if this conversation was forwarded to you?

14 A. I'm not sure if this specific conversation was forwarded
15 to me but I believe certainly in our production there's a
16 bunch of emails that have this trail.

17 Q. Do you dispute that that email is an accurate reproduction
18 of the emails between Kim and Karen?

19 A. I believe it's a partial reproduction, sure.

20 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 15; ATTACHED TO
21 DEPOSITION)

22 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

23 Q. I'm gonna hand you Exhibit Number 15. Have you ever seen
24 this email before?

25 A. I have.

1 Q. Was this email request from Karen Willis forwarded to you?

2 A. I don't know. I certainly am familiar with the email
3 though from producing it.

4 Q. Do you dispute that on July 18th, 2020, Karen Willis asked
5 for proof that the UCC filing has been cancelled and that
6 Billy needed it before July 9th?

7 A. Yes, I see that.

8 Q. Okay, you don't dispute that Karen sent that email?

9 A. I don't.

10 Q. Is it true that there was an accident in your town that
11 took out the internet?

12 A. I don't remember exactly but I do, you know, yes, I live
13 in the middle of nowhere and the internet goes down
14 frequently, I, yeah, so, the answer is I don't believe
15 John would have fabricated anything.

16 Q. I don't really understand what's happening here but it
17 looks like John Bethea is emailing Karen Willis about a
18 UCC file; you see that?

19 A. It's interesting, it, you know, it's addressed to Kim but
20 it looks like it was sent to Karen, so, I, you know, I
21 guess, I didn't send this email, so, I'm not entirely sure
22 what the deal is.

23 Q. What is a UCC3?

24 A. A UCC3 is either a modification or I believe it's a
25 removal of a UCC-1.

1 Q. So, was there in process on July 8th a modification or
2 cancellation of Dealer Financials UCC-1 on Penland
3 Automotive?

4 A. No.

5 Q. Why is John Bethea talking about a UCC-3 may not have
6 gotten transmitted because your internet was out?

7 A. I have no idea. I would, you want me to - - I don't know.

8 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 16; ATTACHED TO
9 DEPOSITION)

10 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

11 Q. I'll hand you Number 16.

12 A. Thank you.

13 Q. Can you tell us what this is, please?

14 A. I believe it was a UCC search that I did with the
15 Secretary of State, South Carolina Secretary of State.

16 Q. And you paid \$25.00 on July 9th, 2020 at 2:01 p.m.?

17 A. Okay.

18 Q. Is that correct?

19 A. That's what the document says, so, I - - well, yes.

20 Q. Search for Penland; is that correct?

21 A. Yes.

22 Q. Okay, 10 pages, nine documents; is that correct?

23 A. Yes.

24 Q. And the list of those documents is down here below, ---

25 A. Um-hum.

1 Q. --- which is multiple Financing Statements, an Amendment
2 and an Amendment of a UCC-3 and a Financing Statement; you
3 agree with that?

4 A. I do.

5 Q. Okay, and I take it your internet was back up on the 9th?

6 A. It does appear that way, yeah, ---

7 Q. And you ---

8 A. --- yeah.

9 Q. --- and you were able to access the South Carolina
10 Government UCC search page; is that right?

11 A. That's correct.

12 Q. Did you file anything that day?

13 A. I don't do our UCC filings; this was a search.

14 Q. What was the purpose of this search?

15 A. In the ongoing - - you know, so, these were handled with
16 Tim Yarger, I basically said, I basically asked Tim, "What
17 are you," you know, "why are we gonna cancel the UCC when
18 we're negotiating to reopen the line" and he said, "Don't
19 worry about that," so I didn't. This was kind of the
20 final - - I guess I did a search as part of our
21 underwriting to either confirm what other UCCs were filed,
22 so, this was a search to confirm that we knew what UCCs
23 were filed.

24 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 17; ATTACHED TO
25 DEPOSITION)

1 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

2 Q. I'm handing you Exhibit Number 17.

3 A. Okay.

4 Q. Do you recognize that email?

5 A. I did, I do.

6 Q. All right, did you receive Karen Willis' Thursday July
7 9th, 2020 email?

8 A. I did.

9 Q. Okay, and it says, "Reopen" ---

10 A. Um-hum.

11 Q. --- in the subject line; see that?

12 A. It does.

13 Q. And who does it, and it says, "Per Billy Penland, Please
14 reopen our floor plan at \$400,000;"

15 A. Um-hum.

16 Q. --- you see that?

17 A. I do.

18 Q. Okay, and the email came from Karen Willis; is that right?

19 A. That's correct.

20 Q. It did not come from Tim Yarger; did it?

21 A. That's correct.

22 Q. Okay, and it says, "Per Billy Penland;" correct?

23 A. Um-hum.

24 Q. Is that a yes?

25 A. Sorry, yes.

1 Q. It does not say, "Per Tim Yarger;" does it?

2 A. Does not.

3 Q. Okay. Now, let's look up at the top here.

4 A. Um-hum.

5 Q. There's an email, it says, "Karen, Per our agreement with
6 Billy and Tim the existing loan and security document
7 packet dated November 21, 2016, as amended, remains in
8 place. Best Dan;" do you see that?

9 A. I do.

10 Q. You ever send that email?

11 A. I believe so.

12 Q. Have you gone back and searched to see if you sent that
13 email?

14 A. Well, we produced it, so, I'm assuming we sent it.

15 Q. Have you gone back and searched to see if you actually
16 sent this email?

17 A. I'm not sure how to answer that question. If ---

18 Q. Have you gone back and looked to see if it actually went
19 out in your sent documents?

20 A. I don't believe we would've produced it if I, I don't know
21 why I would still have it if it wasn't sent. So, yes, I
22 believe we sent this email.

23 Q. Why doesn't it have a time and date stamp on it unlike
24 every other single email in the entire file?

25 A. Your emails don't have time and date stamps on it; I

1 noticed that.

2 Q. I don't think that's true, sir. Why doesn't this one have
3 a time and date stamp on it?

4 A. I don't know.

5 Q. When you produced it, how did you produce it?

6 A. Search, you know, search for the key words "Penland;" I
7 imagine. So, we searched emails, searched email accounts
8 for emails.

9 Q. Okay, and what did you do with them once you found them?

10 A. Gave them to my attorney.

11 Q. How?

12 A. Put them in a Dropbox. I mean, you know, so, we did it
13 electronically, and I guess sent them, uploaded it to
14 their server, potentially. So, we produced stuff to or I
15 sent things to my attorneys electronically.

16 Q. Have you asked - - so, you put it in a Dropbox link?

17 A. I don't think they wanted to use our Dropbox, they wanted
18 to use their system, so, we did it in their system.

19 Q. All right, so, you ---

20 A. But I still have the production - - anyway.

21 Q. You still have the same email address?

22 A. I do.

23 Q. You still have the same internet service provider?

24 A. I believe so, yeah.

25 Q. Have you deleted any emails related to this litigation?

1 A. I have, we certainly have attempted not to, but I, you
2 know, don't take this wrong.

3 Q. Is this email still on your computer?

4 A. I believe so.

5 Q. Where did this email come from? In other words, do you
6 use a laptop, do you use your phone, do you use a desktop
7 at your office?

8 A. All three.

9 Q. Okay, do you remember how you sent this one?

10 A. I mean, they would've been - - no, I don't. I mean, it
11 would, you know, the, it's an IMAP account, so, the, you
12 know, the account or the folders would've been the same on
13 any device I used.

14 Q. It's a MAC?

15 A. No, it's a Windows, but the email address is a, I guess it
16 was an IMAP at this point, meaning it synchronizes between
17 my desktop, my laptop and my phone.

18 Q. Have you asked John Bethea if he got this email?

19 A. I have not.

20 Q. Have you asked Kim Rusch if she got this email?

21 A. I have not.

22 Q. Do you know if either of them have produced this email in
23 response to our discovery request?

24 A. I don't know. I mean, you have the discovery, you know, I
25 don't have it in front of me, so, no, I don't know.

1 Q. Okay, the answer's no.

2 A. Okay.

3 Q. All right, so, I will ask you, at your attorney's
4 direction, not to do anything else with any of your
5 computers related to this document ---

6 A. Okay.

7 Q. --- so that we can go back and actually look at the meta
8 data to see if this was ---

9 A. Sure.

10 Q. --- ever sent, when it was sent, so.

11 A. Understood.

12 Q. Okay. Did you ever get a response to this email?

13 A. I don't know.

14 Q. When you were searching documents where did you find this
15 email?

16 A. I don't know. I mean, you know, in my email.

17 Q. Did you find it, well, did you find it in "Sent"?

18 A. I think I, I think we searched, again, we just searched
19 my, we just searched my emails, so, I'd have to go back in
20 - - I'm not sure we, I think you search at the top and it
21 searches all the folders.

22 Q. Whose "we"?

23 A. You're looking at him.

24 Q. You did it?

25 A. Uh-huh.

1 Q. Okay, where did you find this email, was it in "Sent," was
2 it in "Draft"?

3 A. Truthfully, I don't, I don't recall.

4 Q. Did you have anybody else do an electronically stored
5 information search?

6 A. No, I believe I did the searches, you know, I'm the
7 administrator so I can log into people's accounts and I
8 did all the searches.

9 Q. So, Kim and John didn't do their own searches?

10 A. I believe they did for text messages and whatnot, but on
11 emails, I'm the one who, I'm the administrator.

12 Q. And you have access to all of their folders?

13 A. Yeah.

14 Q. Did you find this email in any of their accounts?

15 A. I don't know. I mean, you know, you're telling me the
16 answer is no, so, I don't know.

17 Q. Well, I don't know what you found, I just know that you
18 didn't produce it.

19 A. Okay, if it was not produced I didn't find it.

20 Q. This seems to be a pretty important document, is it
21 important to you?

22 A. I mean, it certainly is a nice email, but it doesn't
23 change the reality of the situation.

24 Q. It would be important to you to find that you sent this
25 email; wouldn't it?

1 A. I don't think it changes the conversations I had with Tim
2 Yarger, so, I'm not sure it's that important.

3 Q. Is there any other document that puts in writing that you
4 are going to use the existing Loan and Security document
5 packet dated November 21st of 2016?

6 A. No, but there's an Affidavit from Tim Yarger that states
7 that that's what we agreed to do.

8 Q. Okay. So, no, in all of DFH, there is not a single
9 document telling anyone at Penland Automotive that DFH
10 intends to use the existing Loan and Security document
11 package dated November 21st, 2016?

12 BY MS. BRIDGES:

13 Object to form.

14 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

15 Q. Correct.

16 BY MS. BRIDGES:

17 Object to form.

18 WITNESS ANSWERS:

19 A. If it's not produced, then that's all there is. We
20 produced everything you requested, or everything relevant
21 to whatever the request was.

22 BY MR. IMHOFF:

23 So, on the record, Emily, this is, look, we need to get to
24 the bottom of that. I would suggest you have, let him
25 manipulate it and get it to a third party or we'll send a

1 third party to do it so that we can get the meta data for
2 this.

3 BY MS. BRIDGES:

4 Okay.

5 BY MR. IMHOFF:

6 Let me go off the record a minute.

7 (Off the record at approximately 1:18 p.m.; on the record at
8 approximately 1:21 p.m.)

9 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

10 Q. I don't know if I'm gonna make this an exhibit or not.

11 This is an email from Kim, actually from you to Kim,
12 "Please send Americas a credit letter for tomorrow for
13 Penland;" what does that mean?

14 A. In other words, we generally notify the auctions of what
15 someone's credit availability is.

16 Q. Yeah, yeah, then sends it to the auction and says, "Hey
17 they're good "X" amount;" whatever?

18 A. That's correct. What's the date on that email?

19 Q. July 9th at 3:25 p.m.

20 A. Yeah.

21 Q. And that's the letter typically you'll send?

22 A. Yeah. I mean, generally, sometimes there are more people
23 listed but in this particular case I believe that's, you
24 know.

25 Q. And that tells the auction what you're gonna loan anyway?

1 A. That's correct, that he can spend up to \$400,000.

2 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 18; ATTACHED TO
3 DEPOSITION)

4 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

5 Q. I'm gonna hand you Exhibit Number 18.

6 A. Sure.

7 Q. This is an odd format to me, it's a little bit different
8 than the other emails we've been looking at, ---

9 A. Um-hum.

10 Q. --- and it looks like an email to you and Steve, and I
11 guess Kim ---

12 A. Yeah.

13 Q. --- from John Bethea?

14 A. Yeah, he puts her, yeah, yep.

15 Q. Is this an email you went and searched and pulled?

16 A. I believe so.

17 Q. Okay.

18 A. I mean, I would've done all the searches, so.

19 Q. Why does it look so different?

20 A. I don't know.

21 Q. It's July 20th, 2020 2:28 p.m., "Glenn Halls floorplan
22 computer," I'm just gonna say, "is down and I will not be
23 able to get data for cars to floor until Tuesday;" what is
24 that?

25 A. So, the, one of the initial floor request was flipping

1 cars from Floorplan "A" to ours.

2 Q. And so, this is just to get the information from Glenn so
3 that you could loan the money on it and get them off
4 Glenn's lot?

5 A. Yes.

6 Q. Did I mark it?

7 A. 18.

8 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 19; ATTACHED TO
9 DEPOSITION)

10 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

11 Q. I hand you 19. All right, so, this is an email from John
12 Bethea to you?

13 A. Um-hum.

14 Q. Which is interesting, but here's what I want to talk
15 about; okay?

16 A. Okay.

17 Q. The fourth paragraph down, "This is a good example why we
18 use curtailments. The 148 average" day, "number of days
19 or almost 5 months since these vehicles have been written
20 down;" what does that mean?

21 A. So, the purpose, you know, other during the pandemic, a
22 vehicle is a depreciating asset. So, the purpose for
23 curtailments is for us to stay ahead of the depreciation.
24 It appears as though Mr. Hall did not charge curtailments
25 or impose curtailments on his floorplan, and so, these

1 cars had been on the floorplan it looks like for 148 days,
2 and, you know, there had been no curtailments paid; that's
3 my view of this email.

4 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 20; ATTACHED TO
5 DEPOSITION)

6 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

7 Q. All right, do you recognize this is an email from John
8 Bethea to yourself, Steve and Kaim Rusch?

9 A. Yeah, I'm not sure why he does that, but yes, it's Kim.

10 Q. Wednesday July 22nd?

11 A. Yes.

12 Q. "Please find attached the Penland cars to flip." Are
13 those from Glenn's floorplan?

14 A. I believe so.

15 Q. Okay. "Tim and I booked out the cars with the actual
16 verified options." So, that's when you actually put eyes
17 on the cars to make sure that the options and thus the
18 value are correct?

19 A. Yeah, yes.

20 Q. And then, "Total floored amount 180,706.47 cents;" I
21 assume that is with Glenn?

22 A. I would assume the same thing, yeah.

23 Q. But they're coming onto your lot?

24 A. That's correct.

25 Q. On to your book?

- 1 A. Yes.
- 2 Q. "Black Book Values" after they verify the option is
- 3 178,400?
- 4 A. Um-hum.
- 5 Q. Is that right?
- 6 A. Yep.
- 7 Q. Okay, so, the difference is between the value of the cars
- 8 and the amount that Glenn is owed on his floorplan is
- 9 \$1,706.47; is that right?
- 10 A. Yes.
- 11 Q. Okay. And then he asked, "Can we floor \$178,400 and Bill
- 12 will pay the \$1,706.47 difference." Did you answer John?
- 13 A. I'm sure I did cause we floored him.
- 14 Q. Okay.
- 15 A. You know, but I, you know, so, I ---
- 16 Q. Were there additional terms or obligations or curtailments
- 17 or fees or interests on those \$178,000 of cars?
- 18 A. I mean, I'd have to go back and look at the actual amounts
- 19 that were floored, but I'll assume that - - I'd have to go
- 20 back and look, but I would not be surprised if we floored
- 21 \$178,000 and \$400.
- 22 Q. What are the terms?
- 23 A. 2016 contract.
- 24 Q. Plus amendments?
- 25 A. Plus amendments.

1 Q. When did the curtailments start?

2 A. Sixty days.

3 Q. From what time period?

4 A. From the time we floor them.

5 Q. Why 60 days?

6 A. Because that's what Tim and I agreed to.

7 Q. Is that in any document?

8 A. It's on the portal.

9 Q. What's the portal?

10 A. Portal's the customer, when they see the portal they can
11 see that; you have lots of information pulled from the
12 portal.

13 Q. Tell me what the name of it is and where is it.

14 A. I call it the portal.

15 Q. Yep.

16 A. I don't know where it is; quite truthfully. Worthwhile is
17 our, you know, they host it, I believe, and that's where
18 our inventory is maintained.

19 Q. Is that where the terms and conditions are?

20 A. No.

21 Q. Well, you told me, I said why is it 60 days, curtailment
22 start at 60 days, and you said it's on the portal. Is it
23 on the portal?

24 A. I believe it's on the portal, yeah.

25 Q. Okay, well, wouldn't that be one of the financial terms

1 and conditions between Dealer Financial and Penland
2 Automotive?

3 A. But you asked me where the terms and conditions are
4 maintained and they're not maintained on the portal. It
5 may be, we have the daily rate on the portal too, but we
6 don't view that as, you know, our document of record.

7 Q. Let me go back. So, when the curtailments start on these
8 cars that were flipped, and you said 60 days; you agree
9 with that?

10 A. I believe so, yes.

11 Q. Okay, where is curtailments start on these flipped cars,
12 starts at 60 days, in writing in a document between
13 Penland Automotive and Dealer Financial?

14 A. It would have been part of the conversation with Tim
15 Yarger, so, he wanted, he want, the only thing he wanted
16 to make sure was still in place was the preferential rate.
17 So, I do believe when we reopened the line, the
18 curtailments on the portal were set at 60 days.

19 Q. I asked you where is it in writing in an agreement between
20 Dealer Financial and Penland Automotive when the
21 curtailments start and how much they are.

22 A. It's in ---

23 Q. Where is it in writing?

24 A. There's a number of documents it's in writing.

25 Q. Show it to me, please; you've got ---

1 A. Sure.

2 Q. --- 20.

3 A. Okay, so, here's one that says 10.

4 Q. Stop. Does that say it starts at 60, curtailments starts
5 at 60 days?

6 A. Yes.

7 Q. Where? What's the name of that document or number? Is
8 that Number 2?

9 A. On Number 2, 1417, the top, "Principal Reduction Payments:
10 Maturity Date."

11 Q. Okay, this says, "Principal Reduction Payments: Maturity
12 Date, "Until a Borrower has sold or otherwise disposed of
13 any Finance Vehicle, Borrower must repay the principal
14 amount of the Advance relating to such Financed Vehicle as
15 provided in the table below." The table starts with "Date
16 of Advance + 60 days, Percentage of Original Principal
17 Amount of Advance Required to be Repaid" is 10 percent.

18 A. (Nods head).

19 Q. Is that a yes?

20 A. That's a yes.

21 Q. That's what it says; right?

22 A. Yes, sir.

23 Q. Okay, so, after 60 days of the amount loaned or advanced,
24 if it's not paid back in full, the Borrower owes 10
25 percent of whatever they borrowed on that vehicle; is that

1 right?

2 A. That's correct.

3 Q. And it starts at 60 days?

4 A. That's correct.

5 Q. Okay, now, that is different than the amendments; isn't
6 it?

7 A. It is.

8 Q. Mr. Haight, which document controls in, on July 22nd,
9 2020, which one?

10 A. The, this document is the largest one in my conversations
11 with Tim Yarger.

12 Q. When you say, "This ---

13 A. So, ---

14 Q. --- document," you're talking about Exhibit Number 2, the
15 actual November 21st, 2016 Loan and Security Agreement;
16 correct?

17 A. Say that one more time, I was reading the date.

18 Q. When you say, "This document controls," and you pointed to
19 Exhibit Number 2 ---

20 A. Um-hum.

21 Q. --- the Loan and Security Agreement November 21st, 2016;
22 correct?

23 A. That's correct.

24 Q. Okay, so, when the, you, when you drafted the email that
25 we don't know if it was sent or not that says, "We're just

1 gonna use the old documents with amendments," did you mean
2 the amendments or just the old documents?

3 BY MS. BRIDGES:

4 Object to form.

5 BY THE WITNESS (TO MS. BRIDGES):

6 I answer? So, got it.

7 WITNESS ANSWERS:

8 A. I believe we used these documents with my discussions with
9 Tim and he asked for the preferential rate, which is 7, in
10 this document, at 8 cents per hundred dollars per day.
11 You know, going forward, or, you know, when we reinstated
12 the line, it was 7.8 cents per hundred dollars per day.

13 Q. Mr. Haight?

14 A. Um-hum.

15 Q. Where is that in writing so that Billy Penland and Karen
16 Willis can see what the actual terms of the agreement are
17 between July and October 8th, 2020?

18 A. It's right there.

19 Q. It's not there, sir, because there are amendments

20 ---

21 A. It's right there.

22 Q. --- to it that changed the curtailments, changed the
23 amounts and changed the interest fees.

24 A. If you look at what was set up on the portal, it matches
25 that except for the Daily Rate.

1 Q. I asked you if it was on the portal, you said yes and then
2 you said no. What's ---

3 A. Well, the curtailments is set so it charges the
4 curtailments; right? So, the person that's not in this
5 room that really needs to be is the guy who negotiated it.

6 Q. All right. What you're saying is that you're billing
7 software, your portal, starts charging at 60 days; is that
8 right?

9 A. It depends on what we put in it, it could be, you know, it
10 could be ---

11 Q. Right.

12 A. --- I guess we could put one day.

13 Q. Right. But, that's done by Dealer Financial; right?

14 A. It is also visible to the dealer; I believe.

15 Q. Right. So, where is the actual agreement in writing, not
16 a place where you're charging your customers and their
17 emailing and calling you going "What in the world are the
18 terms"?

19 A. That's not what ---

20 BY MS. BRIDGES:

21 Object to form.

22 WITNESS ANSWERS:

23 A. That's not the call I got.

24 Q. I understand that. Where is it in writing what the
25 specific ---

1 A. It's right there.

2 Q. You're going back Number 2; ---

3 A. Yeah.

4 Q. --- right?

5 A. Yep.

6 Q. Why isn't it - - well, let's just go to it. Why isn't it
7 in Exhibit Number 17, which is a \$400,000 credit limit,
8 not a \$500,000 credit limit?

9 A. So, you know, you know, so, I, you know, in - - I regret
10 not taking, not forcing Tim to take the time and having us
11 produce new documents now, obviously. But that doesn't
12 change the fact that what Tim and I agreed to were to use
13 the existing documents, \$400,000 and 7.85 cents.

14 Q. I hear all that, and I understand that that's your
15 narrative and that's what you want to tell me but that's
16 not my question.

17 A. Okay.

18 Q. How does the company know whether Exhibit Number 2, the
19 2016 Loan and Security Agreement has the Terms and
20 Conditions that are applicable in July of 2020 and going
21 forward, or it's Exhibit 17, or, let me finish, or if you
22 sent the letter that's Exhibit Number 11, the July 16,
23 2020 letter, ---

24 A. Which one is that?

25 Q. --- with the July 6th, 2020 proposed additions, if you

1 sent that, or if it's Exhibit Number 10 where you start
2 charging 7.5 percent beginning at 90 day mark, or if it's
3 Exhibit Number 9 where you changed the credit line, or if
4 it's Exhibit Number 8 where you changed all kinds of
5 different conditions?

6 A. I guess you better get the guy who agreed to it to, in
7 here and that was who I negotiated with at Penland
8 Automotive.

9 Q. Yeah, ---

10 A. So, it was not unclear to him.

11 Q. --- except that guy doesn't own the company; right?

12 A. He never owned ---

13 BY MS. BRIDGES:

14 Object to form.

15 WITNESS CONTINUES:

16 A. --- owned the company, but he did all the negotiating.

17 Q. Well, he did all the negotiating for every one of those
18 amendments ---

19 A. He did.

20 Q. --- and changes; didn't he?

21 A. Yes, he did.

22 Q. And every single one of those was emailed to Karen Willis
23 or was signed by Billy Penland; right?

24 A. That's not true.

25 Q. Okay, tell me where that's not true?

1 A. Well, actually I take that back. So, these emails, you're
2 right, would've copied Karen Willis but, and I'll agree to
3 that if you'll agree that Karen wasn't on the phone with
4 Tim Yarger and I, and that you have an Affidavit from Tim
5 that corroborates what I just said.

6 Q. You run a background check on Tim?

7 A. I ran a background check on Mr. Penland.

8 Q. I didn't ask you that.

9 A. It, you know, I'm not sure what a background has to do
10 with daily conversations. Did Mr. Penland run a
11 background check on Tim? He's the one who employed him,
12 and ---

13 Q. Did you ever run a background on Tim Yarger?

14 A. We did not.

15 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 21; ATTACHED TO
16 DEPOSITION)

17 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

18 Q. All right, I'm gonna hand you Exhibit Number 21.

19 A. Thank you.

20 Q. Is this the portal you're talking about?

21 A. Yes, sir.

22 Q. All right, so, it's not till July 22nd that someone asks
23 to give Kim, I'm sorry, yeah, Karen Willis access to the
24 portal; is that right?

25 A. According to this email, yes.

1 Q. Okay, so, you've already given some amount of money for
2 Penland Automotive to go to the auction and buy cars; is
3 that right?

4 A. Yes.

5 Q. And there's nothing in writing other than the 2016
6 Agreement that tells what the Terms and Conditions are
7 gonna be for those new cars that they're buying; is that
8 right?

9 A. Sure.

10 Q. And the first time that Karen at Penland can become aware
11 of when you start charging curtailments and the amounts
12 you charged is after July 22nd, 2020?

13 BY MS. BRIDGES:

14 Object to form.

15 WITNESS ANSWERS:

16 A. No, she was already set up in the portal, she just
17 couldn't access it.

18 Q. Well, that's the same thing, she can't access it means she
19 can't look at it; right?

20 A. I mean, she ---

21 BY MS. BRIDGES:

22 Object to form.

23 WITNESS CONTINUES:

24 A. --- Can't access it because they were set up in the portal
25 from the day we, they have to be set up for us to floor

1 the cars. So, you know, I would say that Karen not being
2 able to access it is head space and timing of the
3 operator, not us; she had a login and an email.

4 Q. It says, "Please set up Penland in the portal and inform
5 Karen of the login;" does it not?

6 A. That's what it says, it doesn't mean she wasn't already
7 set up.

8 Q. It says, "Please set up."

9 A. It doesn't mean she wasn't already setup. Do you want to
10 know who set the people up in the portal?

11 Q. Sure.

12 A. Me.

13 Q. Okay, did you set her up?

14 A. Absolutely, prior - - when we first floored cars, and I'm
15 not exactly even sure of the date we first floored cars,
16 and it may have been here, I'm not sure whether Billy
17 bought cars when he first went to Americas or not. So,
18 anyway, when we, in order for us to floor a car, the
19 customer has to be set up in the portal. And in fact,
20 they remain set up from you know, so, Karen had a login,
21 you know, from her previous interactions with us.

22 Q. In 2019?

23 A. Um-hum.

24 Q. Is that a yes?

25 A. Yes, sorry.

- 1 Q. You think she just forgot her login?
- 2 A. I don't know.
- 3 Q. So, you didn't take that, one of the things you didn't do
- 4 when it was canceled is deactivate her portal access?
- 5 A. I don't recall actually; that's a good question.
- 6 Q. Do you remember on July 22nd, 2020 getting this email?
- 7 A. I don't recall getting an email, no.
- 8 Q. You ---
- 9 A. But we ---
- 10 Q. --- recall what you did in response to it?
- 11 A. I guess I'll answer it this way: We would have, we would
- 12 have, if we deactivated it we would've reactivated it, we
- 13 had to to floor cars. So, we would have reactivated the
- 14 portal or Penland Automotive prior to flooring cars;
- 15 otherwise, we couldn't have floored cars.
- 16 Q. When you reactivate it, does that mean you're gonna have
- 17 the user name and the ---
- 18 A. Yeah.
- 19 Q. --- password and all that stuff?
- 20 A. Yes.
- 21 Q. Okay, did you send it to Karen?
- 22 A. I don't know.
- 23 Q. Did anybody send it to Karen?
- 24 A. I don't know.
- 25 Q. If it isn't sent to Karen can she get in?

1 A. There's a telephone.

2 Q. What does that mean?

3 A. In other words, somebody could've called her with it, so,
4 are you, you know, so, there's a lot of ways to get Karen
5 information.

6 Q. Do you send a email in here, say, "Here get Karen the
7 information" to anybody?

8 A. I don't, you know, I would have been the one that set her
9 up in the portal; okay? I don't recall calling Karen with
10 it, but I also don't recall not calling her. And I
11 actually think this email was sent prior to us flooring
12 cars. I think we first floored cars on July 23rd.

13 Q. I don't know if you've seen it, I can put, you can look at
14 it, I'm not sure I'm gonna mark it. Darla's credit report
15 from you to Steve, "Darla has her credit file locked,
16 can't pull, interesting and smart;" what is this about?

17 A. I believe we were just engaging with Equifax on credit
18 reports, and so, we, probably we used Darla and Penland as
19 examples, to see, you know, there's a couple of things
20 they were trying to sell us; you know.

21 Q. Who's Darla?

22 A. Darla is the dealer principal at another ---

23 Q. Dealer?

24 A. --- Dealership.

25 Q. Okay, so, when Mr. Lanzl says, "We can use Penland as the

1 personal example with Laura unless you think of a better
2 way. Maybe our current" blank, blank, blank "may have a
3 cash flow problem." What's blanked out there?

4 A. I imagine it was redacted by my attorney, so, I don't
5 know.

6 Q. Maybe just other personal, other dealers ---

7 A. I don't know.

8 Q. --- perhaps? Okay. You used Penland as a personal
9 example of what?

10 A. So, we were trying to figure out whether we liked the
11 reports or if we wanted to sign up for it; all that kind
12 of good stuff.

13 Q. From Equifax?

14 A. From Equifax. So, there was a - - you know, we were, they
15 were, we were initial, we were initially using just the
16 credit check and they had this, I'll call it fancy company
17 report that, for most of our dealers, doesn't prove
18 useful.

19 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 22; ATTACHED TO
20 DEPOSITION)

21 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

22 Q. Hand you Exhibit Number 22.

23 A. Um-hum.

24 Q. Do you recognize this as an email from John Bethea to,
25 well, Steve, Tim, Karen. What is "Payoff Request Email"?

1 A. So, most funding requests, both from auctions and dealers,
2 non-auction funding goes to our auction at
3 dealerfinancial.com email address and that's where we
4 aggregate what needs to be funded for the day.

5 Q. You get that email?

6 A. I have access to that email, yes.

7 Q. Well, because the response comes from you?

8 A. Yeah, yeah, yeah, so, I would've pulled it, you know,
9 there are times I'll pull things out for non-auction
10 purchases and it, or any purpose in response. So, yes, I
11 can go in and respond to emails at the auction, email
12 address.

13 Q. All right, so, this just goes back to John, you say,
14 "John, Just to you. We're very happy to do these trade in
15 payoffs but just to set the tone. What Penland 'wants' to
16 floor it for needs to be driven by" Blue Book, Black Book?

17 A. Black Book?

18 Q. "Black Book value and the Retail installment contract
19 (please). We always need a copy of the retail installment
20 contract and we will verify the payoff! Our target is 80
21 percent of average Black Book"?

22 A. Black Book.

23 Q. "BAM," what's BAM?

24 A. BAM.

25 Q. Something you do?

1 A. Yeah.

2 Q. All right, so, is this a different agreement with Penland
3 Automotive?

4 A. No, it's really, if anything, it was the first trade in
5 request we had gotten from Penland, I believe, and it was
6 really just to John. It wasn't - - it could've been about
7 any dealer but it was really, "Hey, John, This is the
8 things we need to do trade in's."

9 Q. Well, I guess dealerships get their used cars a couple of
10 different ways, they can go to the auction and buy them,
11 they sell their own cars, I guess, or they could take the
12 trade, sell another car and then they got a trade that
13 they would ask you floorplan; is that right?

14 A. That's correct.

15 Q. All right, is the trade in and floor planning at the trade
16 in covered in the 2016 Agreement?

17 A. I'm not sure we specifically covered non-auction
18 purchases. You know, I'm not sure we, I'm not sure we
19 cover any flooring, how we floor things in the Agreement
20 specifically.

21 Q. So, I'm a little confused. Why is there even a discussion
22 about this, why don't they just send you a bill for
23 whatever the \$15,700 is and you give them the money?

24 A. Because we don't allow our dealers to use flooring to
25 create cash for themselves. So, we'll floor what they

1 have in a car or the value but not more. So, in other
2 words, dealer steals a car from a customer, gets a \$10,000
3 car, \$3000 is all he paid for it, we will only floor
4 \$3000; we don't allow them to turn it into a cash
5 generation opportunity.

6 Q. So, I guess that's what I was saying are the details of
7 that, how much you're going to pay them is 80 percent, how
8 they get it, what the curtailments are, what the fees are,
9 what the interest is, is that set forth in any of this?

10 A. That's not - - the flooring is separate and apart from
11 curtailments and fees. In other words, somebody goes to
12 an auction, bids on a car, we floor the ticket price;
13 that's kind of custom in, customary and standard in the
14 industry.

15 Q. Okay.

16 A. Non-auction purchases are, I don't want to say where
17 dealers start playing games, and I'm not stating that in
18 this particular case, but it's where they, again, they get
19 a car for \$3000, they know the black book value is \$10,000
20 and they want us to floor it for \$10,000, we're not gonna
21 do that.

22 Q. I get that, I'm just trying to figure out if there's a
23 written agreement, if it's covered by the '16 written
24 Agreement, if it so bizarre that you would do this and
25 each one is a one off?

1 A. Non-auction floors are handled on a one-off basis as far
2 as flooring is concerned.

3 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 23; ATTACHED TO
4 DEPOSITION)

5 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

6 Q. Gonna hand you Exhibit Number 23. All right, so, there's
7 this, some discussion about that Malibu we just talked
8 about ---

9 A. Um-hum.

10 Q. --- okay, in Exhibit Number 22, but I'm more interested in
11 July 31st, 2020.

12 A. Okay.

13 Q. Did you ever receive this email forwarded from Kim?

14 A. I don't know; if it wasn't produced it wasn't sent to me.

15 Q. Will you agree with me that Karen Willis tells Kim Rusch
16 on July 31st, 2020, "Also, going forward please have Dan
17 speak directly with me;" you see that?

18 A. I do.

19 Q. Do you dispute that she said that?

20 A. I don't.

21 Q. "I am the one that handles the banking and financials and
22 it obviously becomes way too confusing with Tim in the
23 mix;" does it say that?

24 A. It does.

25 Q. Do you dispute she asked Kim to have you speak with her

1 and keep Tim out of it?

2 A. I don't see she asked to keep Tim out of it but she
3 certainly wanted to be involved, yes.

4 Q. "Any floors or payoffs will come straight from me;" see
5 that?

6 A. I do.

7 Q. Do you dispute that she sent that?

8 A. I don't.

9 Q. Do you dispute that this was sent in July of 2020?

10 A. I don't.

11 Q. Okay, did Kim ever tell you that Karen wanted you to deal
12 with her not Tim?

13 A. That's not what that says.

14 Q. "Also, going ---

15 A. And ---

16 Q. --- forward please have Dan speak directly with me."

17 A. Right, not ---

18 Q. Did anyone tell you that going forward you were to speak
19 with Karen not Tim?

20 A. No. I mean, let me do it this way: I'm sure that this
21 was communicated to me; okay? If it was so important to
22 Karen, why didn't she email it to me directly or call me?
23 I would say that I certainly understand the email, but
24 that's not how they did business.

25 Q. That's not who did business?

1 A. Penland. These requests didn't come, I don't believe came
2 from Karen, they came from Tim, non-auction floors.

3 Q. That was one; right?

4 A. I don't, you know, I won't say I don't think we've ever
5 gotten a non-auction floor from Karen, but, you know,
6 daily operations was handled with Tim.

7 Q. Okay.

8 A. With me; I'll put it that way. Karen and Kim interacted a
9 great deal.

10 BY MR. IMHOFF:

11 What time is it?

12 BY MS. BRIDGES:

13 1:53.

14 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

15 Q. All right, I'm handing you Exhibit Number 24.

16 A. Yes, sir.

17 Q. I think I messed it up.

18 BY MR. IMHOFF:

19 Emily, I think your copy has more than you need maybe?

20 BY MS. BRIDGES:

21 That's - - I have two pages; is that what I'm supposed to
22 have?

23 BY MR. IMHOFF:

24 Yeah, I thought you had an extra one.

25 BY MS. BRIDGES:

1 Okay.

2 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

3 Q. All right, do you recognize this as an email from Kim,
4 don't know who it goes to, dated August 26th, 2020? Look
5 on the back.

6 A. Sorry. Okay, August 26, 2020, yes, sir.

7 Q. Okay, Karen Willis says August 26, 2020, "I'm totally
8 confused! What invoice?"

9 A. Okay.

10 Q. Do you agree that that was said?

11 A. Sure.

12 Q. Kim, "Hey, Karen, That would be a floorplan fee invoice
13 generated by the portal if there's a car that's been on
14 the floorplan 30-day! Must be your first one since
15 getting back onboard. It's in your 'portal invoice' list
16 marked 'sent.' I attached a pdf here, too! Does that
17 make sense?" Now, when you went and got this email did
18 you get the attachment?

19 A. I guess if it's not produced we didn't have it or, so, we
20 produced what was there.

21 Q. I'm gonna ask you to go back and get this 2:37 p.m.,
22 August 26th email from Kim to Karen and see if you can get
23 the pdf?

24 A. Sure.

25 Q. All right. Karen then it says, "Thanks. But we were

1 under the belief that we weren't having fees owed until
2 the car sales. I think Tim is reaching out to John and
3 Dan." Have you ever seen this email discussion?

4 A. I'm intimately familiar with this back and forth.

5 Q. Was this forwarded to you?

6 A. I don't know if this email was forwarded to me.

7 Q. Well, you, did you discuss it with Kim or with Karen or
8 with anyone else?

9 A. Discussed it with Kim, discussed it with Tim, returned
10 Karen's phone call, and it goes back to again the
11 negotiations with Tim about reopening the line.

12 Q. Did you talk to Karen?

13 A. I believe I left her a voicemail and did not get a return
14 phone call.

15 Q. Talk to Billy?

16 A. No.

17 Q. Did you send him the document where this is laid out?

18 A. Where what's laid out?

19 Q. The invoice.

20 A. I didn't, but it's - - I did not.

21 Q. Okay, so, Karen doesn't, isn't in the portal so she
22 doesn't see the invoice; right, according to this?

23 A. Uh, ---

24 Q. That's what it says.

25 A. --- it doesn't say she's not in the portal.

1 Q. Well, it says ---
2 A. Kim was just trying to be helpful.
3 Q. --- "There's a floorplan fee invoice generated by the
4 portal;" do you agree with that?
5 A. That's correct, so, that that was, you know, Kim's
6 practice, you know, is to remind, because we run weekly
7 invoices on Thursdays, is to send a reminder to people who
8 have a weekly invoice that we're gonna run the invoice.
9 Q. So, there is a floorplan fee invoice that's generated by
10 the portal; right?
11 A. A weekly invoice is generated by the portal, yes, sir.
12 Q. And that's, and the portal can't do anything without the
13 inputs from you; is that right?
14 A. So, let's put it this way: Once the car is floored, the
15 magic black box generates, you know, the weekly invoices.
16 Q. But it's not magic, you have to put the inputs ---
17 A. Sure, ---
18 Q. --- in, ---
19 A. --- yeah, no, no, ---
20 Q. --- when do the curtailments start, ---
21 A. --- I'm not debating that, ---
22 Q. --- fees, ---
23 A. --- yeah.
24 Q. --- interest, whatever; right?
25 A. Yeah, yeah, yeah, yeah.

1 Q. So, that's all information that you put in?

2 A. That's correct.

3 Q. You personally put in?

4 A. That's correct.

5 Q. Okay, and then the portal creates the fees based on what
6 you put in?

7 A. Yes.

8 Q. Okay, and that's when the invoice is created; right?

9 A. Well, the invoice, yeah, I'm - - the invoice is created on
10 Monday morning at Midnight.

11 Q. So, this is about, would you suspect if this is the first
12 one, it's been about 30 days since the, since Penland has
13 floor planned a car with Dealer Financial?

14 A. I think that's safe to assume.

15 Q. Okay, so, the same day that the invoice goes out the first
16 time, August 26th, Karen Willis at Penland Automotive
17 says, "We were under the belief that we weren't having
18 fees owed until the car sales;" do you agree with me on
19 that?

20 A. I do agree with you.

21 Q. She says that to you; right?

22 A. She does.

23 Q. And that information was made available to you; is that
24 right?

25 A. Let me put this way: I don't know whether this specific

1 email was, but the conversation I am not unfamiliar with.

2 Q. Right, so, the first invoice, you get an immediate
3 response from your customer, "We don't think the terms are
4 what you're saying the terms are;" right?

5 A. That's not what she says.

6 Q. Well, is a curtailment and fees until the car is paid off
7 a term of the documents from 2016 ---

8 A. Sure, ---

9 Q. --- and the amendments?

10 A. --- fine, yep.

11 Q. First time they get an invoice they tell you, "We don't
12 think we're in agreement here;" ---

13 BY MS. BRIDGES:

14 Object to form.

15 DIRECT EXAMINATION CONTINUED BY MR. IMHOFF:

16 Q. --- right?

17 BY MS. BRIDGES:

18 Object to form.

19 WITNESS ANSWERS:

20 A. No, we got an email from Karen and I returned Karen's
21 phone call and I handled it with Tim. I'm telling you
22 that the day-to-day operations for me was with Tim.

23 Q. I get that, and that worked out great for you for a while,
24 I get that, but you weren't talking to Billy who signed
25 the documents and you weren't talking to Karen who now has

1 told you multiple times to deal with her and that she
2 disagrees with what you're billing them; ---

3 A. What ---

4 BY MS. BRIDGES:

5 Object to form.

6 WITNESS CONTINUES:

7 A. --- what multiple times?

8 Q. Well, ---

9 A. I believe that's ---

10 Q. --- go back to the Exhibits.

11 A. --- one email. That, there's one line in one email.

12 Q. Well, we'll keep going.

13 A. But I would say that, you know, if it was - - anyway, I
14 won't fight with you.

15 Q. Well, I think the takeaway is first invoice, someone from
16 Penland Automotive says, "This is not what we believe our
17 agreement is;" is that fair?

18 BY MS. BRIDGES:

19 Object to form.

20 WITNESS ANSWERS:

21 A. We had a question and we handled it.

22 Q. You handled it personally ---

23 A. Yeah.

24 Q. --- with Tim Yarger ---

25 A. Yep.

1 Q. --- without Billy or Karen?

2 A. Well, considering I never interacted with Billy and rarely
3 inter - - you're right, yeah, okay, I won't
4 ---

5 Q. He signed every one of your documents; didn't he?

6 A. I understand. So, Tim Yarger was the individual that I
7 worked with, not on a daily basis, but on a common and
8 frequent basis when it came to Penland Automotive, ---

9 Q. I get that.

10 A. --- and we handled it with Tim.

11 Q. You personally and Tim Yarger personally "handled it"
12 without Karen Willis or without Billy Penland?

13 BY MS. BRIDGES:

14 Object to form.

15 WITNESS ANSWERS:

16 A. I responded to Karen's phone call, left her a voicemail,
17 she didn't call me back, she didn't email me. If it was
18 that confusing, chances are I would've gotten a further
19 request on that invoice; I don't - - I'm not sure I did.

20 Q. All right.

21 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 25; ATTACHED TO
22 DEPOSITION)

23 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

24 Q. Let's look at Exhibit Number 25, a further request.

25 A. Sure.

1 Q. Would you like to retract your statement that you just
2 made that you didn't get any response from Karen or didn't
3 get any further requests from her?

4 A. I didn't get this response.

5 Q. Was this forwarded to you?

6 A. Let me put it this way: I will not disagree that there
7 was an active conversation around the first invoice, and
8 we made a concession, with Tim Yarger not with Karen
9 Willis, about how we were going to handle the transition.

10 Q. Was this email forwarded to you?

11 A. I don't know.

12 Q. Was this information in this email on August 27th in
13 Exhibit Number 25 given to you in any form?

14 A. Let me - - so, I don't know whether this specific email
15 was, but there was an active conversation and that I will
16 grant you.

17 Q. Okay, so, the very next day, Karen says to Dealer
18 Financial, "Can we please hold off on the ACH until we
19 determine what is supposed to be going on;" correct?

20 A. Sure.

21 Q. Is that part of the general conversation?

22 A. I would say so.

23 Q. Okay, is that a response in your mind to your call the day
24 before?

25 A. Why don't we just go to my email that lays out how were

1 gonna handle the invoices through August or through
2 September.
3 Q. Because it's my deposition ---
4 A. Okay.
5 Q. --- and I'm asking the questions ---
6 A. No, no, ---
7 Q. --- today.
8 A. --- so, I would say that there was an active conversation
9 ---
10 Q. Well, ---
11 A. --- about ---
12 Q. --- she responded the next day?
13 A. Sure, okay, I'll give you that.
14 Q. And she said, "Can we hold off on the ACH;" correct, what
15 she says?
16 A. That's what I read, yes, sir.
17 Q. "Until we determine what is supposed to be going on?" did
18 she say that?
19 A. It does appear that's what she said.
20 Q. And it's August 27th to Kim Rusch; correct?
21 A. Um-hum.
22 Q. Is it a yes?
23 A. Sorry, yes.
24 Q. And I know that you're saying there's a general
25 conversation, was the information in this email conveyed

1 to you in some form?

2 A. I mean, again, I don't know whether this email was
3 conveyed to me in some form, but there was a, you know,
4 dialogue between Dealer Financial and Penland Automotive
5 about the first invoices.

6 Q. Not just that August 26th but also continuing on August
7 27th?

8 A. Sure.

9 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 26; ATTACHED TO
10 DEPOSITION)

11 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

12 Q. I'm gonna give you August 28th ---

13 A. Okay.

14 Q. --- From nonresponsive Karen. And this one's actually to
15 you; isn't it, Mr. Haight?

16 A. It is.

17 Q. So, your request just a couple of minutes ago, why didn't
18 she call me or email me and she never returned my phone
19 calls, well, actually she's now reaching out directly to
20 you; isn't she?

21 A. You bet. Let me modify, this is the email, this is the,
22 this is the email that I telephoned her, left a voicemail
23 and did not receive a return phone call, so, ---

24 Q. So, you didn't call her for ---

25 A. I didn't call her before that.

1 Q. --- several days?

2 A. I was certainly talking with Tim Yarger, but no, I did not
3 speak with Karen; I don't believe.

4 Q. All right, so, when you testified earlier that you called
5 her and she didn't call you back and it was her fault and
6 she was nonresponsive, you're gonna withdraw that now?

7 A. What I'm gonna say is, you know, there was an active
8 conversation going on with Penland Automotive, I believe
9 this is the day that I returned her, that I called her.

10 Q. She has now emailed Dealer Financial for the third
11 straight day to ask Dealer Financial what the terms and
12 conditions are of the agreement between Dealer Financial
13 and Penland Automotive; correct?

14 BY MS. BRIDGES:

15 Object to form.

16 WITNESS ANSWERS:

17 A. No, she asked about a specific invoice and she's confused.

18 So, I mean, you know, she didn't ask will you - - I'll
19 stop there. She wants to talk about an invoice which,
20 don't take this wrong, in the Penland relationship was a,
21 you know, previously as amended, you know, the emails
22 about paying half and half and all that kind of good
23 stuff, it's not an uncommon conversation.

24 Q. Mr. Haight, ---

25 A. Yes, sir.

1 Q. --- she tells you exactly what she wants to talk about
2 where she said, "We were under the belief that we weren't
3 having fees owed until the car sales"?

4 A. And I immediately picked up the phone, called Tim Yarger
5 and said, "Tim" - - cause that was a request at the very
6 beginning, and we said, "No, we're not doing that."

7 Q. So, let me tell you, let me tell you something about
8 depositions, and we'll get an objection from Ms. Bridges
9 here okay, but they can either go fairly quickly when you
10 get the information fairly quickly or they can take a
11 very, very long time, and I will tell you I will stay here
12 forever. If you want to keep beating around we can do
13 that and I won't say another word about it.

14 A. Okay.

15 Q. But if you would like to get this deposition done today,
16 let's focus on my questions ---

17 A. Okay.

18 Q. --- and answering those questions; ---

19 A. Sure.

20 Q. --- okay?

21 BY MS. BRIDGES:

22 Object to form.

23 WITNESS ANSWERS:

24 A. All right, I understand.

25 Q. Okay.

1 A. Not a problem, okay.

2 Q. And I agree with Bridges, Ms. Bridges' objection, but I'm
3 trying to make this ---

4 A. Okay.

5 Q. --- move a little more efficiently. So, look at Exhibit
6 Number 24 ---

7 A. I see that.

8 Q. Let me ask you the question, please.

9 A. I'm sorry, yes, sir.

10 Q. I understand you're the CFO and the President and all that
11 stuff, so, you like (inaudible) access, so do I, but a lot
12 smoother if I get answers to my questions, not what you
13 want to tell me; okay?

14 BY MS. BRIDGES:

15 Object to form.

16 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

17 Q. So, look at Exhibit Number 24, please.

18 A. Yes, sir.

19 Q. Karen Willis says on August 26th, "We were under the
20 belief that we weren't having fees owed until the car
21 sales;" correct?

22 A. Correct.

23 Q. She said that?

24 A. She did.

25 Q. She then emailed again to Dealer Financial on August 27th;

1 correct?

2 A. Well, can we just say that it also says, "I think Tim is
3 reaching out to John and Dan"?

4 Q. I agree, okay ---

5 A. Okay.

6 Q. --- it says that.

7 A. Okay, so, there's a ---

8 Q. And then she ---

9 A. Yeah, sorry.

10 Q. --- and then she emailed again on August 27th?

11 A. I agree.

12 Q. And then she emailed you directly on August 28th?

13 A. I agree.

14 Q. Okay.

15 A. Is that better for you?

16 Q. All right, and on August 28th she says, "Can you please
17 give me a call so we can work out all these details on the
18 fees;" correct?

19 A. That's what her email says.

20 Q. Is it still your testimony that she's only worried about
21 one invoice and not any other fees or any other charges or
22 any other curtailments between Dealer Financial and
23 Penland Automotive?

24 A. I mean, I don't, let me just say, I can't put my head,
25 myself in her head, so, I'm not gonna testify to what was

1 on her mind. I will testify that there was an active
2 conversation about the first invoice.

3 Q. And why Dealer Financial was charging certain things;
4 correct?

5 BY MS. BRIDGES:

6 Object to form.

7 WITNESS ANSWERS:

8 A. About the first invoice.

9 Q. Then it was mislabeled and sent to the wrong business?

10 BY MS. BRIDGES:

11 Object to form.

12 WITNESS ANSWERS:

13 A. You want to depose Karen you can find out what was in her
14 head.

15 Q. Well, I'm deposing Dealer Financial ---

16 A. Yeah.

17 Q. --- right now, and at first you said that Karen wasn't
18 responsive and didn't talk to you, now we find that
19 there's three emails three days in a row based on the
20 first charges, and I'm trying to figure out what Dealer
21 Financial thought the issue was with ---

22 A. Sure.

23 Q. --- their client since you like to be very helpful with
24 the communication with your dealers.

25 A. Yes, sir.

1 Q. What was the communication issue that Karen Willis was so
2 concerned about that she emailed you three days in a row?

3 A. You want me to tell you what ---

4 BY MS. BRIDGES:

5 Object to form.

6 WITNESS ANSWERS:

7 A. --- I think the communication issue was?

8 Q. I do.

9 A. Is that Billy Penland was trying to renegotiate, you know,
10 the terms and conditions and wanted to not pay for cars
11 until he sold them, which was part of the initial request
12 which we declined.

13 Q. Okay, renegotiate what?

14 A. When Tim came to reopen the line, he asked if we could not
15 charge fees or curtailments until the car was paid off and
16 we said no.

17 Q. So, is that your personal opinion or is that Dealer
18 Financials' opinion?

19 A. That is Dealer Financials' opinion.

20 Q. Okay, but you don't have a problem with the details and
21 the agreement with your client, it's just one of those
22 clients trying to negotiate something?

23 BY MS. BRIDGES:

24 Object to form.

25 WITNESS ANSWERS:

- 1 A. I'm not sure that's a question.
- 2 Q. Well, that was a question, yeah.
- 3 A. Okay.
- 4 Q. I mean, is it - - I understand, you deal ---
- 5 A. I believe ---
- 6 Q. --- You deal with salesmen every day; right?
- 7 A. I'm embroiled in a partnership dispute.
- 8 Q. With who?
- 9 A. With Billy Penland and Tim Yarger.
- 10 Q. Are you?
- 11 A. Yeah.
- 12 Q. Oh. When did you find that out?
- 13 A. When you guys filed the lawsuit.
- 14 Q. So, at this point you weren't embroiled in partnership
- 15 dispute in August of 2020?
- 16 A. At this point, I didn't know that Tim Yarger, I didn't - -
- 17 that, that's a ---
- 18 Q. See what I mean, you just chased it, you just chased the
- 19 red herring and now we're talking about Tim Yarger in a
- 20 partnership dispute instead of walking through what
- 21 happened ---
- 22 A. All right, ---
- 23 Q. --- in August of ---
- 24 A. --- please, ---
- 25 Q. --- and September ---

1 A. --- I'll let you depose me.

2 Q. Thank you.

3 A. You bet.

4 Q. I get it, they did, see, I get it, but believe me, it's
5 gonna take a lot longer if I don't get to drive.

6 A. I enjoy being here with you.

7 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 27; ATTACHED TO
8 DEPOSITION)

9 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

10 Q. All right, I'm gonna hand you 27.

11 A. Okay.

12 Q. All right, now, this is five minutes later after Karen
13 Willis' email to you.

14 A. Okay. Actually, I believe it's a different email chain.

15 Q. It is, it is, I'm talking about the timing.

16 A. Okay.

17 Q. --- 1:07 and 1:08.

18 A. Sure.

19 Q. Again, Karen Willis, on August 28, says to Kim Rusch at
20 1:08 p.m., "Thanks! I've sent him an email. I heard Tim
21 saying he missed the call from Dan but I'd rather Dan call
22 me." Was that information conveyed to you that you need
23 to be calling Karen Willis not Tim?

24 A. I did call Karen Willis.

25 Q. And was this information conveyed to you?

1 A. I don't know. I mean, again, there was an active
2 conversation.

3 Q. I'm gonna set these aside in case your lawyer wants to use
4 them. You emailed back at 2:00 o'clock, "Karen Willis,
5 left you a message, please call at your convenience."

6 A. Sure.

7 Q. There's your call back; okay?

8 A. So, would you ---

9 Q. Documentation of it.

10 A. --- would you say that that's a fairly timely response?

11 Q. The good thing about being in charge I don't have to ---

12 A. I understand.

13 Q. --- answer questions either. But I'd liked to.

14 A. Well, please do.

15 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 28; ATTACHED TO
16 DEPOSITION)

17 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

18 Q. I'm, gonna hand you this ---

19 A. Yes, sir.

20 Q. --- Exhibit Number 28. She again asks Kim at Dealer
21 Financial September 3rd, 2020, "Can we hold off on the
22 interest ach???" with three question marks.

23 A. Um-hum.

24 Q. "I'm trying to get in touch with Dan to discuss it." Okay,
25 was this information conveyed to you?

1 A. Again, I don't know whether that's specific email was
2 conveyed, but I will say that culminating with my email,
3 there was an active conversation about what we were doing
4 or what Penland wanted to do.

5 Q. I don't know that I'll make this an exhibit.

6 A. Yes.

7 Q. Kim says that your out-of-pocket and can call around
8 1:00;" okay?

9 A. I have no reason to dispute that.

10 Q. All right. Did you call back?

11 A. I don't know.

12 Q. Did you call Karen?

13 A. I don't know.

14 Q. Did you ever call Karen to talk about it?

15 A. As evidenced by you holding up the 2:00 o'clock one, I
16 don't know whether ---

17 Q. Strike that.

18 A. --- I called.

19 Q. Did you ever talk to Karen about it?

20 A. I don't recall.

21 BY MR. IMHOFF:

22 This is sort of a good fun topic I would prefer to finish,
23 but if you guys want to take a break now.

24 BY THE WITNESS:

25 Let's keep rolling.

1 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 29; ATTACHED TO
2 DEPOSITION)

3 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

4 Q. Gonna hand you Exhibit Number 29. Once again, Karen
5 emails Kim Rusch, ---

6 A. Um-hum.

7 Q. --- "If you can, please ask him to call me instead of
8 Tim;" see that?

9 A. Where am I going? Sure, I see that.

10 Q. Okay, do you dispute that she asked Kim that in response
11 that you were out-of-pocket?

12 A. I'll go back to there was an active conversation, so, no,
13 I'm not gonna dispute that.

14 Q. Well, Mr. Haight, it's a little more than an active
15 conversation, it is a customer telling Dealer Financial on
16 multiple occasions, "Stop talking to Tim Yarger and start
17 talking to me."

18 BY MS. BRIDGES:

19 Object to form.

20 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

21 Q. Do you disagree with that?

22 BY MS. BRIDGES:

23 Object to the form.

24 WITNESS ANSWERS:

25 A. No, I don't. I do disagree with you. I would say that

1 there are several emails where Karen mentions, "I'll get
2 Tim to call Dan, I'll get Tim to call John." So, Tim was
3 not excluded from the conversation.

4 Q. Would you like me to go back and count the number of
5 emails that we've just gone through ---

6 A. No.

7 Q. --- where Karen says, "Please have Dan Haight call me not
8 Tim"?

9 A. I did call her.

10 Q. Would you like me to go back through the emails and
11 actually count them for you?

12 BY MS. BRIDGES:

13 Object to form.

14 WITNESS ANSWERS:

15 A. I don't need you to count them.

16 Q. Karen said on multiple occasions to Dealer Financial,
17 "Have Dan Haight call me not Tim;" right?

18 A. Sure.

19 Q. And again, ---

20 A. Actually, she said, "Call me," so, I'll say, you know, I,
21 you know, that's fine.

22 Q. Call Karen?

23 A. Yeah.

24 Q. Okay, so, here's September 3rd, she says again, "I need to
25 do that" talking about the ACH. Do you have it in front

1 of you?

2 A. I'm sorry.

3 Q. "But I wanted to talk to him also. I think we are being
4 told misinformation and I just wanted to go straight to
5 the top and hopefully figure things out. I believe it's
6 an internal problem here, not anything on your end, but
7 that's just between us girls. Hahaha." Did you get the
8 information in this email on September 3rd?

9 A. Again, there was an active conversation, I don't recall
10 whether this specific email came to me, but I would say
11 that the important part of this email is, "I believe it's
12 an internal problem," so, Penland was getting full and
13 complete information. I don't believe Billy Penland
14 wanted to hear it.

15 Q. Okay. So, you believe it's internal, what do you believe
16 the internal miscommunication was?

17 A. I have no idea, I wasn't there.

18 Q. You just said you believed it was internal.

19 A. No, Karen says it was internal.

20 Q. "I think we are being told misinformation, I just wanted
21 to go straight to the top and hopefully figure things
22 out." Are you the top?

23 A. Yes.

24 Q. Okay, did you ever talk to Karen after this email

25 ---

1 A. I don't recall.

2 Q. --- about the issues?

3 A. I don't recall. I do believe there's an email to Karen
4 that lays out the solution.

5 Q. And now, she's telling you, not only just "Call me, we got
6 a problem here. Dan, I need to talk to you."

7 A. She's not telling me, ---

8 BY MS. BRIDGES:

9 Object to form.

10 WITNESS ANSWERS:

11 A. --- she's telling Kim, and I'm, I believe I'm ---

12 Q. Right, independent contractor.

13 A. --- dealing with, I believe I am dealing with Penland
14 Automotive with the people that were appointed to do
15 business with.

16 Q. Right.

17 A. Again, it's an internal problem.

18 Q. Is there any reason you didn't want to talk to Karen
19 Willis?

20 A. No.

21 Q. A person who hired you back, brought you back on, told you
22 you could use the old documents, that was all someone
23 other than Karen Willis; right?

24 A. I believe if you look at the preponderance of the emails,
25 you know, the, the relationship on a daily basis with

1 Dealer Financial and Penland was Karen to Kim, Dan to Tim,
2 you know, so, my experience with Karen is that she is a
3 completely pleasant and competent individual.

4 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 30; ATTACHED TO
5 DEPOSITION)

6 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

7 Q. All right, I've handed you 30; I think this is what you
8 been waiting ---

9 A. Yeah.

10 Q. --- for; right?

11 A. I mean, you know, I, you know, hopefully, yes.

12 Q. "Tim and Karen, ---

13 A. Um-hum.

14 Q. --- Based on our discussions last week, Dealer Financial
15 agrees to hold all weekly invoices generated in late
16 August and September 7, 14, 21 until September 29. We
17 will run all open weekly invoices on September 29 so your
18 account will be current by the end of September;" did you
19 write that?

20 A. I did.

21 Q. Did you send it at 9:02 a.m. on September 6th, 2020?

22 A. It does appear that way.

23 Q. Did you send it to Tim, Karen, John, Steve and Kim?

24 A. Yes.

25 Q. I meant to say Kim and Karen, but ---

1 A. Yeah, I got ya. It was intended to be in a inclusive
2 email to try and settle the conversation.

3 Q. Sure. "Of note, I believe the invoice generated on
4 September 28 (due October 1) will have the first
5 curtailments for the vehicles floored in late July." What
6 does that mean?

7 A. In other words, at 60 days the first curtailment would be
8 due.

9 Q. Sure. Well, that would make sense because that was what
10 it said in the 2016 Agreement; right?

11 A. That's correct.

12 Q. All right, so, why was the portal generating invoices at
13 the end of August?

14 A. Because fees are generated every 30 days, the first
15 curtailment isn't generated until the 60th day.

16 Q. What are the fees?

17 A. You borrow money you pay fees.

18 Q. Yeah, what are they specifically?

19 A. They are attributed to each car based on the value of the
20 vehicle.

21 Q. You have all the documents in front of you. I want you to
22 pick a document and tell me how I know if I work at
23 Penland Automotive what fees you're gonna charge me and
24 when?

25 A. Sure. So, it is specified on, you know, again, you know,

1 the Term Schedule, 1416, modified to the preferential
2 rate.

3 Q. What does that mean?

4 A. In the realty conversation, Tim requested that the rate be
5 left at 7.8 cents per hundred dollars per day, not the 8
6 cents listed in the contract.

7 Q. I want you to go back to Exhibit Number 2, please.

8 A. Yep.

9 Q. Where in that document, or any of the amendments, you have
10 all the documents in front of you, tell me where the fees
11 are calculated, based on what?

12 A. A-1 or A-i, however you say that, 1416.

13 Q. Okay.

14 A. And so, are you angry at me for charging your client a
15 lower rate than is specified?

16 Q. I want you to show me where it is.

17 A. It's right here, "A" yeah, so, 1416.

18 Q. To what?

19 A. And I'm ---

20 Q. Right here, "Floorplan Factor means \$0.08 per \$100.00
21 borrowed or 0.0008;" is that it?

22 A. Yes, sir.

23 Q. Okay, and when is that charged after 30 days?

24 A. If you read it, "Floorplan Fees will be due 3:00 p.m. on
25 each Friday following the date that an Advance has been

1 outstanding for 30, 60, 90 days respectively."

2 Q. Okay, so, this is where you find that out, this is the
3 document?

4 A. Sure.

5 Q. Okay, is this is what you were charged in the first late
6 August invoice?

7 A. They were charged - - you know, so, the first invoice if
8 they floored cars in July would've been in August, ---

9 Q. Okay.

10 A. --- and it would've been at 7.8 cents per hundred dollars
11 per day not 8 cents per hundred dollars per day.

12 Q. Okay, why?

13 A. Because that's what Tim and I agreed to, that's what his
14 request was.

15 Q. I thought that you had the agreement in writing that you
16 were reopening?

17 A. That's correct.

18 Q. Well, that's not in writing anywhere; is it?

19 A. That is not.

20 Q. Okay. Were there any other agreements that you and Tim
21 had agreed which would change or modify the fees,
22 curtailments, interest, anything else from the documents
23 that you're claiming are still being used?

24 A. Yeah, so, the request from Tim, the biggest concern was
25 the Daily Rate and the Curtailment Rate, I believe, so, it

1 was 7.5 versus the 10. Which is materially similar to
2 when we stopped doing business.

3 Q. It says, "Dealer Financial agrees to hold all weekly
4 invoices generated in late August and September 7, 14 and
5 21 until September 29;" what does that mean?

6 A. So, an invoice, invoices are generated every week, every
7 Monday for the cars that aged over 30 days the previous
8 week. And so, there is the possibility, when I write this
9 email, there's the possibility that invoices would be
10 generated on the 7th, 14th, 21st and 29th. I'm not sure I
11 went into the portal to check it, but I said okay, we're
12 in essence - - I'm sorry.

13 Q. No, no, nope, keep going.

14 A. Yeah, my agreement with Tim was we will hold all invoices
15 till the end of September as a customer accommodation, Tim
16 positioned it as a transition.

17 Q. You're holding them so they're not due; is that right?

18 A. I mean, they're due but we're holding them.

19 Q. Right.

20 A. I mean, you know, they're generated ---

21 Q. It's still generating ---

22 A. Yeah.

23 Q. --- interest; right?

24 A. Uh, well, they, so, the invoices are generated every week;
25 that's just what the magic black box is programed to do.

1 We agreed, and it's, you know, they're generated and they
2 have due date of that Thursday, we've agreed to hold them.

3 Q. Right, but it's not like you're waiving the money, you're
4 just waiting to get paid?

5 A. That's correct.

6 Q. So, you're still gonna get paid?

7 A. Yes, sir.

8 Q. So, that's not resolved here, what's been charged, just
9 that you're not gonna charge it until September 29th?
10 You're not gonna make it due until September 29th?

11 A. That's correct.

12 Q. All right. All right, and then it says, "I believe the
13 invoice generated on September 28 (due October 1) will
14 have the first curtailments for vehicles floored in late
15 July. Your curtailment rate is set at a preferred rate of
16 7.5 versus the normal 10% but that invoice could be
17 considerable," etcetera, etcetera. Where in all these
18 documents, again, including Exhibit Number 2 from November
19 2016, is this 7.5 percent rate, curtailment rate?

20 A. In the 2016 document it's 10 percent.

21 Q. What about in the amended emails in 2018?

22 A. Sure.

23 Q. Can I tell you where it is?

24 A. Sure.

25 Q. It's 10.

1 A. Okay. I would agree that's where it is.

2 Q. That it's in 10?

3 A. Okay.

4 Q. Says in, Tuesday November 13th, 2018 it will be "7.5%
5 beginning at the 90 day mark;" right?

6 A. Um-hum.

7 Q. Is that a yes?

8 A. "7.5% at the 90 day mark" yep.

9 Q. Okay, but this is different, this is 7.5 percent after 60
10 days; right?

11 A. That's correct.

12 Q. So, this is different than the original Agreement and the
13 2018 Amendment at Exhibit 10; right?

14 A. Yes.

15 Q. Right. All right, let's see what's next.

16 BY MR. IMHOFF:

17 You guys want to take a break, I'm kind of moving
18 - - yeah, it's time, let's take a break. How long you
19 guys want?

20 BY MS. BRIDGES:

21 Five minutes for a restroom break?

22 BY THE WITNESS:

23 A one-function break; in other words, restroom break or
24 ---

25 BY MR. IMHOFF:

1 I'm gonna eat my apple so give me ten.

2 BY THE WITNESS:

3 Sure, you bet.

4 (Off the record at approximately 2:27 p.m.; on the record at
5 approximately 2:55 p.m.)

6 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

7 Q. I'm gonna hand you DFH120, I'm not gonna mark it
8 necessarily.

9 A. Okay.

10 Q. September 7th, it looks like, well, I don't - - oh, it's
11 from Steve to you.

12 A. Yep, he's my cheerleader.

13 Q. "Dan-o!! Great job on notes to Penland, to Investors, to
14 Eric and PPM update, etc. over the weekend!! Wow!! Okay,
15 so, September 7th, 2020 what are the notes to Penland?

16 A. I mean, I guess I don't recall specifically, but it
17 probably is that, because it's the day after.

18 Q. Why would he congratulate you on your September 6th email
19 to everybody at Penland, Exhibit Number 30; if you know?

20 A. I don't. I mean, you know, I think it was just, again, we
21 were having a, you know, wide ranging discussion and he
22 likes me.

23 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 31; ATTACHED TO
24 DEPOSITION)

25 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

1 Q. I'm gonna hand you Exhibit Number 31.

2 A. Okay.

3 Q. I assume you got this email on September 23rd that Tim
4 Yarger was no longer with Penland Automotive?

5 A. I did, I believe I responded to it.

6 Q. Okay. I want to go back to Exhibit Number 30 and just
7 make sure that I understand. Would Penland Automotive's
8 first charges owed to Dealer Financial be due September
9 29th?

10 A. May I look at a calendar?

11 Q. Well, you can, certainly, I'm not gonna stop you from
12 looking at a calendar, but it says, "Until September 29th"
13 ---

14 A. Yeah, if September 29th is a Thursday, then the answer is
15 yes, you know, because that's when we run weekly invoices.

16 Q. Well, the next line says, "There will likely be an invoice
17 created on September 28, this will be due, as per normal,
18 on Thursday, October" 21, or, "October 1," I mean; does
19 that help?

20 A. So, then September 29th is not a Thursday. So, my
21 agreement with Tim was that the account would be current
22 by the end of, you know, I, basically, I had told him Tim
23 I can do anything till the end of the quarter but beyond
24 that I gotta, you know, report out and that type of stuff,
25 so, I wanted the account current by the end of the

1 quarter.

2 Q. It's the last paragraph, or I'm saying the last paragraph,
3 "Of note, I believe the invoice generated on September 28
4 (due October 1) ---

5 A. Curtailment.

6 Q. Well, the first curtailment. So, I guess my question is,
7 is the first amount due from Penland Automotive to Dealer
8 Financial due October 1st?

9 A. No, September 29th. So, I think we agreed to hold off, or
10 no, we were invoicing as we invoice every customer, but we
11 agreed to allow them not to pay us until the end of
12 September.

13 Q. Somewhere between September 28th and October 1st is the
14 first time that Penland Automotive has to pay
15 ---

16 A. September 29th, I mean, so, I wanted the account current,
17 so, in other words, obviously, if, and I'm gonna assume a
18 few things here, October, September 28th is likely a
19 Monday, September 29th would've been a Tuesday, so, the
20 first day of the quarter would've been what, I guess,
21 Thursday, October, January, February, March, ---

22 Q. 31st.

23 A. --- April, May, June, July, August, September, so,
24 September has 31 days okay, but I need the, I need for
25 2020. Do you mind if ---

1 BY THE COURT REPORTER:

2 That's 2020.

3 BY THE WITNESS:

4 Oh, it is 2020.

5 BY THE COURT REPORTER:

6 Yeah.

7 WITNESS CONTINUES:

8 A. All right, so, September 29th is a Tuesday, so, chances
9 are a weekly invoice would have been generated on Monday,

10 ---

11 Q. September 28th?

12 A. --- the 28th, the invoices that were generated previously,
13 I said we needed to run by the 29th because we run them in
14 the afternoon, the ACH is effective the next day. So, by
15 September 30th, the account would've been clear and they
16 would've been current, but then there also would have
17 been, the September 28th invoice would be due that
18 Thursday and I said we're gonna return to normal with that
19 invoice. So, they would've had to have made a payment
20 likely to us on the 29th and the 1st.

21 Q. I'm gonna ask it open ended, what is the first amount
22 payable, owe-able to Dealer Financial from Penland
23 Automotive when they reopened the account in 2020?

24 A. Well, okay, uh ---

25 Q. Per your email.

1 A. Right, right, so, but there's also payoffs; right? So, in
2 other words, if they sell a car they gotta pay it off.
3 So, I'll stick with, I'll answer your question, because
4 I'm assuming it's dealing with the weekly's, and so, I'll
5 make it specific to weekly's. We agreed, if they floored
6 cars at the end of July, there wouldn't have been a weekly
7 generated until the beginning of August. So, or the end
8 of August, so, that kinda makes sense to me; okay?

9 Q. Thirty days?

10 A. Thirty days. So, we agreed to floor the transition, we
11 agreed to hold off, you know, to allow them to transition
12 from old floorplan to new floorplan to pay those invoices
13 generated during, I guess, the end of August in the month
14 of September until the 29th. But after that, we would
15 return to normal, which is we generate an invoice on
16 Monday, it's due on that Thursday.

17 Q. I know you don't like the way I say things or ask
18 questions but let me try one more time.

19 A. And I - - okay.

20 Q. Other than paying off cars that were sold, ---

21 A. Um-hum.

22 Q. --- is the first time that Penland would have to pay
23 Dealer Financial on September 29th of 2020?

24 A. As a concession, the answers is yes, but ---

25 Q. Yeah.

1 A. --- so, the invoices would have stated, you know, the
2 invoices would be generated, they stated they were
3 generated on that Monday and they'd be due on that
4 Thursday; Monday, Thursday, Monday, Thursday, Monday,
5 Thursday. We agreed as a customer concession to hold off
6 letting Penland pay those, I'll call it four weekly's,
7 three or four weekly's, until the 29th.

8 Q. Did John Bethea ever tell you that Billy Penland was
9 expecting a document or contract for the reopening in July
10 of 2020?

11 A. I don't recall that.

12 Q. Has he ever told you that since the institution of the
13 litigation that Billy Penland was consistently asking,
14 "Where is my contract with Dealer Financial"?

15 A. Well, I'll be, you know, on the advice of counsel, we
16 haven't done much discussion about it, we've tried not to.

17 Q. Yeah, but ---

18 A. So, ---

19 Q. Go ahead.

20 A. --- but, I would say that my, well, I'm not gonna put John
21 on the stand here for you, my belief is that he would not
22 state that there was a recurrent request from Billy
23 Penland during that timeframe.

24 Q. Has it ever been communicated to you that Billy Penland
25 was asking for a contract ---

1 A. No.

2 Q. --- with Dealer Financial?

3 A. No.

4 Q. Before September 23rd, 2020, in Exhibit Number 31 email,
5 did you have any inkling or idea that Tim Yarger was on
6 questionable ice with Penland Automotive?

7 A. No.

8 Q. I'm gonna try something with you and I'm not sure it will
9 work; ---

10 A. Okay.

11 Q. --- okay?

12 A. I'll try to participate.

13 Q. If this goes badly then I - - it's just a wasted attempt.
14 Will you agree with me that Penland Automotive, after
15 receiving, being notified and then receiving their first
16 invoice in late August after the 30 days, immediately
17 tried to contact Dealer Financial to talk about that
18 invoice, the charges or whatever, would you agree that
19 that happened?

20 A. And I'm not trying to be cute, I would agree that a member
21 of Penland Automotive did reach out, yes.

22 Q. And then per your September 6th email, Penland Automotive
23 wouldn't owe anything to Dealer Financial until September
24 29th; right?

25 A. They would owe it, they wouldn't pay it.

1 Q. Fine, didn't have to pay anything till September 29th; is
2 that fair?

3 A. Wouldn't have to pay the weekly's. If they'd sold a car,
4 they would have to pay off the car.

5 Q. Okay.

6 A. I don't believe there was any modification to that.

7 Q. And then I assume the invoices come out on September 28th
8 or October 1st or whatever you were just telling me; is
9 that right?

10 A. Yes, sir.

11 Q. Okay.

12 A. September 28th.

13 Q. And then within eight days or so, you get a call from me
14 saying, "There's a dispute about these things, we need to
15 talk about it"?

16 A. That wasn't the phone call I received from you, but I
17 would agree that the timing is your phone call came
18 shortly after this.

19 Q. Right. So, I think you testified earlier that it was an
20 out of the blue surprise call?

21 A. Yes, sir.

22 Q. Now, seeing sort of how things worked with Penland not
23 understanding and trying to contact Dealer Financial, Tim
24 being pushed out and then not owing things till the end of
25 September, do you see a little better how the timing

1 worked regarding the confusion regarding the relationship
2 between Dealer Financial and Penland Automotive?

3 A. So, like I'll answer you this way: The back and forth
4 and, you know, calls from Karen that disagreed with Tim
5 were common and recurrent throughout our entire
6 relationship. So, I certainly, putting myself in your
7 shoes, can appreciate that, you know, now that Tim's gone,
8 whatever, but, you know, the dynamic was common to us
9 throughout the entire relationship, that we'd get a, you
10 know, statement from Karen, which I imagine was coming
11 from Billy, and we'd handle it with Tim.

12 Q. Okay, I get that. Was it common for Karen to email you
13 every day for consecutive days and say, "Call me not Tim"?

14 BY MS. BRIDGES:

15 Object to form.

16 WITNESS ANSWERS:

17 A. So, I would say that most of those emails did not come to
18 me, they went to Kim. Now, but, again, I will, but I will
19 acquiesce that there was a robust conversation amongst the
20 players, and so, I'm not gonna fault, I'm not going to say
21 that Karen wasn't communicating with Dealer Financial
22 because she was.

23 Q. On October 8th, 2020, did Penland Automotive owe Dealer
24 Financial any money?

25 A. I mean, they owed us money because they still had cars on

1 the floorplan, but I believe they were current.

2 Q. They were current, up to date on all the invoices?

3 A. I believe.

4 Q. Even the ones they disputed?

5 A. Well, I don't believe they ever disputed an invoice. I
6 don't believe they ever disputed an invoice, they disputed
7 when they were gonna pay it.

8 Q. All right, on October 8th, were they in default at all to
9 Dealer Financial?

10 A. I would say that the contract was in default because of
11 change in ownership and a change in management is a active
12 default.

13 Q. Okay, all right, other than those two things, were they in
14 default for anything else?

15 A. Are you, so, um, ---

16 Q. They were up to date on their payments; right?

17 A. Sure.

18 Q. Okay, ---

19 A. I mean, if you ---

20 Q. --- the cars, as far as you know, were on the lot; right?

21 A. Uh, sure, ---

22 Q. Okay, ---

23 A. --- yeah.

24 Q. --- they didn't owe you any money; right?

25 A. Well, I mean, again, yes, they owed us money but I would

1 say that they were, their account was certainly relatively
2 current, you know, it was not about invoices.

3 Q. Okay, when did you find out that Tim Yarger claimed an
4 ownership in Penland Automotive?

5 A. He sent a text to me, which I think we've disclosed, I
6 don't know the exact date, I have notes but I was told I
7 can't have notes, anyway, so, he sent a text to me with
8 four pictures, I believe four pictures, and I texted back
9 to him, I said, "I don't think you really meant for me to
10 get this." And that's when he said, "No." So, sometime,
11 you know, between Karen's email about him leaving and our
12 conversation was when I believe I received that document
13 from Kim.

14 Q. I had the exact pages of what I wanted or whatever, she
15 did good, did fine. These are very, very hard for me to
16 read.

17 A. Yeah.

18 Q. Does October 3rd sound right to you?

19 A. I would not dispute that. I mean, you know ---

20 Q. He sent a text to you?

21 A. That's right. I mean, it ---

22 Q. With four photographs?

23 A. That's correct.

24 Q. Was anyone else in the text string?

25 A. I don't think so, but I'm not sure I can answer that

1 definitively, but I don't think so, I think it was just
2 me.

3 Q. Whose phone number is it 864-569-5944?

4 A. Say that again.

5 Q. Do you have an 864 phone number?

6 A. The office does but say it again and I'll ---

7 Q. No, it would have to be a cellphone.

8 A. 864-595?

9 Q. Yeah.

10 A. Do you mind if I, can I look at my phone; is that okay?

11 Q. Well, let me show you this. I don't even know how I'm
12 gonna do this. Yeah, you can look at your phone; I'm
13 sorry.

14 A. Okay. I believe that to be Tim Yarger's phone email or
15 phone.

16 Q. All right.

17 BY MR. IMHOFF (TO MS. BRIDGES):

18 It's gonna be harder, do you have access to your
19 documents?

20 BY MS. BRIDGES:

21 Yeah, do you have the ---

22 BY MR. IMHOFF:

23 3070, do you have page 3070?

24 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 32; ATTACHED TO
25 DEPOSITION)

1 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

2 Q. I'm gonna hand you Exhibit Number 32.

3 A. Okay.

4 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 32; ATTACHED TO
5 DEPOSITION)

6 BY MS. BRIDGES:

7 You said 3070?

8 BY MR. IMHOFF:

9 Yeah, 3070.

10 BY MS. BRIDGES:

11 Give me one second to get there. Yeah, I've got it. And
12 is this, what number is this, Jason; I'm sorry?

13 BY THE WITNESS:

14 Thirty-two.

15 BY THE COURT REPORTER:

16 Thirty-two.

17 BY MS. BRIDGES:

18 Okay.

19 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

20 Q. I'm gonna let you look at it a minute, you know, make sure
21 this is it.

22 A. (Witness reviews Exhibit Number 32).

23 Q. Okay. So, it looks to me like you got four images on
24 October 2nd, 2020; is that right?

25 A. That's what it appears, yes, sir.

1 Q. All right.

2 A. Yeah, and, yeah.

3 Q. So, I can't tell what's ingoing and what's outgoing; can
4 you?

5 A. I can. So, if you'll notice, though I think I've got
6 this, so, the, if you'll start at the first image it says,
7 "Incoming" and my response if you go up, ---

8 Q. Ah, got ya.

9 A. --- you know, a few lines it says "Outgoing." And so, my
10 response to Tim is, "Tim you sent me four pics of
11 documents. I'm not sure I was supposed to get them."

12 Q. All right, perfect, okay, so, good. All right, so, we
13 know that Tim got fired somewhere around September 22nd,
14 2020; right?

15 A. Um-hum.

16 Q. Well, we don't know that, but there's an email that says
17 about September 22nd; right?

18 A. He left the company.

19 Q. All right, and you don't talk to him other than just
20 "Thinking about you, hope you're recovering from you
21 procedure;" right, after that?

22 A. I believe we spoke but I, we certainly didn't text, we
23 didn't text.

24 Q. You spoke to him before October 2nd after, between
25 September 22nd and, I'm sorry, September 23rd and October

1 2nd did you talk to Tim Yarger?

2 A. Ask the question again, I was looking at dates.

3 Q. Yeah. Between September 23rd, 2020 and October 2nd, did
4 you talk to Tim Yarger in person or on the phone?

5 A. I believe I spoke with him on the phone.

6 Q. All right, did you talk about Billy Penland or Penland
7 Automotive?

8 A. Yes.

9 Q. What did you talk about?

10 A. Why he left, why he was no longer with Penland.

11 Q. What did he say?

12 A. He said - - sorry, I'm not laughing, but I can see Billy's
13 interested. Anyway, he said that he could no longer work
14 at Penland Automotive, that there were some shady things
15 going on and he needed to leave.

16 Q. Did he tell you what shady things?

17 A. He believed there was insurance fraud and that there
18 would've been an odometer that had been rolled back.

19 Q. Anything else?

20 A. That's what I recall.

21 Q. Did he tell you who did that?

22 A. Who did what?

23 Q. Either the insurance fraud or rolling the odometer back.

24 A. I mean, I don't think he stated anything specifically, but
25 my, you know, again - - so, no, he did not say, "Billy did

1 this," he just said, you know, that there was - - they
2 got, they received cars from a car rental company that
3 when they went to sell them had hail damage claims and the
4 people who with the, that owned the cars hadn't filed the
5 claims. So, he did not say who, in his opinion, filed the
6 claim, but, you know, I reached an, a assumption.

7 Q. Of what?

8 A. That he was referring to Billy.

9 Q. That there was insurance fraud by Billy Penland at Penland
10 Automotive regarding hail claims?

11 A. Correct.

12 Q. Have you ever verified that?

13 A. No.

14 Q. Have you ever followed up on it?

15 A. No.

16 Q. Did you call him to see how he was doing or call him
17 because you got this email, why'd you call him?

18 A. I think I knew he had, was having a medical procedure, but
19 certainly I, you know, again, we had had a good working
20 relationship, and so, I certainly called him after I was
21 told that he had left. And then I believe maybe John told
22 me he was having a medical procedure and I talked with him
23 then as well, you know, after that as well.

24 Q. Okay. All right, the other thing he told you was there
25 was an odometer roll back issue?

1 A. That's what I recall, yes.

2 Q. Do you remember anything more than that?

3 A. No.

4 Q. And that's why he told you that he left Penland
5 Automotive?

6 A. In, you know, in substance, he said I, you know, I, you
7 know, he wasn't going to be involved in crooked things.

8 Q. Okay.

9 A. And that's my summary, maybe not an exact quote.

10 Q. Did he tell you during that conversation that he thought
11 he was an owner of Penland Automotive?

12 A. Well, one of the calls was generated because he sent me,
13 you know, this back and forth, ---

14 Q. I just want to talk about the first time you talked to him
15 between September 23rd ---

16 A. I don't believe so.

17 Q. Okay. Did he tell if he resigned or if he was asked to
18 leave or if he was fired?

19 A. I took from the conversation that he left; I, you know, I
20 don't recall exactly what he said.

21 Q. All right, did you have any other conversations with him
22 prior to October 2nd?

23 A. Again, I do believe we spoke after I received Karen's
24 email, prior to this text message, but, I mean, I wouldn't
25 say we had frequent conversations, no; I may have spoken

1 with him once. I'm not sure when his medical procedure
2 was.

3 Q. What did you do in response either to Karen's letter or to
4 your telephone conversation to Tim, with Tim Yarger to
5 ensure the security of your collateral and your
6 relationship with Dealer, I'm sorry, Penland Automotive?

7 A. Well, again, the agreement was with Penland Automotive,
8 so, we probably did an audit, we do them on a recurrent
9 basis, but I wouldn't be surprised if I asked for a
10 special audit just to see where things were.

11 Q. Okay. Anything else?

12 A. Not that I can recall at the moment.

13 Q. Did you contact anyone at Penland Automotive to get their
14 side of the story?

15 A. No.

16 Q. Okay. So, he text you these three photographs, ---

17 A. Four.

18 Q. --- sorry, four, and you say, "Tim, you sent me four pics
19 of documents, not sure I was supposed to get them;" right?

20 A. Yep.

21 Q. That happens on October 2nd at about 5:30; right?

22 A. Um-hum.

23 Q. Yes?

24 A. It looks like I received them, well, hang on. Looks like
25 they were sent to me, oh, yeah, okay, got it, looks like

1 maybe I read them at 6:12, but yeah, so some, yeah, in the
2 afternoon of August, excuse me, October 2nd I received
3 that text message from Tim.

4 Q. All right. You received a, an October 3rd response did
5 you, you received a response the next day from him; is
6 that right?

7 A. Actually, I think I, well, yes, it does look that way in
8 the morning.

9 Q. Okay, he says, "Sorry I missed your call. I will call a
10 little later"?

11 A. Actually, looks like he sent it that, if you look at, I
12 think the sent is the far left and I read it in the
13 morning.

14 Q. I see.

15 A. I think, but anyway.

16 Q. Anyways it just saying, "I'll call you later." "Boy(sic),
17 I hate that I had to send it to you but because Billy
18 Penland is not a soul(sic) owner of Penland Automotive, I
19 have talked to an attorney, not hired one yet, just talked
20 a friend and he told me to let everyone know I'm no longer
21 a part of Penland Automotive and to secure your
22 investment;" right?

23 A. Yes.

24 Q. "We will be taking a lien out on the property. Brother, I
25 just don't want you to get caught up in what's going on a

1 lot of bad things that I have found out that's been going
2 on is getting ready to come down on him if it's too late
3 if you want can call me tomorrow I can explain or you
4 could still call me tonight, talk to you later;" is that
5 what it says?

6 A. That's what it says.

7 Q. Okay. What did you do in response to, now you have the
8 images and him saying that Billy Penland is not a sole
9 owner ---

10 A. Yeah.

11 Q. --- a lot of bad things?

12 A. You bet. Well, so, it looks like, you know, I didn't read
13 that until the next morning, and I think I responded to
14 him via text message, well, you know, I sent him a text
15 message certainly shortly after reading it.

16 Q. Yeah, it says, "Tim, just checking to see if now is a good
17 time to chat;" right?

18 A. Yes, well, the first one I think was, no outgoing, yeah,
19 so, I think the first one was me saying, "Sorry I missed
20 your call I will call you later, I'll call a little
21 later." But then, yeah. But there was an attempt, I
22 guess, between the two of us to get into telephone
23 contact.

24 Q. All right. So, did you talk to him on October 3rd?

25 A. I imagine I did.

1 Q. All right, I cannot figure out what's going up here where
2 it starts, "Yowza."

3 A. Okay, hang on.

4 Q. Who wrote "Yowza"?

5 A. I believe I did.

6 Q. "This is what I was telling you I just got yesterday from
7 a banker;" did you write that?

8 A. No, that would've been Tim to me.

9 Q. Okay, what is it?

10 A. I believe there was, if you look further down, you know,
11 the, I believe the text, "Tim, I really," from Tim, "I
12 really hope all went well with your health" to the bottom,
13 "Never paid for a car in her life" is a copy of a text
14 message Tim received from someone and he was forwarding it
15 to me. So, the, "Tim, I really hope all went well" down
16 to "Fraud account" and "the lady never paid for a car in
17 her life" was my understanding a copy and paste of another
18 text message. His original writing was, "This is what I
19 was telling you about. I just got it yesterday from a
20 banker". So, I believe it was furtherance to his belief
21 that there were unscrupulous things happening.

22 Q. I see. All right, so, he's telling you there's
23 unscrupulous things and bankers are contacting him to do
24 buybacks on cars and, okay, all right; that was helpful.
25 All right, so, what do you do now that you think he's

1 telling you that Billy Penland's not the sole owner,
2 there's insurance fraud, there's rollbacks, there's cars
3 being sold that aren't documented with the banks, the
4 banks are coming, what do you do?

5 A. Well, so, and I'll back up to when we found out that Tim
6 had departed, left, fired, departed, whatever, no longer
7 there. I would say that Steve and I had at least one
8 conversation about what do we do, and given that, you
9 know, the account was current and all that, you know, we
10 didn't know Billy, and what we knew was uncomfortable, but
11 we agreed to let the account roll until your phone call,
12 or until the interactions that day.

13 Q. So, Mr. Haight, on October 3rd, you knew that management
14 had changed; right?

15 A. (No verbal response).

16 Q. Right?

17 A. Yes.

18 Q. You knew there was an allegation that ownership had
19 changed; right?

20 A. Um-hum.

21 Q. Is that a yes?

22 A. Yes.

23 Q. There's an allegation that there's bank fraud?

24 A. Yes.

25 Q. There's an allegation there's insurance fraud?

1 A. Yes.

2 Q. And there's an allegation that there's fraud, criminal
3 fraud?

4 A. Yes.

5 Q. All things you knew on October 3rd?

6 A. All things that were stated to me, I don't know them to be
7 true.

8 Q. Right. And you did not take any steps to contact Penland
9 Automotive, secure or repossess your cap, your collateral;
10 correct?

11 A. That's correct. I will state that people don't normally
12 leave because they're happy with one another, so.

13 Q. Did you believe Tim Yarger that he was an owner of Penland
14 Automotive?

15 A. I certainly believed that, you know, so, the answer is
16 it's not a great document obviously, but yes, I believed
17 that he believed, so, I'll put it like that.

18 Q. Were you - - did you have a reasonable belief, one way or
19 the other, that Tim Yarger was an owner of Penland
20 Automotive on October 3rd, 2020?

21 A. Based on that document I had reasonable confidence that he
22 had a claim.

23 Q. You actually made jokes with Steve about it because I
24 think it came from Pocket Rocket or Lawyer Rocket or ---

25 A. Right.

1 Q. --- something ---

2 A. I mean, you know.

3 Q. --- Rocket Lawyer?

4 A. Yes.

5 Q. Right?

6 A. Correct.

7 Q. That's what you mean by it's not a great document?

8 A. That's correct.

9 Q. Why didn't you reach out to Penland Automotive?

10 A. Because we decided to let it stand. You know, we were
11 going to continue to do business with Penland Automotive.

12 Q. Okay. Have you determined to any reasonable degree of
13 whether or not Tim Yarger was ever, in fact, an owner of
14 Penland Automotive?

15 A. I don't think it really matters to me.

16 Q. But have you come to a conclusion either way?

17 A. I've done no work beyond reading the document, and, you
18 know, and talking to Tim a couple of times about it.

19 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 33; ATTACHED TO
20 DEPOSITION)

21 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

22 Q. I'm gonna hand you Exhibit Number 33, it's two pages
23 unfortunately.

24 A. Thank you.

25 Q. On October 3rd, 2020, it looks like you did a Secretary of

1 State Business filing search, somebody did?

2 A. Yeah, that would've been me.

3 Q. Okay, why'd you do that?

4 A. I don't recall exactly, but it was clearly, you know, a
5 result of the conversation with Tim Yarger; I may have
6 been trying to provide him information.

7 Q. What did you find?

8 A. I mean, you know, that obviously it, the, shows that
9 Penland Automotive is in good standing and that the
10 Register Agent is Charles Penland.

11 Q. The Registered Agent or the Owner?

12 A. Registered Agent. You and I both know that the Secretary
13 of State doesn't necessarily, there's nothing down here
14 that demonstrates ownership.

15 Q. Okay, tell me what happened that on October 3rd you're
16 searching Penland Automotive, LLC's Registered Owner, I'm
17 sorry, Registered Agent?

18 A. I think I might've even searched Penland Asphalt and some
19 of that stuff. I was just kinda curious what was still
20 out there. And I'm not sure why I sent this to Tim but it
21 was clearly based on, you know, a conversation with him,
22 so, I don't know exactly.

23 Q. Were you trying to figure out who owned it or who the
24 Registration was, or if Tim Yarger's name is on it at all?

25 A. Well, I, you know, I know that Tim Yarger, you know,

1 there's very little probability that Tim Yarger will be
2 listed here because, you know, the only thing listed on
3 the profile page is the Registered Agent, there's no
4 ownership ever listed there. And, in fact, in South
5 Carolina, the origination documents, you know, it, South
6 Carolina does a good job of concealing ownership in LLCs,
7 so.

8 Q. Is your testimony you don't remember why you did it or
9 what it's for?

10 A. Sure.

11 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 34; ATTACHED TO
12 DEPOSITION)

13 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

14 Q. I'm gonna hand you Exhibit Number 34.

15 A. Is there anything under three cars, three cars today,
16 okay.

17 Q. I thought I had an earlier email than this, maybe it was a
18 text about auditing. Do you remember after your October
19 2nd and October 3rd text and conversation with Tim Yarger
20 ordering an audit of Penland Automotive?

21 A. I don't recall but I wouldn't be surprised if I did.

22 Q. Okay. Who is Peter Troutman?

23 A. Peter Troutman is one of our auditors.

24 Q. Is he also an independent contractor?

25 A. Yes.

1 Q. Okay. All right, so, you got an email from Peter Troutman

2 ---

3 A. Um-hum.

4 Q. --- to yourself and Steve on October 6th 3:04 p.m. about
5 this audit; is that fair?

6 A. That's fair.

7 Q. Okay, how did you find out later that afternoon that
8 Penland paid off three cars on October 6th?

9 A. I mean, the moment they select a payoff in the portal, you
10 know, we can see that, so.

11 Q. You get notification or ---

12 A. Not notification, I have to go, you know, I guess an
13 invoice is generated, I don't get notified of those
14 things, otherwise, I'd get thousands of emails every day,
15 but an invoice, had they paid off the cars, an invoice
16 would've been generated and the cars would've come off the
17 floorplan the moment the invoice was generated.

18 Q. Okay. Did you text, "Gents, Tried to send you a text
19 while driving. looks like Penland paid off three cars
20 today. So, the audit had the intended outcome! Nice
21 work."

22 A. I wrote that.

23 Q. You did write that?

24 A. I did.

25 Q. So, was part of the audit process to force Penland to pay

1 off cars?

2 A. Not forced to pay off cars, but anytime we do an audit, we
3 are looking for cars that aren't on the lot, and it
4 actually looks this, again back and forth, was, I'll call
5 it routine and productive, so, this audit discussion is
6 not out of the norm for audit results. We generally
7 always find cars that are off the lot and then we run them
8 down.

9 Q. All right, but on October 6th, 2020, Penland's paid off
10 three cars and they are in what kind of shape, what kind
11 of relationship shape with Dealer Financial?

12 A. I mean, again, you know, they remain in default but we
13 hadn't done anything about it, and not doing anything
14 doesn't waive our rights when it comes to default, but,
15 you know, we were paying close attention to what was
16 happening. We were uncomfortable and we were paying very
17 close attention to what was happening with the account.

18 Q. All right. You know what time you got a phone call from
19 me on October 8th?

20 A. It was the afternoon, I imagine, but I don't recall the
21 specific time. Although I may have produced some notes,
22 some extemporaneous notes I took, but I don't recall.

23 BY MR. IMHOFF (TO MS. BRIDGES):

24 Is that true, have you seen those?

25 BY MS. BRIDGES:

1 I don't recollect notes, seeing them or not.

2 WITNESS CONTINUES:

3 A. Then maybe I didn't keep them, so, anyway, would've been
4 the afternoon.

5 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 35; ATTACHED TO
6 DEPOSITION)

7 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

8 Q. I'm handing you Exhibit 35.

9 A. Okay.

10 Q. I think a couple of things got stuck together somehow; I
11 lost mine, yeah. All right, did you send an email at 5:23
12 p.m. to JD (Jevone) Davis, "Cars to Pick Up"?

13 A. It appears I did, yes.

14 Q. Sorry, I'm sorry, at 4:42 p.m., "Cars to Pick Up."

15 A. Yes.

16 Q. Okay. Why did you ask JD Davis to go pick up these cars?

17 A. I didn't ask JD Davis to go pick up the cars, I called JD
18 because I knew he had a relationship with a tow company.

19 Q. All right, you called JD to use his relationship with
20 Alpha Towing to go get the cars?

21 A. I mean, it was a tow - - I did not realize, I didn't know
22 who it was, but I knew he had a relationship with a tow
23 company, and it's, you know, they have a lot near his lot.

24 So, I called and asked if, you know, if he could give me
25 the number and he agreed to call them.

1 Q. You called JD first?

2 A. Yes.

3 Q. Why him?

4 A. Because he, I knew he had a relationship with a tow
5 company.

6 Q. Don't all dealerships have a relationship with a tow
7 company?

8 A. Maybe, I knew that he had, you know, I was aware of his
9 relationship with a tow company.

10 Q. Okay, how?

11 A. Because of my relationship with JD, so, no particular
12 reason.

13 Q. All right, what did you tell him?

14 A. My first phone call to JD was, "Hey, do you have a
15 relationship with a tow company?" and he said, "Yes". I
16 said, "Could they pick up cars on Wade Hampton Boulevard"
17 and he said, well, actually, I asked him to give me the
18 number and he said, "Let me" he goes, "I'll take care of
19 it," I said, "Fine." And I said, "I may need him to pick
20 up cars on Wade Hampton Boulevard," and I said, "Check it
21 out" and he said, "Okay" and he called me back.

22 Q. Check what out?

23 A. Whether or not they were available to do that.

24 Q. Alpha Towing?

25 A. The tow company that it turned out to be Alpha Towing.

1 Sorry, I'm not trying to be cute, but I didn't know it was
2 Alpha Towing until after the cars were picked up.

3 Q. All right, what time was that phone call?

4 A. Shortly after I called both of you guys and no one
5 answered their phone.

6 Q. You called me?

7 A. I did.

8 Q. So, you called, we had a conversation, you know what time
9 that was, other than afternoon?

10 A. In the, it was, - - no, again, I was driving, I was on 85,
11 by the time I talked to Billy I was on I-26, I don't know
12 what time, you know, it was in the afternoon.

13 Q. Did you call me back after you talked to Billy?

14 A. I called, so, I talked to Billy, very brief conversation,
15 gave him some time, called him back, got his voicemail,
16 when I didn't hear, when I didn't get Billy and didn't
17 hear back from him, I called you and got your voicemail.

18 Q. All right, was it after you got my voicemail that you
19 called JD?

20 A. Yes, because then I called Steve.

21 Q. Called Steve first and then called JD?

22 A. Correct.

23 Q. Okay, so, was Steve involved in the decision to repossess
24 the cars?

25 A. I would say that Steve was a sounding board for me to talk

1 through my logic.

2 Q. Okay. What was your logic?

3 A. My logic was that I just got a call from a dealer's
4 attorney telling me I didn't have a valid contract, and
5 so, with everything else that was going on, you know, that
6 is by definition insecure. So, I felt insecure at that
7 moment in time.

8 Q. Right. If you didn't have a valid contract, did you have
9 a contractual right to repossess those vehicles?

10 A. I believed I had a valid contract.

11 Q. I understand that, but there was a dispute about that; is
12 that fair?

13 A. I don't believe there ---

14 BY MS. BRIDGES:

15 Object to form.

16 WITNESS CONTINUES:

17 A. --- was a dispute, I believe you said that we didn't have
18 a contract, there was not much of a dispute, but ---

19 Q. Well, this whole litigation is whether there's an
20 existence of a valid contract; isn't it?

21 BY MS. BRIDGES:

22 Object to the form.

23 WITNESS ANSWERS:

24 A. I'm not sure who lends \$180,000 without a valid contract,
25 so, in our mind ---

1 Q. You do.

2 A. Well, no, ---

3 BY MS. BRIDGES:

4 Object to form.

5 WITNESS CONTINUES:

6 A. --- we believe we have a valid contract. I was just told
7 by an attorney, not my client, that I didn't have a valid
8 contract; that's the picture of insecurity.

9 Q. Okay.

10 A. I didn't start this dispute.

11 Q. If you did not have a valid contract, did you have a right
12 to repossess the vehicles?

13 BY MS. BRIDGES:

14 Object to form.

15 WITNESS ANSWERS:

16 A. I had a valid contract.

17 Q. Okay, if you didn't have a valid contract, did you have a
18 right to repossess the vehicles?

19 BY MS. BRIDGES:

20 Object to form.

21 WITNESS ANSWERS:

22 A. I don't deal in hypotheticals. I had a valid contract, I
23 had every right.

24 Q. Well, okay, you know a jury is actually gonna determine if
25 you have, either a jury or a judge is gonna determine

1 whether you had a valid contract?

2 A. I welcome the opportunity.

3 BY MS. BRIDGES:

4 Object to form.

5 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

6 Q. If you did not have a valid contract, do you believe you
7 had a legal right to repossess those vehicles?

8 BY MS. BRIDGES:

9 Object to form.

10 WITNESS ANSWERS:

11 A. I had a valid contract.

12 Q. Okay. What did you say to JD about where the cars were
13 and why you were getting them and what was going on?

14 A. I, you know, the only thing, when I gave JD the direction
15 of where to pick up the cars, I just told him where to
16 pick them up, I did not give him any editorial.

17 Q. Did you tell him where they were?

18 A. Not until I gave him direction to pick them up, yes, at
19 that point obviously I had to tell him.

20 Q. I don't see it on here. Where did you tell him on Exhibit
21 35 where they were?

22 A. I don't believe I told him on Exhibit 35.

23 Q. When did you tell him?

24 A. Must've been on the phone.

25 Q. And so, you told him Penland Automotive?

1 A. At some point I had to.

2 Q. Okay. So, you told JD Davis that you were repossessing
3 cars from Penland Automotive?

4 A. No, I told him I needed to pick up cars from Penland
5 Automotive.

6 Q. He didn't know, you didn't tell him repossessing them?

7 A. I don't believe I did; I don't use that term.

8 Q. Well, what would be the reason that you would be picking
9 up all these cars after hours at another dealership?

10 A. Well, the afterhours is in consideration for not
11 disrupting their business, and he doesn't really need to
12 know.

13 Q. Not saying he doesn't need to know, I'm just trying to
14 think of what in his brain could be a potential reason
15 other than repossession for going to another dealership's
16 lot afterhours and taking cars?

17 BY MS. BRIDGES:

18 Object to form.

19 WITNESS ANSWERS:

20 A. You'll have to ask him that.

21 Q. I will. All right, so, you say that your direction before
22 5:00 o'clock is to have Alpha Towing secure these vehicles
23 afterhours?

24 A. That's correct.

25 Q. And you put "AFTERHOURS" in all caps?

1 A. That's right.

2 Q. Okay, and the reason you did that is to not interfere with
3 Penland Automotive's business?

4 A. That's correct.

5 Q. Okay, Penland Automotive, whose cars you were taking away,
6 you didn't want to interfere with their business?

7 BY MS. BRIDGES:

8 Object to form.

9 WITNESS ANSWERS:

10 A. That's correct.

11 Q. Okay. All right, how is he supposed to get the keys?

12 A. The agreement with what we now know is Alpha Towing was I
13 would pay 150 bucks, and I think in the conversation back
14 and forth JD said they could get the keys, I said, "Fine."
15 I said, "I'll pay 150 bucks for cars and keys."

16 Q. How were they gonna get the keys afterhours?

17 A. I don't know.

18 Q. I mean, this is your business. How do you get car keys
19 when you are picking up cars off a lot afterhours, Mr.
20 Haight?

21 A. I don't know, I told Alpha Towing I would - - they said
22 they could get the keys, I said, "Great, I'll pay you
23 150," you know, I told JD I'll pay them \$150 for cars and
24 keys.

25 Q. Well, there's only one way to get keys afterhours; right,

1 that's to break in and get them?

2 BY MS. BRIDGES:

3 Object, object to form.

4 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

5 Q. How else would get them, come on, common sense, you're
6 gonna have to answer this in front of a jury. How do you
7 get keys ---

8 A. I imagine they were gonna ---

9 Q. --- for cars in ---

10 A. --- go the next day.

11 Q. --- a dealership that are in the dealership?

12 BY MS. BRIDGES:

13 Object to form.

14 WITNESS ANSWERS:

15 A. Tow companies do it all the time. I imagine he would go
16 back the next day, quite truthfully; that was my belief.

17 Q. All right, what happened after you talked and emailed JD
18 regarding the cars, who was the next person you talked to?

19

20 A. Probably JD, and I was surprised to find out that that he
21 had already picked up the cars. So, he either called or
22 texted me and said, "We've got the cars," and I believe my
23 response was, "What?" So, and then he detailed for me
24 that Alpha Towing had a personal relationship with Billy
25 Penland and that Billy Penland voluntarily surrendered the

1 vehicles.

2 Q. Okay, that's what JD told you?

3 A. That's what JD told me and that's what Mike at Alpha
4 Towing told me the next day.

5 Q. Okay, did Mike at Alpha Towing tell you that he wasn't
6 gonna take the cars off Billy Penland's lot in the middle
7 of the night as you requested?

8 A. I didn't talk to Mike. Let me put it this way: I, that
9 all, I found that out with this stuff.

10 Q. I thought you just said that you talked to Mike the next
11 day?

12 A. I did talk to Mike the next day, we didn't have a
13 conversation about picking up cars, and no, I don't think
14 he said anything about not picking them after, you know,
15 not wanting to pick them up afterhours.

16 Q. All right, why didn't you call Billy Penland back, text
17 him, email him, call Karen, tell somebody that you felt so
18 insecure that you were going to come and repossess their
19 cars?

20 A. I believe I tried.

21 Q. Okay, well, ---

22 A. We were at ---

23 Q. --- by 4:42, you're repossessing the cars, you hadn't even
24 let the business day run out before you directed somebody
25 to go repossess them; correct?

1 A. And we were at Penland Automotive at 9:30 the next
2 morning.

3 Q. My question, again, my questions; ---

4 A. Okay.

5 Q. --- okay? Why didn't you wait to talk to someone at
6 Penland Automotive before deciding before business hours
7 were over, banking business hours were over, to come and
8 repossess all of the cars off the lot?

9 A. They didn't repossess all the cars off the lot, they
10 repossessed the cars on our floorplan.

11 Q. That's what I meant, all your cars on the lot.

12 A. There's a lot, there were many more cars on the lot.

13 Q. How many more?

14 A. I don't know.

15 Q. Okay. So, how can you say that there were many more cars
16 on the lot if you don't know?

17 A. Because I was there the next day; I didn't count them.

18 Q. Why didn't you wait to have the discussion with someone
19 from Penland Automotive before repossessing the cars
20 afterhours?

21 A. Why did I need to? I mean, my intent was to pick up the
22 cars and go have a conversation with Billy Penland.

23 Q. Why?

24 A. Well, one, I, you know, again, the definition of
25 insecurity is having an attorney tell you you don't have a

1 contract. So, I figured I'll get the cars and then go
2 have a conversation with him, see whether we can continue
3 to do business.

4 Q. You think the way to do business with your customers, who
5 I assume you value and like to have good communication
6 with, is to have one of their competitors go take their
7 cars off the lot without any notice afterhours; ---

8 BY MS. BRIDGES:

9 Object to form.

10 DIRECT EXAMINATION CONTINUES BY MR. IMHOFF:

11 Q. --- that's the way that Dealer Financial does its business
12 with its customers?

13 BY MS. BRIDGES:

14 Object to form.

15 WITNESS ANSWERS:

16 A. No, that's not.

17 Q. Apparently, it is, Mr. Haight.

18 A. Once I get a call ---

19 BY MS. BRIDGES:

20 Object to form.

21 WITNESS CONTINUES:

22 A. --- from an attorney and I don't get a return phone call
23 from the dealer, I'm not sure what you expect me to do.

24 Q. You didn't even let the day run out.

25 A. That's right.

1 Q. Okay.

2 A. Cars disappear all the time.

3 Q. Okay. All right, so, your plan was to put the cars on a
4 lot and then go talk to Billy Penland?

5 A. My plan was to secure the vehicles and go see Billy the
6 next morning, and that's exactly what we did.

7 Q. All right, what'd you do?

8 A. We showed up at his lot at roughly 9:00, 9:30, I'm not
9 sure when they open, but we intended to be there right
10 when it opened, we were informed that Billy was not there
11 and was at the auction, America's Auto Auction, and so, we
12 had, you know, a brief conversation with the folks in the
13 office and left and went to America's to go find Billy,
14 ---

15 Q. Okay.

16 A. --- to have a conversation.

17 Q. Okay, did you find him?

18 A. We did.

19 Q. Did you talk to anybody else?

20 A. I believe we saw another dealer, whose name I can't recall
21 coming out of the bathroom and we said hello to him and
22 then saw Billy.

23 Q. Did you talk to anyone other than JD between 4:42 p.m. on
24 October 8th, 2020 and when you talked to Billy about Billy
25 Penland, Penland Automotive or repossessing those

1 vehicles?

2 A. Anybody?

3 Q. Anybody.

4 A. I spoke with Steve.

5 Q. Okay.

6 A. I don't believe I had a conversation with John but I might
7 have, but it would've, you know, Steve is the only person
8 I recall, and that's it.

9 Q. Did you talk to anybody at any other dealerships,
10 auctions, floorplan companies?

11 A. No. You mean during that period of time?

12 Q. During that period of time.

13 A. No.

14 Q. All right, so, you find Billy; right?

15 A. Um-hum.

16 Q. Whose he with?

17 A. Well, you know, again, it's an auction so it's a bustling
18 place, you know, I was not aware that Billy was with
19 anybody at that point in time.

20 Q. How many people are at the auction?

21 A. Hundreds.

22 Q. Do you go to auctions very often?

23 A. I mean, what's often? I mean, you know, I don't go every
24 week or every day but, yes, I go to auctions.

25 Q. I mean, are you an odd sight at an auction?

1 A. Probably not.

2 Q. Okay, is Steve Lanzl an odd sight at an auction?

3 A. He probably doesn't go as frequently as I do, but I don't
4 know what an odd sight is. I mean, there are some odd
5 sights at auctions, I don't think we would count.

6 Q. Is it unusual for the two owners of Dealer Financial to be
7 at an auction looking for a dealer?

8 BY MS. BRIDGES:

9 Object to form.

10 WITNESS ANSWERS:

11 A. I don't know.

12 Q. Has it ever happened before?

13 A. We have been to auctions together before.

14 Q. How many?

15 A. Adesa in Charlotte, America's, you know, so we've been to
16 auctions together before.

17 Q. Less than 10?

18 A. Sure.

19 Q. Less than five?

20 A. I don't know.

21 Q. Okay. So, you go to Billy and what do you say?

22 A. I said, "Do you mind if we have a," I think I tapped him
23 on the shoulder because he was facing away, it's a loud
24 place, we're just inside the, kind of the bay doors, I
25 tapped him on the shoulder and said, "Hey, would you mind

1 if we have a conversation?" And we, the three of us kinda
2 maneuver our way, we were kinda close to the - - maneuver
3 our way outside where it was quieter.

4 Q. Okay, were there people around?

5 A. There's always people around at an auction.

6 Q. Okay, so, who was standing there?

7 A. Myself, Steve and Billy.

8 Q. Anybody else?

9 A. No.

10 Q. Anybody within hearing distance?

11 A. I don't believe so. I know there's an Affidavit that says
12 there is but, you know, and I, if I'm, I'm assuming who
13 the gentleman is, I don't believe he could've heard a
14 thing; it's a loud place.

15 Q. Okay, all right, and tell me what was said.

16 A. Billy stated to me, you know, I guess, you know,
17 obviously, I'm not exactly sure how it kicked off, but the
18 crux of it was Billy stated to me, "I was not out of
19 trust, why'd you pick up my cars?" I said, "You're right,
20 you weren't out of trust, you're in default of your
21 contract," you know, I kinda showed him the default
22 letter, there was an
23 old - - I said, you know, there wasn't, it wasn't a long
24 conversation. He again stated, "I wasn't out of trust,"
25 and I said, "Yes, I know, you're in default," and I asked

1 him if he wanted the cars back, because we could've easily
2 flipped them to another floorplan or kept going, and he
3 said, "No, I'll see you in court" as he pushed by me.

4 Q. Okay, what did you say when he said, "No, I'll see you in
5 court"?

6 A. Nothing.

7 Q. Okay. Mr. Haight, would you have given him his cars back?

8 A. Yeah.

9 Q. Why'd you take them?

10 A. Because I had an attorney tell me I didn't have a
11 contract.

12 Q. I don't understand that, it doesn't compute. Why would
13 you take them afterhours in the middle of the night and
14 give them back at 10 a.m. the next morning; ---

15 BY MS. BRIDGES:

16 Object to form.

17 DIRECT EXAMINATION CONTINUES BY MR. IMHOFF:

18 Q. --- what has changed?

19 A. Cars ---

20 BY MS. BRIDGES:

21 Object to form.

22 WITNESS CONTINUES:

23 A. --- are designed to roll away, so, if you don't get them,
24 you know, I'm not accusing Mr. Penland of anything, he
25 could've hidden them, they could've moved, whatever, you

1 know, so, we could have, we could've lost the cars and we
2 decided to secure our collateral.

3 Q. Were you going to require him to sign a document ---

4 A. I have no idea.

5 Q. --- execute a contract?

6 A. I have no idea.

7 Q. Well, I - - just doesn't compute, so, it, next morning you
8 are at the auction after having repossessed this man's
9 cars and you're going to give them back to him; is that
10 right?

11 A. So, let me put it this way: ---

12 BY MS. BRIDGES:

13 Object to form.

14 WITNESS CONTINUES:

15 A. --- We, you know, Billy and I have spoken, this is the
16 third time that I recall, there could've been, you know -
17 - you know, being told I didn't have a contract, you know,
18 I had no idea where the conversation's going but I felt
19 like we needed to go have it. And so, Billy decided that
20 he didn't want the cars back and, you know, didn't want to
21 do business with us and walked away.

22 Q. I don't think it's a complicated question, and I want to
23 note for the record that I'm gonna ask you this same
24 question ---

25 A. Okay, ---

1 Q. --- with a jury and we're gonna read this part if your
2 answer changes. Why were you going to give Billy Penland
3 his cars back at 10:00 a.m. at the auction the next day?

4 A. I didn't say ---

5 BY MS. BRIDGES:

6 Object to form.

7 WITNESS CONTNUES:

8 A. --- I was going to, I said we were going to have a
9 conversation.

10 Q. Okay, did you offer him his cars back?

11 A. I did.

12 Q. Would you have given his cars back?

13 A. Certainly.

14 Q. Okay, were there any contingencies or anything else that
15 required Billy to do to get his cars back from you at the
16 auction?

17 A. I mean, you know, obviously, the conversation about
18 whether we were going to continue to business is a whole
19 different conversation. He could've flipped them to
20 another floorplan, which he had a couple of them, you
21 know, so, he could've easily gotten his cars back.

22 Q. Was there any obligation on Billy Penland's part to get
23 his cars back at the auction the next day, was there any
24 restriction?

25 BY MS. BRIDGES:

1 Object to form.

2 WITNESS ANSWERS:

3 A. I don't understand what you mean by - - I mean, I asked,
4 he said no; that's as far as the conversation went.

5 Q. If he said yes, would you have had them delivered right
6 back to his lot?

7 A. I would've said which floorplan would you like to put them
8 on, or let's talk about whether we can continue to do
9 business.

10 Q. So, there were things that you were trying to negotiate by
11 having this man's cars pulled off his lot. You wanted him
12 to move it to another floorplan, that's one; right?

13 BY MS. BRIDGES:

14 Object to form.

15 WITNESS ANSWERS:

16 A. I wanted to have a conversation with Billy about what was
17 going on. Again, I got a call from his attorney
18 threatening me that we didn't have a contract.

19 Q. You wanted to have a conversation with him to get him to
20 take the cars off your floorplan and pay them off; right?

21 BY MS. BRIDGES:

22 Object to form.

23 WITNESS ANSWERS:

24 A. I wanted to have a conversation with Billy.

25 Q. So, the only thing that Billy had to do to get his cars

1 back the next day at the auction was have a conversation
2 with you?

3 BY MS. BRIDGES:

4 Object to form.

5 WITNESS ANSWERS:

6 A. Let's put it this way: That's where it starts.

7 Q. Okay, there was no other motive to try to get him to sign
8 something, do something, move them off your floorplan at
9 all?

10 BY MS. BRIDGES:

11 Object to form.

12 WITNESS ANSWERS:

13 A. I had nothing in my pocket, beyond the default letter, and
14 a desire to have a conversation. You know, I had no idea
15 where it was going.

16 Q. Okay, just want to make sure, 4:30 p.m. the day before,
17 you're taking the man's cars away from him in the middle
18 of the night; ---

19 BY MS. BRIDGES:

20 Object to form.

21 DIRECT EXAMINATION CONTINUES BY MR. IMHOFF:

22 Q. --- right.

23 A. I'm securing collateral.

24 Q. Okay, and the next day at 10:00 a.m. in the auction you're
25 offering his cars back with no strings attached accept a

1 conversation; right?

2 BY MS. BRIDGES:

3 Object to form.

4 WITNESS ANSWERS:

5 A. I didn't say no strings attached, there's a contract, you
6 know, I, if he would've said, "I have a contract with you,
7 I don't know what my attorney was saying," I probably
8 would've given him his cars back. But you're asking me to
9 speculate. All's I know is we in good faith felt
10 insecure, we secured our collateral, and we immediately
11 went to go see our customer to try and resolve it when he
12 wouldn't call me back.

13 Q. Mr. Haight, I am not asking you to speculate. You drove
14 down the next day from North Carolina all the way out to
15 an auto auction ---

16 A. Sure.

17 Q. --- to see Billy Penland; right?

18 A. It's 35 miles.

19 BY MS. BRIDGES:

20 Object to form.

21 WITNESS ANSWERS:

22 A. That's right.

23 Q. Thirty-five miles; right?

24 A. Yep.

25 Q. And you have this letter with you, October 8th, 2020;

1 right?

2 A. Um-hum.

3 Q. Is that a yes?

4 A. Yes.

5 Q. And you have no idea what strings were attached or what
6 you were gonna ask from Billy Penland at that auction to
7 give him his cars back; is that your testimony today?

8 BY MS. BRIDGES:

9 Object to form.

10 WITNESS ANSWERS:

11 A. That's my testimony.

12 Q. Okay. Let's look at the rest of Exhibit Number 35. It
13 looks like at about 6:42 the next day on Friday, October
14 9th, you are sending inventory to sell to JD; is that
15 right?

16 A. That's correct.

17 Q. What inventory to sell?

18 A. The cars that we had secured and were now being, excuse
19 me, stored at Penland Automotive, or excuse me, at Sequoia
20 Automotive.

21 Q. And, in fact, there's a whole bunch of these emails about
22 out to a bunch of dealerships; right, that these cars are
23 for sale?

24 A. That's correct.

25 Q. Okay. How many dealerships did Dealer Financial send it

1 to?

2 A. However many we produced or were left in the record; if
3 you will.

4 Q. Well, was John Bethea talking to other dealerships that
5 you didn't send an email to to buy Billy Penland's cars?

6 A. Possibly.

7 Q. Okay, were you ---

8 A. We did not ---

9 Q. --- talking to ---

10 A. --- they weren't, and they, we never identified the
11 dealership.

12 Q. You don't think anybody knew what dealership they came
13 from?

14 BY MS. BRIDGES:

15 Object to form.

16 WITNESS ANSWERS:

17 A. I don't know what they knew, we didn't identify. So, no,
18 I don't think most of these dealers knew.

19 Q. How big is this used car culture?

20 A. There are thousands of used car dealerships in the State
21 of South Carolina.

22 Q. Okay, what about up here in the Greenville, Spartanburg
23 area?

24 A. There are hundreds.

25 Q. Okay, do you know if they know each other?

1 A. I'm sure ---

2 BY MS. BRIDGES:

3 Object to form.

4 WITNESS ANSWERS:

5 A. --- they do.

6 Q. Do you know if they talk?

7 A. You'll have to ask them.

8 Q. Do you know if they go to auctions together?

9 A. I'm sure they do, otherwise, the auctions wouldn't be very
10 busy.

11 Q. Mr. Haight, you're not seriously testifying that you don't
12 think the word of you repossessing Billy Penland's cars
13 didn't get out to the used car community in this area; are
14 you?

15 BY MS. BRIDGES:

16 Object to form.

17 WITNESS ANSWERS:

18 A. If it got out it didn't come from us.

19 BY MS. BRIDGES:

20 Object to form.

21 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

22 Q. It didn't come from you verbally or it didn't come from
23 your actions?

24 A. It didn't come from anything. Nowhere in any of those
25 documents can you identify that they're identified as

1 Penland Automotive vehicles; that is something we're very
2 serious about.

3 Q. But they did come off Penland Automotive's lot and then
4 end up on JD Davis' lot and then get posted for sale all
5 around the Upstate; right?

6 A. Cars move all the time.

7 BY MS. BRIDGES:

8 Object to form.

9 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

10 Q. Right?

11 BY MS. BRIDGES:

12 Object to form.

13 WITNESS ANSWERS:

14 A. Sure.

15 Q. They did, they came off his lot, went to another lot, and
16 then got advertised for sale by Dealer Financial all over
17 the Upstate; right?

18 BY MS. BRIDGES:

19 Object to form.

20 WITNESS ANSWERS:

21 A. I'm not sure you can say all over the Upstate, but we were
22 looking to, you know, once he said he didn't want the cars
23 back, we were looking to liquidate the cars.

24 Q. I'm gonna ask the question again. Are you testifying
25 today that you don't think the word spread like wildfire

1 that Dealer Financial repossessed Penland Automotive's
2 vehicles?

3 BY MS. BRIDGES:

4 Object to form.

5 WITNESS ANSWERS:

6 A. I don't believe the world is centered around Billy
7 Penland.

8 Q. Do you think word got around?

9 A. I have no idea.

10 Q. Has anyone come to you and said, "Why did you repossess
11 Penland Automotive's cars"?

12 A. No.

13 Q. Has John Bethea ever come to you and said, "People are
14 asking why we repossessed Billy Penland's cars"?

15 A. No.

16 Q. No one ---

17 A. Not to my recollection.

18 Q. --- no one has ever said to you, "Hey people are asking
19 about why we repossessed Penland Automotive's cars"?

20 BY MS. BRIDGES:

21 Object to form.

22 WITNESS ANSWERS:

23 A. Not to my recollection.

24 Q. Have you ever declined to repossess cars for someone who's
25 in default and hasn't paid, isn't up-to-date?

1 A. When you say - - we have - - an independent auto
2 dealership business is always a bit troubling from
3 collateralization. If we're in conversation with a
4 dealer, yes, we have dealers who are in default that we do
5 not pick up cars as we try and work things out, which is
6 why we went to go see Billy.

7 Q. So, it's not automatic that if someone's in default or
8 someone's out of trust ---

9 A. No.

10 BY MS. BRIDGES:

11 Object to form.

12 DIRECT EXAMINATION CONTINUES BY MR. IMHOFF:

13 Q. --- that you would repossess the cars?

14 A. That is correct.

15 Q. How many times has Dealer Financial gone and repossessed
16 cars afterhours?

17 A. Every time but this one.

18 Q. How many times is that?

19 A. That's a good question. Prior to Penland Automotive, I'm
20 not sure I can give you a specific number, but we're
21 fortunate that we don't have many workouts, so, it's not a
22 frequent occurrence.

23 Q. Less than five?

24 A. More than five.

25 Q. Less than 10?

1 A. Possibly, I don't know, I don't know the specific number.

2 Q. Do you call the dealership and tell them you're coming?

3 A. No.

4 Q. Other than JD, did you tell anyone that you were
5 repossessing cars from Penland Automotive or why you were
6 repossessing cars from Penland Automotive?

7 A. I didn't tell anybody why, and beyond JD, no, I don't
8 believe I did.

9 Q. So, whatever, what happened with the cars?

10 A. Ultimately we sold them.

11 Q. To who?

12 A. Three were sold, and I guess it would be considered
13 private sales, the remainder at auction.

14 Q. So, there are a total of seven cars; is that right?

15 A. I think so.

16 Q. Four were at auction?

17 A. Yes, that's my recollection.

18 Q. So, who did the three get sold to?

19 A. Two were sold to another dealership in North Carolina, and
20 the third was sold to a private party.

21 Q. All right, we'll come back to that. What auctions were
22 the four sold at?

23 A. I, let's put it this way, I don't know which ones were
24 sold where but we ran them at America's, we then moved
25 them to Charlotte, one at Adesa and finally you know at

1 Carolina's.

2 Q. Why so many times, why were they moved so many times?

3 A. Because we were trying to get the most money we could for
4 them.

5 Q. Was there a reserve on them?

6 A. When they were running through the auction?

7 Q. Yeah.

8 A. Absolutely. We have a responsibility to try and, you
9 know, get the most money we can for the vehicle, so, we
10 try and show some diligence in that.

11 Q. All right, we'll come back to that. Was JD a Dealer
12 Financial customer?

13 A. Yes.

14 Q. Is he still a Dealer Financial customer?

15 A. Yes.

16 Q. Where is he now?

17 A. He's located, I guess it's still Wade Hampton Boulevard
18 because he's got a lot in Lyman.

19 Q. What's it called?

20 A. Sequoia Motors.

21 Q. He's still at Sequoia Motors in Lyman?

22 A. That's my understanding, yes. Well, let me put it this
23 way: If something happened over the weekend but I believe
24 I spoke with him last week.

25 Q. You know where Tim Yarger is?

1 A. The last time where Tim was at a lot in Mauldin, I don't
2 recall the name.

3 Q. When's the last time you talked to him?

4 A. Three, four months, three months.

5 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 36; ATTACHED TO
6 DEPOSITION)

7 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

8 Q. Hand you Exhibit Number 36.

9 A. Thank you.

10 Q. Did you write this?

11 A. I did.

12 Q. What day did you write it?

13 A. October 8th.

14 Q. And you handed this to Billy Penland?

15 A. I did.

16 Q. It says, "Dear Billy, The change in ownership structure,
17 change and management structure, and our good faith belief
18 that our position is insecure, without limitation,
19 qualifies as an 'Event of Default' under our Loan
20 Documents dated November 21, 2016 (as amended, the 'Loan
21 Agreement');" does it say that?

22 A. It does.

23 Q. Does it say anything about a phone call or not having a
24 contract or an attorney or anything?

25 A. Does not.

1 Q. It says the management structure and ownership structure;
2 correct?

3 A. It does.

4 Q. And those are things that you knew about on October 2nd
5 and October 3rd; correct?

6 A. Our understanding of a default doesn't mean, doesn't waive
7 our right to act at a future date.

8 Q. Those are things you knew about on October 2nd and October
9 3rd, 2020; correct?

10 A. Yes.

11 Q. And you didn't repossess Billy's cars on October 3rd or
12 October 4th; correct?

13 A. That's correct.

14 Q. Okay, but those are the reasons you state in your October
15 8th letter; correct?

16 A. And our good faith belief that our position is insecure.

17 Q. Right, those are the terms that you put in your letter as
18 the reason that you're calling default; right?

19 A. Those are the reasons we did call the default.

20 Q. Okay.

21 A. Our good faith ---

22 Q. By the ---

23 A. --- belief that our position is insecure.

24 Q. "By the terms of our agreement, your Loan is immediately
25 due and payable."

- 1 A. Um-hum.
- 2 Q. Did you ever given him the chance to pay the loan, switch
3 it to another floorplan lender, before you repossessed his
4 cars?
- 5 A. No.
- 6 Q. How can you demand immediate payment of the entire loan
7 balance and make it immediately due and payable before
8 he's even gotten the letter?
- 9 A. I handed him the letter and ---
- 10 Q. The next day; right?
- 11 A. This letter was handed to him the next day.
- 12 Q. Right, after you repossessed the cars?
- 13 A. Um-hum.
- 14 Q. Yes?
- 15 A. Sorry, yes.
- 16 Q. And after October 8th?
- 17 A. Yes.
- 18 Q. The letter's dated October 8th, the cars were repossessed
19 on October 8th; right?
- 20 A. Yes.
- 21 Q. And you wrote that he was in default and his loan is
22 immediately due and payable on October 8th; right?
- 23 A. That's correct.
- 24 Q. But you didn't give him the letter until October 9th?
- 25 A. Maybe if he would've returned my phone calls.

1 Q. But you didn't give him the letter till October 9th;
2 right?

3 A. That's correct.

4 Q. Right. You also state, "Your payment obligations under
5 the Loan Agreement are evidence by a Demand Note dated
6 November 21, 2016 (as amended, the 'Note') made by you to
7 the order of DFH and your obligations under the Loan
8 Agreement and Note are secured by, among other things, an
9 Unlimited Guaranty dated November 21, 2016 (as amended,
10 the 'Guaranty'). This is the Guaranty I was asking you
11 about earlier.

12 A. Um-hum.

13 Q. So, this man, whose company is borrowing money from your
14 company, executed a Personal Guaranty in 2016; is that
15 right?

16 A. That's correct.

17 Q. And he never executed another Personal Guaranty with your
18 company ever; right?

19 A. I don't believe so.

20 Q. And he told you, through Karen Willis, to close his
21 account in February of 2019; right?

22 BY MS. BRIDGES:

23 Object to form.

24 WITNESS ANSWERS:

25 A. Deactivate the account.

1 Q. No, sir, it says, "Close and deactivate the account;"
2 correct?

3 A. That was ---

4 BY MS. BRIDGES:

5 Object to form.

6 WITNESS CONTINUES:

7 A. --- the email I got from Karen, yes, I think we agreed to
8 that.

9 Q. And Dealer Financial didn't close the account and didn't
10 release him from his Personal Guaranty on the word of Tim
11 Yarger, an employee who is not a signator to the Personal
12 Guaranty, and as we discussed earlier, never could be?

13 BY MS. BRIDGES:

14 Object to form.

15 WITNESS ANSWERS:

16 A. Neither is Karen.

17 Q. Never could be, Mr. Haight.

18 A. Neither is Karen.

19 BY MS. BRIDGES:

20 Object to form.

21 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

22 Q. Okay, so, in your letter of October 8th, you are telling
23 this man that he is still obligated under a Personal
24 Guaranty that he has directed you to close and deactivate?

25 BY MS. BRIDGES:

1 Object to form.

2 WITNESS ANSWERS:

3 A. Billy Penland never told me to deactivate the account,
4 Karen did; ---

5 Q. Okay, you were ---

6 A. --- if you want to play that game.

7 Q. --- you were told - - I'm not playing games, you are.

8 BY MS. BRIDGES:

9 Object to form.

10 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

11 Q. You were told to close - - and it's funny to you, I know.

12 BY MR. IMHOFF:

13 For the record he's laughing.

14 BY THE WITNESS:

15 I'm not laughing.

16 BY MS. BRIDGES:

17 Object ---

18 BY MR. IMHOFF:

19 He thinks ruining someone's business is hilarious.

20 BY MS. BRIDGES:

21 Object to form.

22 BY THE WITNESS:

23 I think your histrionics are hilarious.

24 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

25 Q. Histrionics, okay. Well, I mean, you know, I take the

1 laws fairly seriously.

2 A. I do too.

3 BY MS. BRIDGES:

4 Object to form.

5 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

6 Q. Do you, sir? Sir, were you told to close and deactivate
7 Billy Penland's account, yes or no?

8 A. If you're ---

9 BY MS. BRIDGES:

10 Object to form.

11 WITNESS CONTINUES:

12 A. --- standard is, if it doesn't come from Billy it doesn't
13 count, I was never told by Billy Penland to do much of
14 anything.

15 Q. This is what I'm talking about with the games and why
16 we're gonna be here all night.

17 A. I'll be happy to be here all night.

18 Q. Were you ---

19 BY MS. BRIDGES:

20 Object to form.

21 DIRECT EXAMINATION CONTINUED BY MR. IMHOFF:

22 Q. --- told to close and deactivate the account?

23 A. By an employee and I was told by another employee to not.

24 Q. Did you ever ask Billy Penland?

25 A. Billy didn't - - you know, I talked to Billy three times;

1 I think I told you that.

2 Q. Did you ever ask Billy Penland if you could leave his
3 Personal Guaranty open?

4 A. I didn't need to, I was negotiating with the guy who did
5 all the negotiations for him.

6 Q. I'm still trying to figure this out how Tim Yarger, who
7 doesn't own any of the things that Billy Penland owns, in
8 your mind has the right to obligate Billy Penland's house,
9 bank accounts and everything else to your company; please
10 explain it.

11 BY MS. BRIDGES:

12 Object to form.

13 WITNESS ANSWERS:

14 A. I guess you'll have to ask Billy that because Billy
15 allowed him to do all the negotiating.

16 Q. So, your company's position is that a Personal Guaranty
17 can stay in place if some other person, who's not a
18 signator or an obligee in the Personal Guaranty tells you
19 it's okay?

20 BY MS. BRIDGES:

21 Object to form.

22 WITNESS ANSWERS:

23 A. If that person is, you know, is empowered to do so, sure;
24 happens all the time.

25 Q. Okay, so, Tim Yarger was empowered to execute a Personal

1 Guaranty obligating Billy Penland, where is that document?

2 BY MS. BRIDGES:

3 Object to form.

4 WITNESS ANSWERS:

5 A. Tim Yarger did all the negotiating.

6 Q. Where is the empowerment from one citizen of the United
7 States of America to obligate another citizen of the
8 United States of America under a written Personal
9 Guaranty, ---

10 BY MS. BRIDGES:

11 Object to form.

12 DIRECT EXAMINATION CONTINUES BY MR. IMHOFF:

13 Q. --- where sir?

14 A. Billy signed the documents, Tim did the negotiating.

15 Q. Would you like to answer the question, where, under what
16 law, what document, what contract, what Native American
17 Treaty can one citizen of this country obligate another
18 citizen of this country under a Personal Guaranty?

19 BY MS. BRIDGES:

20 Object to form.

21 WITNESS ANSWERS:

22 A. I'll guess you'll have to ask Billy Penland why he allowed
23 Tim Yarger to negotiate.

24 Q. I want an answer to my question or I'm gonna keep asking
25 it and then I'm gonna ask to go the court and ask for

1 attorney's fees if you don't answer it. Under what law,
2 anything, what, how can one citizen ---

3 A. I'm not ---

4 Q. --- obligate another citizen under a Personal Guaranty?

5 BY MS. BRIDGES:

6 Object to form.

7 WITNESS ANSWERS:

8 A. I'm not an attorney.

9 Q. Great. But you wrote it; right?

10 A. He's in default, he was in default of his contract

11 ---

12 Q. You wrote ---

13 A. --- that he signed.

14 Q. --- you wrote ---

15 A. Billy signed this contract; didn't he?

16 Q. --- you wrote that he was under obligations, secured by
17 other things an Unlimited Guaranty. Sir, did you write
18 the letter?

19 A. I did.

20 Q. Based on what law does Tim Yarger have the ability to
21 obligate this man under that Guaranty?

22 BY MS. BRIDGES:

23 Object to form.

24 WITNESS ANSWERS:

25 A. Tim Yarger didn't obligate him, Billy Penland signed the

1 Guaranty.

2 Q. No, sir, you said Tim Yarger said open it and leave it in
3 place; stop playing games. Under what law, contract or
4 document allows Tim Yarger, in your professional opinion
5 with an MBA from Northwestern and a Major rank in the
6 Army, to obligate Billy Penland under that Personal
7 Guaranty?

8 BY MS. BRIDGES:

9 Object to form.

10 WITNESS ANSWERS:

11 A. Billy Penland allowed Tim Yarger to do the negotiating,
12 Billy Penland signed the document.

13 BY MR. IMHOFF:

14 All right, he won't answer the question.

15 WITNESS CONTINUES:

16 A. I, well, you know, ---

17 BY MR. IMHOFF:

18 He will not ---

19 WITNESS CONTINUES:

20 A. I don't know ---

21 MR. IMHOFF CONTINUES:

22 --- answer the question.

23 BY MS. BRIDGES:

24 Jason?

25 WITNESS CONTINUES:

1 A. --- I don't know the law, so, I mean, you know.

2 Q. You don't know the law?

3 BY MS. BRIDGES:

4 Jason?

5 WITNESS ANSWERS:

6 A. I certainly don't ---

7 BY MR. IMHOFF:

8 Yes?

9 BY MS. BRIDGES:

10 Let's go talk. Let's go off the record.

11 (Off the record at approximately 4:16 p.m.; on the record at
12 approximately 4:19 p.m.)

13 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

14 Q. I'm gonna try to ask the question one more time.

15 A. Okay.

16 Q. I'm gonna listen to your answer.

17 A. Okay.

18 Q. Your attorney and I have had a discussion about your
19 answers and whether or not they're sufficient. We have a
20 difference of opinion on that; okay? I'm gonna try it one
21 more time and see what you say.

22 A. Yes, sir.

23 Q. In your opinion, or document, or whatever, what gives Tim
24 Yarger the right to obligate Billy Penland another
25 citizen, a different citizen, under a Personal Guaranty?

1 BY MS. BRIDGES:

2 Object to form.

3 WITNESS ANSWERS:

4 A. I believe that Billy Penland gave Tim Yarger the right to
5 negotiate on his behalf, but Billy Penland signed the
6 documents. But I believe, in very good faith and by
7 practice, that Tim was the individual designated by Billy
8 to conduct business for him.

9 Q. Okay, what is your basis that Billy Penland gave Tim
10 Yarger the right to obligate him to the contract and
11 specifically the Personal Guaranty?

12 A. So, one is their common practice of that's how it was
13 done, and then in Tim Yarger's office when this was
14 signed, you know, I don't believe Billy said he's in
15 charge but it was, you know, Tim handles that for us. And
16 that's a six-year old conversation. But based on their
17 practice, that's what gave me the understanding that Billy
18 Penland empowered Tim Yarger.

19 Q. And I asked you this earlier but I've forgotten the
20 answer: Did Tim Yarger ever say anything on behalf
21 Penland Automotive, Billy Penland or Penland Properties II
22 with Dealer Financial?

23 A. Not to my recollection.

24 Q. Thirty-six?

25 A. Yes, sir.

1 BY MS. BRIDGES:

2 Yeah, that was 36.

3 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

4 Q. Do you know Darryl Jeter?

5 A. No, sir.

6 Q. Do you know what Darryl Jeter looks like?

7 A. You know, subsequent to all of this, I understand Darryl
8 to be a gentleman that accompanies Billy to auction
9 periodically.

10 Q. What does he look like?

11 A. I believe him to be an African-American gentleman.

12 Q. Okay. So, after you got this signed Statement by Darryl
13 Jeter, then you determined that he wasn't close enough to
14 hear anything?

15 BY MS. BRIDGES:

16 Object to form.

17 WITNESS ANSWERS:

18 A. You know, so, certainly, when we were standing there
19 talking, I saw a gentleman standing, and that's what kinda
20 - - I didn't see anybody in a Yankee uniform, so, I'm
21 assuming that that was Mr. Jeter. And in seeing Billy at
22 previous auctions, that gentleman was with him.

23 Q. Why didn't you just return the cars to Penland Automotive
24 after you had your conversation with Billy?

25 A. He told me he didn't want them.

1 Q. He said he didn't want them?

2 A. That's exactly what he said.

3 Q. "I don't want them"?

4 A. That's exactly what he said, "I don't want them, I'll see
5 you in court;" that's a quote.

6 Q. Between our conversation and your decision and email and
7 call to JD to pick up the cars, what did you do to
8 determine what contracts were in place, what obligations
9 Mr. Penland had, what due diligence did you do to
10 determine whether you were secure or not; tell me what you
11 did.

12 A. Well, I knew the contracts that were place, I may not have
13 remembered every concession or amendment we made to them,
14 but I knew we had a contract dated, you know, 2016. My
15 feeling of insecurity didn't need to be - - you know, you
16 guys did that when I couldn't get in touch with anybody.
17 So, you know, and I called Steve, I don't believe I called
18 the, my attorney, but I may have; I don't think I did.
19 But I, you know, in discussing with Steve, you know,
20 because we had had past conversations, we were kinda on
21 the same page, and, as happens, you know, you gotta move
22 quickly in these types of situations often.

23 Q. When you did your initial evaluation of Billy Penland and
24 Penland Automotive in 2016 and whatever it is you did in
25 2018, did you find that Billy Penland was a secure enough

1 risk that you'd do business with him and his company?

2 A. I would say that for independent auto dealers, you know,
3 Billy, he had a good, you know, he had been in business a
4 long time, there was nothing - - there are plenty of
5 dealers who shouldn't be in the business.

6 Q. Did you find anything negative about Billy Penland or
7 Penland Automotive that gave you the belief that over the
8 night on October 8th he would steal those cars?

9 A. I didn't think Billy would steal anything, but when you're
10 insecure, you secure collateral.

11 Q. Did you find anything in Penland Automotive's past or
12 Billy Penland's past at any of the times you investigated
13 him or worked with him that gave you a concern that the
14 collateral would disappear?

15 A. Our experience is that collateral disappears every day,
16 and cars are, by design, intended to drive away. So,
17 what's there today may not be there tomorrow and our
18 experience plays that out time and time again.

19 Q. Right, but that's true of every single dealer, dealership
20 that you're dealing with as a business; right?

21 A. That's correct.

22 Q. That collateral can rollaway, it could disappear any day
23 any time for any reason; right?

24 A. That's right.

25 Q. Okay, but that's not what you were doing on October 8th,

1 you were trying to determine if you were secure or
2 insecure; right?

3 BY MS. BRIDGES:

4 Object to form.

5 WITNESS ANSWERS:

6 A. No, I determined I was insecure.

7 Q. Okay, my question then is in determining that you were
8 insecure, is there anything in Penland Automotive or Billy
9 Penland's past that gave you additional insecurity or
10 questions about that collateral?

11 A. So, I would say that, you know, certainly Billy's
12 background check is not as clean as a whistle, and, you
13 know, as you said, there's, it's a somewhat small
14 community, and I would say that I made my own
15 determination.

16 Q. Are you gonna say that Billy doesn't have a good
17 reputation?

18 A. I'm not gonna say that.

19 Q. Okay, what in Billy's background did you find in those
20 background checks?

21 A. I mean, like all of us, there's certainly, you know, some
22 car stuff and then there are some additional things that I
23 don't recall off the top of my head, but there are, you
24 know, certainly some interactions with Law Enforcement.

25 Q. Has he ever been convicted of a crime?

1 A. I don't know.

2 Q. Does that matter to you?

3 A. We - - it depends what the crime was.

4 Q. Okay, but you don't know if Billy's ever been convicted a
5 crime or not, obviously, ---

6 A. I don't recall. Let's put it this way: ---

7 Q. --- it was not something that ---

8 A. --- it's, you know, in the background, there was nothing
9 in his background, we didn't do it in 2016, we didn't
10 start doing that till later, so, we would've done it, you
11 know, with the existing application. But we knew Billy
12 pretty darn well by that point from doing business in
13 2016. But there was nothing - - anyway, yeah, so, that
14 did not disqualify him from reopening the line.

15 Q. Yeah, but my question is, is there anything in the
16 background or the background check, which you just
17 referenced a minute ago wasn't very clean, that made you
18 feel more insecure on October 8th.

19 A. I would certainly, I want - - no, I mean, I would say that
20 your, you know, your statement to me that we didn't have a
21 valid contract and then not being able to get Billy to
22 stay on the phone told me all I needed to know.

23 Q. First time that there's a bill or a entry from Parker Poe
24 is October 12th, 2020 with KTF, Mr. Ford?

25 A. Sure.

1 Q. Does that sound like the first time you would've contacted
2 him?

3 A. If that's - - I mean, I don't recall, but I certainly am
4 not gonna dispute their very detailed voluminous bills.

5 Q. Well, I mean, yeah, there's some evidentiary arguments
6 that Ms. Bridges and I are gonna have about what
7 conversations you had with your attorneys in those first
8 couple of days; okay? I'm gonna ask and she's gonna
9 object; okay? Did you have an attorney's opinion or
10 attorney's help in drafting your October 8th letter, ---

11 BY MS. BRIDGES:

12 Object to privilege and form.

13 BY MR. IMHOFF:

14 Right.

15 DIRECT EXAMINATION CONTINUES BY MR. IMHOFF:

16 Q. --- repossessing the cars or taking the letter to Billy
17 the next day?

18 BY MS. BRIDGES:

19 Objection under privilege.

20 BY MR. IMHOFF:

21 You want him to answer or not?

22 BY MS. BRIDGES:

23 What, repeat your question just one more time, let me hear
24 what this ---

25 BY MR. IMHOFF:

1 Yeah, and so, I mean, part of it ---

2 BY MS. BRIDGES:

3 Because I'm trying to figure out what you're trying to
4 ask.

5 MR. IMHOFF CONTINUES:

6 --- part of it is his due diligence and work to determine
7 his insecurity and that kind of thing, and so, I'm trying
8 to figure out exactly what he did before he took the
9 actions he did on the night of October 8th. Part of that
10 could be that he talked to Chip or another lawyer or
11 someone else. I need to ask it, I don't know what we're
12 gonna do with it, it may be that he says no and then it's
13 not an attorney/client privilege issue, but my point will
14 be that I'm gonna try to ask that at trial, and if the
15 answer's no at trial then obviously, there's no
16 attorney/client privilege there, if there's yes, then I'll
17 ask to waive the privilege because it's not actually
18 privileged; does that make sense?

19 BY MS. BRIDGES:

20 Yes.

21 BY MR. IMHOFF:

22 Because it's not, it doesn't have to do with the lawsuit,
23 it has to do with his belief on October 8th of what his
24 abilities are under the contract and/or Loan.

25 BY MS. BRIDGES:

1 Yeah, but then, I mean, it could still be privileged no,
2 not directly to this lawsuit, but if ongoing
3 relationships, if there's other types of things brought up
4 that kind of - - so, I think if you want to ask did a
5 conversation happen and then stop, did a conversation
6 happen, let's see what the answer is to that first and
7 then stop there because if a existing ---

8 BY MR. IMHOFF:

9 You're gonna let him answer whether there was a
10 conversation? You can talk to him outside if you want to.

11 BY MS. BRIDGES:

12 No. I'm gonna say, well, then you're gonna ask what we
13 talked about, so.

14 BY MR. IMHOFF:

15 No.

16 BY MS. BRIDGES:

17 Okay.

18 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

19 Q. Did you have a conversation with Chip Ford ---

20 BY MS. BRIDGES:

21 Hold on.

22 DIRECT EXAMINATION CONTINUES BY MR. IMHOFF:

23 --- on October 8th?

24 BY MS. BRIDGES:

25 Object to the privilege.

1 BY MR. IMHOFF:

2 You're not gonna let him answer that?

3 BY MS. BRIDGES:

4 No, not at this time.

5 BY MR. IMHOFF:

6 All right, well, I better get him out loud because if we
7 go in front of a judge I have ---

8 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

9 Q. Do you know one way or the other if you had a conversation
10 with one of your lawyers before October 12th, 2020 about
11 the, your feeling that Mr. Penland and Penland Automotive
12 were in default?

13 BY MS. BRIDGES:

14 Privilege, objection privileged, don't answer.

15 BY MR. IMHOFF:

16 Okay, and you can just think about that, I mean, you gotta
17 file a Protective Order or whatever, but if you can talk
18 to him about it and the answer may be no, Emily.

19 BY MS. BRIDGES:

20 Yeah, it might be no.

21 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

22 Q. All right, did you - - I got your attorney fees,
23 ---

24 A. Yes, sir.

25 Q. --- do you know how much you paid your attorneys?

1 A. Can I reach a note? I asked this morning, \$150,092.50.

2 Q. Have you actually paid all of that?

3 A. There may be a bill or two outstanding but the materially
4 yes, there is not a great balance outstanding.

5 Q. Okay, less than \$10,000, maybe?

6 A. I don't know, I'm not sure, I've looked at, you know, I
7 believe the bills for, what's this, this is July, I'm not
8 sure I paid June's bills yet, or even, not sure I've paid
9 May's bills yet, I probably haven't received June's bills,
10 so, I haven't reviewed them.

11 Q. All right, and that is part of your Counterclaim damages;
12 is that right?

13 A. Yes, sir.

14 Q. And what is the basis for Counterclaiming for attorney's
15 fees; in your opinion?

16 A. It's in the Contract.

17 Q. The, okay, Exhibit Number 2, the 2016 Contract?

18 A. Yes, sir.

19 Q. You have any other basis for your attorney's fees other
20 than the 2016 Contract?

21 A. I guess I haven't investigated what my other rights around
22 that would be, so, I - - that's what I pay attorneys for.

23 Q. Mr. Haight, you were also executing Powers of Attorney on
24 vehicles in 2021; is that correct?

25 A. I mean, it took us a while to sell them, so, maybe so.

1 Q. Were you executing Powers of Attorney on behalf of Penland
2 Automotive and Billy Penland after the events of October
3 8th?

4 A. We were, I mean, I guess the answer's probably yes, I
5 mean, we were selling cars.

6 Q. And by that point, had you been put on notice and served
7 with the lawsuit, or aware of a lawsuit that disputed that
8 there was an agreement between Penland Automotive and
9 Dealer Financial?

10 A. I'm not certain you filed the lawsuit by then. I mean, I
11 don't know, I don't recall.

12 Q. How many Powers of Attorneys do you think you've executed
13 on behalf of Penland Automotive?

14 A. I mean, I believe we attached one to every vehicle that we
15 sold.

16 Q. So at least seven?

17 A. Sure, I mean, that's how many vehicles, so, I mean, you
18 know, we, the, you know, we were not, we didn't purchase
19 the vehicles, so, our name wasn't on the documents, so, in
20 order to transfer them in the wholesale channel, you've
21 got to - - so, we either did it under our name or, I'm not
22 certain actually, so, I'm not sure we attached seven
23 Powers of Attorney; I don't recall.

24 Q. Okay, but you did execute some Powers of Attorneys on
25 behalf of Penland Automotive after you were aware that

1 Penland Automotive disputed the validity and
2 enforceability of the 2016 Contract; right?

3 BY MS. BRIDGES:

4 Object to form.

5 WITNESS ANSWERS:

6 A. The Power of Attorney is irrevocable and we didn't act on
7 behalf of Billy Penland, we acted as Penland Automotive
8 according to the Power of Attorney.

9 Q. You acted on behalf of Penland Automotive in executing a
10 Power of Attorney to dispose of vehicles purchased by
11 Penland Automotive; correct?

12 BY MS. BRIDGES:

13 Object to form.

14 WITNESS ANSWERS:

15 A. That he said he didn't want, yes.

16 Q. Yes?

17 A. Sure.

18 Q. After you knew that Penland Automotive disputed the
19 validity of the enforceability of the 2016 Contract;
20 right?

21 BY MS. BRIDGES:

22 Object to form.

23 WITNESS ANSWERS:

24 A. I think that's pretty obvious.

25 Q. I do too, but you still did it; right?

1 A. Yeah.

2 BY MS. BRIDGES:

3 Object to form.

4 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

5 Q. Have you ever looked the UCC-1 Filing Penalties for not
6 removing a UCC-1 when you're no longer doing business with
7 a company?

8 A. I'm not intimately familiar but I'm sure they are there.

9 Q. We just got the other night a list of UCC filings. Did
10 you ever remove any UCC-1 filings off of Penland
11 Automotive ever?

12 A. No, he still owes us money.

13 Q. So, have you renewed them?

14 A. Yes.

15 Q. When did you renew them?

16 A. Whenever it was required; I don't recall.

17 Q. During the pendency this lawsuit?

18 A. I'm sorry?

19 Q. During the pendency of this lawsuit have you renewed them?

20 A. And I hate to be an idiot, what does pendency mean?

21 Q. Since this lawsuit was filed and served upon you, have you
22 renewed the UCC-1 filings?

23 A. I believe that to be the case.

24 Q. And you know that the existence of those UCC-1 filings are
25 an issue in the lawsuit that Mr. Penland and Penland

1 Automotive have claimed are doing damage to them?

2 A. I guess you'll have to prove how those are doing damage
3 considering he's secured three other floorplans since
4 then.

5 Q. I agree that I have to prove it, I agree with that, but
6 did you understand ---

7 A. Yes.

8 Q. --- and were you told that he was disputing the legitimacy
9 of your UCC-1 filings?

10 BY MS. BRIDGES:

11 Object to form.

12 WITNESS ANSWERS:

13 A. My understanding is he's, you know, disputing everything,
14 so, I don't know whether anybody specifically told me that
15 but sure. I certainly understand there's a dispute.

16 Q. Have you been asked to do an accounting for the cars that
17 were sold?

18 A. Yes, sir.

19 Q. And have you provided that to your attorneys?

20 A. We provided it to you.

21 Q. I'm not sure that I have it. I've, I looked through every
22 single document, over 4000 documents, and I do not see an
23 accounting for the vehicles. What format was that in?

24 A. May I look at a note and I can probably tell you what page
25 I think it's on?

1 Q. I think that's a good idea.

2 A. Okay, there's an Excel spreadsheet that details, there's a
3 couple of Excel spreadsheets, you know, some that show
4 where we ran the cars, how often it ran, what the final
5 sale price is, you know, so, I think, you know, subsequent
6 to that, or with that there's a tally of what we claimed
7 as what Mr. Penland owes us, you know, so, I believe there
8 to be and there maybe more, but those are the two things I
9 can think of that tally the selling of the cars.

10 Q. To move us through this, I'm just gonna tell you what I
11 think and you can tell me if it's true. I think that
12 every penny should be documented somehow, what the sales
13 price was at the auction, what the repair was, what the
14 tow bill was, whatever. So, if that's true, is there
15 documentation for every cost you believe you incurred in
16 disposing of the collateral that you could just give to me
17 and we don't necessarily have to spend a long time talking
18 about it today?

19 A. We would have produced - - I mean, so, I imagine I could
20 go to the - - I guess it depends on what you'd take as
21 proof. So, I mean, I can, we can certainly document, you
22 know, show you a, you know, what we received for the car.
23 So, I, you know, I think the answer to that is yes.

24 Q. I don't have one thing, not one document, not one, and I
25 would presume that there would be dozens if not hundreds

1 of documents for towing ---

2 A. Oh, there's not hundreds.

3 Q. --- repairs, cleaning, auction fees, whatever it is, and
4 let me just tell ---

5 A. Sure.

6 Q. --- I mean, I need to share this okay; maybe you haven't
7 even seen this.

8 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 37; ATTACHED TO
9 DEPOSITION)

10 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

11 Q. All right, this is Exhibit Number 37.

12 A. Um-hum.

13 Q. You may not have even seen this, and ---

14 A. I've seen this.

15 Q. --- it sets out our purposes on ---

16 BY MR. IMHOFF (TO MS. BRIDGES):

17 I'm not gonna talk about that part; okay, Emily?

18 BY MS. BRIDGES:

19 Of course.

20 DIRECT EXAMINATION CONTINUES BY MR. IMHOFF:

21 Q. --- but I want the numbers okay, because I don't have
22 them. Is it true that the total net amount received by
23 DFH was \$74,115.25?

24 A. I believe that to be materially correct.

25 Q. All right, and that will be supported by what documents?

1 A. You know, it's inter - - so, I guess we could look at bank
2 transactions, as well as I'm not sure we retained, you
3 know, the auction paperwork, but I can certainly try and
4 go find it, you know, call the auctions, get them; that
5 kind of stuff.

6 Q. Okay, yeah, I would've expected to have seen that. I
7 would've expected to see the contracts if they were sold
8 to individuals or some record of that. When it says, "net
9 prices, net amount" that is taking out what, auction fees
10 ---

11 A. I imagine it's auction fees.

12 Q. Do you know?

13 A. Yeah, I'm sure, I mean, let me put it this way: If it's a
14 net amount, I would believe the only thing deducted from
15 the price of the vehicles from that number are the fees
16 paid to auction.

17 Q. All right, as of April 1st, 2020, the outstanding loan
18 balance is \$78,419.38 consisting of unpaid principal
19 advances of \$78,787.30 and accrued unpaid floorplan fees
20 \$1,696.01. I don't think that math is right, in fact, I
21 think it's flat wrong. Where are the unpaid floorplan
22 fees set forth?

23 A. I imagine there would've been invoices, you know,
24 subsequent to picking up the cars, I don't recall, but,
25 ---

1 Q. This is what I want you to do: ---

2 A. Sure.

3 Q. --- I want you to go back and do an accounting and give me
4 the supporting documents for it, but I'm gonna ask you
5 some more questions about this in general, so, I
6 understand the documents when I get them; okay?

7 A. Sure.

8 Q. On October 8th, 2020, how much was the total amount, if
9 Penland Automotive was going to pay it off that day, that
10 Penland Automotive owed Dealer Financial?

11 A. I don't know off the top of my head but it was in excess
12 of \$90,000.

13 Q. Ninety?

14 A. Yes.

15 Q. How could it be 90, there's no 90 on this document?

16 A. Because we debited the amount - - you have an Excel
17 spreadsheet in there that details how we came up with
18 this.

19 Q. Okay, well, let's go back; okay?

20 BY MS. BRIDGES:

21 Jason, I can give you the Bates numbers, what I believe
22 you're asking now, but if it's not what you're asking ---

23 BY THE WITNESS:

24 Am I allowed to look?

25 BY MS. BRIDGES:

1 No, not at this point. (TO MR. IMHOFF) If this is not
2 what you're asking, then you can correct me, but I believe
3 what you are asking about is at Bates Numbers 1754 through
4 1773. Now, if I am incorrect in my thinking of what
5 you're saying, obviously we can have a further
6 conversation about that, but if that would be of benefit.

7 BY MR. IMHOFF:

8 Just what I need, something else in front of me. I'm not
9 connected to the internet.

10 (Off the record at approximately 4:45 p.m.; on the record at
11 approximately 4:49 p.m.)

12 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

13 Q. All right, so, I'm gonna try to so show him Page 1763.

14 BY MS. BRIDGES:

15 Let me zoom in.

16 WITNESS ANSWERS:

17 A. Okay.

18 Q. Fourth from last column has "Remaining Balance"?

19 A. Um-hum.

20 Q. "Principal Balance" of 89; see that?

21 A. Yes, sir.

22 Q. I can't read the next line, is it Reserve?

23 A. "Reserve."

24 Q. "Unpaid Fees."

25 A. Um-hum.

1 Q. And then \$91,000 and some numbers; ---

2 A. Okay.

3 Q. --- you see that?

4 A. I do.

5 Q. Is that where you're getting the 91 from?

6 A. I mean, I don't think 91 shows it in here, but that's
7 what's in my head, so, possibly. You know, my
8 understanding was that the balance prior to any, I'll use
9 the word activity, was it was in the \$90,000 range.

10 Q. Well, we're back to your letter, or not your letter,
11 Chip's letter, maybe. "April 1, 2020 the outstanding loan
12 balance is \$78,419.38." There's no way that's true
13 because April 1st, 2020 is before October 8th, 2020 when
14 you repossessed the vehicles.

15 A. That's a very interesting ---

16 BY MS. BRIDGES:

17 Object to form.

18 BY MR. IMHOFF:

19 Okay.

20 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

21 Q. It says the "outstanding loan balance is \$78,000,"
22 etcetera, etcetera. That again does not match that
23 \$91,000.

24 BY MS. BRIDGES:

25 Object to form.

1 BY THE WITNESS:

2 Okay, so, am I supposed to answer?

3 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

4 Q. No, I just kinda want to walk you through this and then
5 we'll talk about ---

6 A. Sure.

7 Q. --- it; okay? "Consisting of unpaid principal advances of
8 \$78,787.30", that's the number I'm really interested in.
9 On October 8th, 2020, what money had been advanced to
10 Penland Automotive for actual purchase of these cars based
11 on the Black Book, not on fees, not on interest, not on
12 floorplan, none of that stuff?

13 A. So, the amount advanced would, if - - I don't know whether
14 curtailments had been paid on those cars. You know, I'd
15 have to look at the specifics, but, so, please ask your
16 question again.

17 Q. This is what I would like, and you can - - it should be
18 fairly simple, either put it into an Excel spreadsheet or
19 talk to Emily about it and she can send it to me in an
20 Interrogatory answer, I want a list of what was actually
21 forwarded to Penland for the vehicles and any other
22 charges and fees that you've put on it since then; okay?

23 A. But I think you have that.

24 Q. And then I want the supporting documentation for all of
25 those things; ---

1 A. Okay.

2 Q. --- okay? But here are my questions for you, just so ---

3 A. Sorry.

4 Q. --- because I think it's gonna turn out to just be math
5 anyway, ---

6 A. Right.

7 Q. --- not your opinion. Why were you continuing to charge
8 fees after October 8th of 2020?

9 A. Because that's what the contract called for.

10 Q. Okay, so, as the cars sit there and go to auction and
11 don't sell, you continue to charge fees?

12 A. Yes.

13 Q. Now, do you know if this letter is correct and the total
14 net amount received was \$74,115.25?

15 A. I believe that, I mean, you know, he would've gotten the
16 letter, he would have gotten the number from me, so, and
17 it looks familiar, so, I will say that I believe that
18 number to be accurate.

19 Q. Do you believe the outstanding loan balance was
20 \$78,419.38?

21 A. I believe, again, he would've gotten that number from me
22 and there's an Excel spreadsheet in there that kind of
23 details how we got there, so, yes, I would say that
24 obviously the date should be April 1, 2021, shame on us,
25 but I believe that to be our calculation, yes, sir, my

1 calculation.

2 Q. All right, and does the amount owed include unpaid
3 floorplans fees, towing, cleaning, etcetera?

4 A. It would include expenses, so, the answer to that is yes.
5 I don't know specific cleaning, I don't want to say yes or
6 no, but yes, it would include floorplan fees, it would
7 include expenses like towing, so, yes, it would include
8 our work to liquidate the inventory.

9 Q. All right, just make sure that I understand. So, you got
10 \$74,115.25; correct?

11 A. Correct.

12 Q. All right, and that's a net amount after you have
13 subtracted towing and auction fees; is that right?

14 A. Yes.

15 Q. Okay, so, if the collateral would've been paid, if Chip is
16 right that the loan balance was \$78,419.38, Dealer
17 Financial recovered all but about \$4000 even with its
18 auction fees and towing; is that right?

19 A. I don't believe that to be correct.

20 Q. What's wrong about that statement?

21 A. Well, if you just take the \$90,000 minus 74, so, again,
22 there, you know - - here's what I'll say: There is an
23 excel spreadsheet that we produced that details every line
24 item. I imagine some of that is legal fees, so, you know,
25 when you asked me legal fees I answered that question, but

1 I'm sure there are some legal fees in there, but there is
2 a spreadsheet that details that down to the penny.

3 Q. There aren't actually. If you look down, Chip talks
4 about, in the second paragraph, maybe the third paragraph,
5 "To-date out of pocket costs and expenses towing, storage,
6 transportation, repair, etc.) of 24,000; see that?

7 A. Sure, okay.

8 Q. "Operational Expenses related to the defaults and
9 enforcement of its rights and remedies" of 21,000; do you
10 see that?

11 A. Sure.

12 Q. And "legal fees and expenses" of 20,000 etcetera,
13 etcetera; you see that?

14 A. Okay. Yes, I see that.

15 Q. The spreadsheet is helping me with this because I can't
16 figure out where those amounts are going and whether
17 they're subtracted from the net amount of 74,115.25. So,
18 what I want to know, and you can look at Emily's computer,
19 I would've brought this with me if I understood what this
20 was, how do you get to the net amount, what is taken out
21 of that 74,115.25?

22 A. Okay, am I allowed to look at her computer?

23 Q. Absolutely.

24 BY MS. BRIDGES:

25 Can I show him 1760?

1 BY MR. IMHOFF:

2 Yeah.

3 WITNESS ANSWERS:

4 A. Okay, so, ---

5 BY MS. BRIDGES:

6 Is this the one you want or ---

7 BY THE WITNESS:

8 I believe so, yes.

9 BY MS. BRIDGES:

10 Okay.

11 WITNESS ANSWERS:

12 A. So, we start with ---

13 BY MS. BRIDGES:

14 Jason, we are at 1760. Just so you know, Jason, that was
15 produced.

16 BY THE WITNESS:

17 A. Yeah, so, on ---

18 BY MR. IMHOFF:

19 I just didn't understand what it was.

20 BY MS. BRIDGES:

21 Oh, no, no, I just wanted to make sure you had a copy of
22 Page 1760; that's all.

23 BY MR. IMHOFF:

24 Yeah.

25 WITNESS ANSWERS:

1 A. So, I, you know, if we begin at the top and work our way
2 down, you know, you see the Principal Balance of 91,754,
3 you know, we're adding expenses and fees, you know, so,
4 you see the Alpha Towing fee in there. There's a five
5 percent late charge, which is allowed for in our contract
6 and, you know, the negative numbers are credits, we apply
7 the Reserve Balance of \$2400, the amount of money for the
8 various vehicles, getting to the net amount of 77,000, or
9 \$78,787.30.

10 Q. Where are you, because I'm at 74,115.25?

11 BY MS. BRIDGES:

12 Oh, we're at 176, Page DFH01760.

13 BY MR. IMHOFF:

14 Yeah, I am too, just where are you on that page?

15 WITNESS ANSWERS:

16 A. All right, look, so, start at the bottom, ---

17 Q. Oh, at the bottom?

18 A. Yeah, I'm at the bottom.

19 Q. The total at the bottom is \$78,787.30?

20 A. Yes.

21 Q. Okay, this is perfect, all right. Let me ask you some
22 questions.

23 A. Sure.

24 BY MS. BRIDGES:

25 Do you want to try mark this as Exhibit 38?

1 BY MR. IMHOFF:

2 Can you print three copies of that off or four sideways?

3 It might be too late. Well, ---

4 BY THE WITNESS:

5 I mean, you know, that particular document should fit on
6 one 8-1/2x11 page printed in landscape.

7 BY MR. IMHOFF:

8 Here it is right here. So, you want me to stop or keep
9 going?

10 BY MS. BRIDGES:

11 I mean, up to you do you want to ---

12 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

13 Q. Yeah, I'm fine. "October 8th, 2020 Floorplan Payoff
14 \$91,754.28.

15 A. Okay.

16 Q. That's the number that's due if Penland Automotive paid
17 everything on October 8th; is that right?

18 A. Yes, sir.

19 Q. That's not what you loaned him; correct?

20 A. That's correct.

21 Q. All right, and then under that you have "Alpha Towing, 5%
22 Late Charge, Sequoia Motors-Storage/secure collateral,
23 Transport," etcetera, etcetera, etcetera, "Legal
24 Expenses," yeah, this is exactly what I was looking for.
25 All right, so, where is the number on this document of the

1 amount you recovered from the sales, ---

2 A. Down ---

3 Q. --- is that ---

4 A. I'm sorry.

5 Q. --- 74,115.25?

6 A. Yes. So, if you look at, you know, down below it says,
7 "Application of Cash." So, those are the, that's inbound,
8 so, you know, applying the Reserve, you can consider that,
9 you know, we took the Reserve Balance and applied it and
10 the rest would have been inbound cash.

11 Q. So, and again this sort of, this spreadsheet doesn't even,
12 my columns don't even line up. What, how much did you get
13 for the Ford Escape?

14 A. \$11,516.25.

15 Q. What's the 2400 right above that? And I don't have a
16 column, there's isn't any column.

17 A. Sure. If you go to the left it says, "8-Oct-20 Apply
18 Reserve." So, Billy, or Penland Automotive had a Reserve
19 Balance and we applied that Reserve Balance to the, as a
20 credit to the outstanding, you know, to reduce ---

21 Q. That's helpful.

22 A. --- the outstanding amount.

23 Q. That's helpful but what column is it in?

24 A. I guess it's under "Fees." So, I mean, you know, I, if
25 you don't like my format, I'm not sure I can ---

1 Q. I think it's ---

2 A. --- defend myself but ---

3 Q. I think it's a PDF conversion of a Power Point.

4 A. But, you know, anyway, this would be an Excel spreadsheet
5 but I ---

6 Q. Or Excel, excuse me.

7 A. Yeah.

8 Q. I'm just not, I'm just not, I can't figure this out. So,
9 under, all right, so, the fees, that's where the 20 - -
10 wait shoot, where are the, what, where ---

11 BY MR. IMHOFF:

12 Can you print this out?

13 WITNESS CONTINUES:

14 A. I mean, see where the ---

15 Q. But I just can't see it.

16 A. Okay.

17 Q. The fees aren't above, expenses aren't above a column.

18 A. There may be some things in columns that might be better
19 elsewhere, but, you know, things in parentheses are
20 credits, things not in parentheses are balances or
21 expenses; I think I said that right.

22 Q. That's the problem is the PDF conversion of Excel has the
23 column headers over nothing.

24 A. Oh, okay.

25 Q. And the actual columns and numbers ---

1 A. Okay.

2 Q. --- don't have headers, so, I can't tell what, I can't
3 tell what it is.

4 A. I understand.

5 BY MR. IMHOFF:

6 Should I keep asking questions, are they gonna bring it?

7 BY MS. BRIDGES:

8 Well, no, I don't know if anyone is back there, so, let me
9 just go grab it.

10 (Off the record at approximately 5:01 p.m.; on the record at
11 approximately 5:02 p.m.)

12 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 38; ATTACHED TO
13 DEPOSITION)

14 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

15 Q. All right, Exhibit Number 38.

16 A. Thank you.

17 Q. All right, help me with this. So, we got a Principal of
18 \$91,754.28; right?

19 A. Yes, sir.

20 Q. All right, then you sell cars, give back a Reserve and you
21 get, help me read this, \$74,115.25; is that right?

22 A. That's correct.

23 Q. How do we get from 91 to 78,787.30 when you get, when you,
24 the total amount due is 91 and then together you've got
25 \$74,000?

1 A. I mean, I guess we gotta add up all the other stuff. You
2 know, so, we gotta add and subtract and again, I hate to
3 say, this is Excel, so, I have confidence in the bottom
4 line number being an accurate representation of what's on
5 this page. Whether you agree with me or not is a
6 different issue.

7 Q. I think I figured it out, I think I figured it out.
8 There's a Fees column ---

9 A. Okay.

10 Q. --- \$4,587.71; right?

11 A. Say that one more time, sir.

12 Q. A "5% Late Charge" under "Fees" is ---

13 A. Yes.

14 Q. --- \$4587.71?

15 A. Okay.

16 Q. Is that right?

17 A. That would be in addition to the 91,754.

18 Q. Right. Then there is another fee of \$10,763.73, what is
19 that?

20 A. So, those are the fees that we accrued during the holding
21 period, you know, well, while we were trying to liquidate
22 the cars, and there's another spreadsheet that kind of
23 lays that out.

24 Q. Well, tell me, give me some example of what the fees would
25 be?