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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The 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 III of III

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1 A. Just floorplan fees, default floorplan fees.

2 Q. Not payments you've made to someone for towing, cleaning

3 ---

4 A. No.

5 Q. --- correcting, maintaining, no, just pure fees from
6 Dealer Financial?

7 A. Yes, sir.

8 Q. Okay. Then you got expenses of Alpha Towing, Sequoia
9 Motors, Sequoia Motor Transport, Transport to Adesa, it's
10 "not been billed," assume it has been now?

11 A. Actually, I'm not sure we ever got a bill for that.

12 Q. "Legal Expenses" 782,508; what is that?

13 A. You know, so, you know, you asked me what our total legal
14 expense was at the time, you know, this was constructed
15 that was a legal bill that was about Penland and I'm sure
16 it shows up in there somewhere.

17 Q. Okay, "Repair Expense 17 Ford Escape," what happened with
18 that?

19 A. I want to say that there was a, you know, there was a
20 bumper that needed to be replaced; if my recollection is
21 correct.

22 Q. I saw some smudges on a bumper and it might've been a
23 silver Ford Escape, I don't know, I'm not gonna go look
24 for it. Do you know when or how that happened?

25 A. I believe the buyer agreed to make the repair themselves

1 and we really were just paying for parts; my recollection.

2 Q. No, when did the ---

3 A. Oh, ---

4 Q. --- when did the Ford Escape get damaged?

5 A. Prior to us picking it up.

6 Q. "Fees from America's AA \$322.10," what is that?

7 A. That was probably inspection and that may have some
8 cleaning in it.

9 Q. Okay.

10 A. But they do a condition report; that kind of stuff.

11 Q. Then you've got some additional legal expenses here, is
12 that all Parker Poe?

13 A. Yes.

14 Q. Okay. What is "DF Operational Expense" of \$21,934.49?

15 A. I mean, so, we have to, you know, it's our, probably
16 peoples time and mileage and, you know, go to auction,
17 rent the cars, so, it's probably, it's our, I would say
18 it's, you know, and again, there's a spreadsheet that
19 details that, but there, you know, it's our direct
20 expenses, or to include personnel expenses.

21 Q. Okay. Why are there two columns, two different columns on
22 the Hyundai Sonata, one for 1,435 and one for 10,294?

23 A. I'm not entirely sure, but maybe we, you know, received
24 11,730; I'm not entirely sure, quite frankly, it's been a
25 while since I constructed this.

1 Q. Okay, same question for the Kia Sorrento, why are there
2 two different columns?

3 A. I'm not entirely sure, but the net sales price would be
4 the net sales price, it's where we applied the cash, and
5 again, I don't know why I chose to do that.

6 Q. And then Hyundai Elantra, so, which is way over in another
7 column for some reason on mine. So, I guess my question
8 is, down here ---

9 A. Um-hum.

10 Q. --- "Net Sales Price," what comes out of the Net?

11 A. I mean, that would, I imagine that's just the auction
12 fees, so, - - I'll stop there; I believe it to be just
13 auction fees.

14 Q. Doesn't include repairs, cleaning, towing, none of those
15 things?

16 A. No, I don't believe so.

17 Q. All right, so, without some of this other stuff, Fees and
18 that kind of thing, on your 91,754.28 payment, you
19 recouped \$74,115.25; is that right?

20 A. Um-hum, that would, you know - - sure. I believe we sold
21 the cars for \$74,115.25 directly related to the vehicles.

22 Q. Okay, now, the letter back at Exhibit 37, I believe, says,
23 "To date DFH has incurred out-of-pocket costs and expenses
24 (towing, storage, transportation, repair, etc.)" of
25 \$24,566.33; you see that?

1 A. Yep.

2 Q. Where is that?

3 A. I have to imagine if we add some of these numbers up we'd

4 come to that.

5 Q. Well, ---

6 A. But ---

7 Q. --- if you keep reading it, it then says, "Operational

8 Expenses," which we just talked about of 21,934.49; ---

9 A. Um-hum.

10 Q. --- see that? Right in the middle ---

11 A. I do.

12 Q. --- "DF operational expense," so we got that, and then

13 "legal fees and expenses" of \$20,930.50. And so, I assume

14 if you add up the three different legal expenses, 94, that

15 comes up to that number 4, so, you've got 30, March 31st,

16 February 28th, January 31st and December 28th; right?

17 A. That's what it says, yeah.

18 Q. I didn't add ---

19 A. I would ---

20 Q. --- them up but my guess is ---

21 A. Yeah.

22 Q. --- that's it's very close ---

23 A. No, I would - - yeah.

24 Q. --- to that number.

25 A. I, you know, all, you know, I would say all the numbers on

1 this document on the letter are coming off of this
2 spreadsheet.

3 Q. Well, except for where does the \$24,566.33 come from?

4 A. Shall we add and ---

5 Q. Sure.

6 A. So, I think ---

7 Q. Don't think you're gonna find it.

8 A. --- you know, so, so the, you know, the 21,934.49 is
9 pretty, is its own block there; right?

10 Q. Uh-huh.

11 A. So, is it okay if I use a calculator on this phone?

12 Q. Yeah.

13 A. Okay. So, if I add up everything above 10,763.73 I get
14 25,187.00. Let's see, "legal expense," I wonder if I
15 should take out - - so, again, I, you know, that - - does
16 he break out the legal fees?

17 Q. He does. Legal fees is one ---

18 A. Okay, all right, so, maybe I'm double counting. Let me
19 back out legal fees here because I came with a number
20 that's higher than what - - so, let me do it this way:
21 That 24,566 may not be, I'm not sure how we tallied that,
22 I guess, I don't recall now, but I do think the bottom
23 line number, which is the 78,787.30 is what we believe to
24 be the balanced owed on April 1st, 2021.

25 Q. All right, do you have backups for all these fees and

1 documents?

2 A. I would say that, I mean, you know, handy, you know, the
3 DF Operational Expense and Excel spreadsheet that I
4 calculated, you know, again, based on mileage, based on
5 people's time. I don't think we retained in essence the
6 auction paperwork but I can see if I can't go find it.

7 Q. And the rest of these I assume you'll have bills for
8 Repair Expense, Fees from America, Alpha Towing, Sequoia
9 Motors, Sequoia Motors, and I assume you have bills for
10 those; right?

11 A. I mean, we either have bills or we may have credit, like
12 at Sequoia Motors, I probably just credited to his, to an
13 invoice of his.

14 Q. Okay, well, for the backups that you have, please get
15 those to me.

16 A. Okay, sure.

17 Q. All right, so, there was an outstanding balance of about
18 \$91,000 and you sold the cars net for \$74,000; ---

19 A. Um-hum.

20 Q. --- is that right?

21 A. Yep.

22 Q. And there was the difference between the principal and the
23 amount you collected of about \$17,000; is that right?

24 A. Um-hum.

25 Q. Is that yes?

1 A. Sorry, yes, that's a, I think that's a fair calculation.

2 Q. Okay, how much of your attorney's fees have you paid to
3 collect that \$17,000 difference?

4 A. I'm not sure I can answer that. I mean, I've paid
5 attorney's fees related to the lawsuit and defending our
6 contract.

7 Q. Oh, that's right, there's prosecuting to collect amounts
8 you're due, and then there's defending, which is to defend
9 allegations of inappropriate conduct in a lawsuit. And
10 so, my question to you is can you break down the amount of
11 attorney's fees you've paid to prosecute your lawsuit to
12 try to attempt this 17, to get the money back that DFH
13 believes its owed versus the amount you've spent defending
14 the lawsuit?

15 A. You know, I'm not sure I understand the difference, ---

16 Q. Fair enough.

17 A. --- and I certainly am not sure I can at this point parse
18 for you my legal bills.

19 Q. Other than what's on this document set forth in what
20 you're attempting to collect, does DFH have any other
21 damages in its Counterclaim?

22 A. I guess, you know, this has obviously continued to expand
23 with default interest, so, that number would be bigger
24 today based on the 400 and some odd days of default
25 interest due at the per diem rate of 78.79.

1 Q. Okay, anything else?

2 A. No, sir.

3 Q. Okay. So, it's a \$70,000 shortfall of what was owed on
4 October 8th and what you ultimately sold the cars for, and
5 a lot of other fees; right? And then \$150,000 legal bill
6 is your damages; right?

7 A. So, I would say that I'm reaching my, and I'm happy to
8 give this to you if you want it, you know, the, that
9 balance today based on the per diem rate is now
10 \$115,030.70.

11 Q. What is, what, which one?

12 A. You know, that 78,787.30 including the per diem rate of
13 78.79 for the last 400 and I want to say 60 days, adds to,
14 you know, increases that \$78,000 balance to 115.

15 Q. So, we know exactly what it is as of sitting here today,
16 it's 115,000 plus 150,000 in legal fees?

17 A. Sure.

18 Q. So, around \$165,000 that you'll ask a jury to award you
19 for a \$17,000 shortfall?

20 A. I'm not the one who filed the lawsuit; \$265,000 dollars,
21 actually.

22 Q. Just answer the question. You're going to ask a jury to
23 award you \$265,000 on a \$17,000 shortfall after you
24 repossessed the collateral?

25 BY MS. BRIDGES:

1 Object to form.

2 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

3 Q. Is that right?

4 A. That is absolutely correct.

5 Q. All right, I don't want to, I mean, we just, I don't know
6 how long everybody wants to stay here tonight necessarily,
7 so, I have got all of these texts. Let's talk about what
8 you've done to collect text between yourself, Steve, Tim,
9 anybody at Dealer Financial, John Bethea.

10 A. Sure.

11 Q. Do you believe you have gone and gotten all of the texts
12 between yourself and anyone at Dealer Financial from let's
13 say January 2019 through let's say October 10th, 2020?

14 A. Here's what I'll say we did: We purchased a piece of
15 software that we understand, you know, downloads all the
16 text messages that somebody has stored on their phones and
17 then parched through those to produce the ones that were
18 relevant to the lawsuit.

19 Q. What's your phone number, cellphone number?

20 A. 704-516-8988.

21 Q. What carrier do you use?

22 A. Verizon.

23 Q. Did you have that phone number in 2019, 2020?

24 A. Yes.

25 Q. What's Steve's phone number that he texts from?

1 A. I'm gonna look at this; okay?

2 Q. Yeah.

3 A. Okay.

4 Q. I'm gonna ask you for John and I'm gonna ask you for Tim

5 also.

6 A. For Tim Yarger?

7 Q. Yeah.

8 A. I think we already gave - - that's 864-595-5944 is the one

9 that I believe I have. Steve, 864-884-5735.

10 Q. 864?

11 A. Yes, sir.

12 Q. 884-5735?

13 A. 884-5735.

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

15 Got that, ---

16 BY THE COURT REPORTER:

17 I did.

18 MR. IMHOFF CONTINUES:

19 --- 884-5735?

20 BY THE COURT REPORTER:

21 I got it.

22 BY THE WITNESS:

23 Yeah, no, no, yeah, and I'm not trying to be cute I just,

24 you know ---

25 BY THE COURT REPORTER:

1 I got it.

2 BY THE WITNESS:

3 Okay.

4 BY THE COURT REPORTER:

5 And 595-5944 for Tim?

6 BY THE WITNESS:

7 59, yes, I believe that's what I wrote down.

8 BY THE COURT REPORTER:

9 Okay.

10 BY THE WITNESS:

11 Let me see if I get it. Sometimes I can't read my own
12 handwriting, hang on. I have Tim's mobile phone as
13 864-569-5944.

14 BY THE COURT REPORTER:

15 569-5944.

16 BY THE WITNESS:

17 Sorry, yeah.

18 BY THE COURT REPORTER:

19 No, that's okay.

20 (Off the record at approximately 5:20 p.m.; on the record at
21 approximately 5:20 p.m.)

22 (DOCUMENT MARKED AS PLAINTIFFS' EXHIBIT NUMBER 39; ATTACHED TO
23 DEPOSITION)

24 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

25 Q. I hand you Exhibit Number 39, and just verify what that is

1 for us, please.

2 A. I don't know whether this is a text or an email, but, and
3 I'm not sure, I mean, "Mr. j auto sales and spa" doesn't
4 show up in my address book, but I imagine this is the
5 email that we discussed previously to JD Motors, JD.

6 Q. Yeah, it looks identical to the email.

7 A. Yeah.

8 Q. It looks like maybe someone took a screen shot of the
9 email on a phone.

10 A. You know, ---

11 Q. It actually has "inboxes" at the top.

12 A. Right. So, you know, again, I'm assuming - - this appears
13 to be identical to that email but I don't have a Mr. J
14 Auto Sales and Spa in my address book. Did you previously
15 hand me the email that I ---

16 Q. Sent to JD?

17 A. Yeah.

18 BY THE COURT REPORTER:

19 Yeah.

20 BY THE WITNESS:

21 And the time stamp will tell us.

22 BY THE COURT REPORTER:

23 It is ---

24 BY MR. IMHOFF:

25 Yeah, it's, I'll tell you, ---

1 BY THE COURT REPORTER:

2 35?

3 MR. IMHOFF CONTINUES:

4 30 ---

5 BY THE COURT REPORTER:

6 Exhibit 35.

7 MR. IMHOFF CONTINUES:

8 --- 35.

9 BY THE WITNESS:

10 35?

11 BY THE COURT REPORTER:

12 Yeah.

13 WITNESS CONTINUES:

14 A. All right, I must be on a - - I mean, if you look at the
15 time stamp at 4:42 p.m., you know, I'm assuming, I don't -
16 - did we produce this?

17 Q. What does it say on the bottom right?

18 A. It says us, yeah, so, anyway, I'm not sure where it came
19 from.

20 Q. Is it the same person, JD?

21 A. Well, yeah, so, I, you know, again, I don't have a Mr. J
22 Auto Sales and Spa, but if you look at the time and the
23 content it sure appears to be exactly the same.

24 Q. Did you email someone else?

25 A. No.

1 Q. Can I see the document back please?

2 A. You want 39 or 35?

3 Q. Yeah, "To Mr. j auto sales and spa, 4:42 p.m." And you
4 say you don't know who Mr. J Auto Sales and Spas is?

5 A. Well, what I'll say is I don't have a Mr. J Auto Sales and
6 Spa in my address book anywhere, but, you know, don't take
7 this wrong, Mr. J and JD ---

8 Q. You have the same phone?

9 A. That would not have - - I mean, do I have the same phone?

10 Q. Yeah.

11 A. I don't know if I physically have the, I doubt I have the
12 same phone from when all this took place.

13 Q. Will you try to start an email and see if you can put in
14 Mr. J ---

15 A. Sure, ---

16 Q. --- Auto Sales ---

17 A. --- yeah.

18 Q. --- see what happens?

19 A. You want an email?

20 Q. Well, I think it's an email.

21 A. Yeah, no, no, no, I got ya, I'm just - - oh, let me, so,
22 start a Mr. J ---

23 Q. Anything "Auto" popping up?

24 A. --- Auto, I mean, you know, so, no, it doesn't auto
25 populate, what I get is, here, I am happy to hand you my

1 phone but it disappears. I get Jake Wilson at mrpjakew, I
2 get John Marshall who is deceased,

3 ---

4 Q. I don't need to hear all the stuff that's on there, I
5 just, does it come up Mr. J Auto Sales ---

6 A. No.

7 Q. --- and Spas?

8 A. No.

9 Q. So, bottom line is we don't, it looks like an email from
10 you on your phone but we don't know who it's to or what,
11 where that name came from; right?

12 A. I do not.

13 Q. Who's Dale Green?

14 A. Dale Green is another independent sales contractor.

15 Q. Is he one of the guys helping you with cars?

16 A. I'm sure he was involved, yes.

17 Q. Have you ever told anyone at any time anything derogatory
18 about Billy Penland or Penland Automotive?

19 A. Not that I'm aware of, no, not that I recall.

20 Q. Can you file a UCC-1 on the company's property without
21 having the ownership sign off?

22 A. I mean, we file a UCC-1 based on somebody signing our Loan
23 and Security Agreement.

24 Q. Right.

25 A. So, I, you know, yeah, I guess you can probably file a

1 UCC-1 for anything at any time, the question is whether it
2 has, whether it's valid.

3 Q. Well, do you have a policy at Dealer Financial who has to
4 sign a Loan and Security Agreement to allow you to assert
5 UCC-1?

6 A. Sure. So, it would be the people or the parties to the
7 Loan, and we obviously try and establish that as, you
8 know, the principals, anybody having an ownership
9 interest; that type of thing.

10 Q. Anybody having an ownership interest?

11 A. Yes.

12 Q. That was my question.

13 A. Okay.

14 Q. If there are more than one owner, do you have to have both
15 of them sign the Loan and Security Agreement?

16 A. We generally do, yeah.

17 Q. That's your policy?

18 A. I mean, it's our practice.

19 Q. Okay, where did you get or why do you have that practice
20 or that policy?

21 A. We're a lender, you know, we try and make the net as wide
22 as responsibly possible.

23 Q. Can you foreclose on a UCC-1 if you don't have all of the
24 owner's signatures on your Loan and Security Agreement?

25 A. I don't know, I'm not sure.

1 Q. Well, I'm guess I'm asking where did that policy or
2 practice come from that you get everybody's, every owner's
3 signature?

4 A. I think that's just good lending practice. You know, we
5 try and get everybody who's involved in the business
6 within ownership interest to sign up.

7 Q. Do you believe there's a good faith provision in every
8 contract?

9 BY MS. BRIDGES:

10 Object to form.

11 WITNESS ANSWERS:

12 A. I don't make legal assessments, truthfully.

13 Q. All right, well, in your practice do you believe that
14 there's a good faith provision in the contracts you sign
15 with the customers?

16 BY MS. BRIDGES:

17 Object to form.

18 WITNESS ANSWERS:

19 A. What is a good faith, I'm not trying to be cute, I don't
20 understand what a good faith provision may have, what
21 legal, what legally that may mean?

22 Q. Do you exercise good faith in the dealings with your
23 customers?

24 BY MS. BRIDGES:

25 Object to form.

1 WITNESS ANSWERS:

2 A. We attempt to, certainly.

3 Q. I want you to put Exhibit Number 2 and Exhibit Number 36
4 in front of you, please.

5 A. Two and 36, okay. Okay.

6 Q. Does this contract, the Loan and Security Agreement dated
7 November 21st, 2016, have a good faith provision in it?

8 A. I don't know, I mean, I guess I've never - - I've
9 certainly read the document but, so, I'll answer with I
10 don't know. I'm happy to read the whole thing and I'm not
11 sure what exactly a good faith whatever means.

12 Q. Does it require Dealer Financial Holdings to exercise good
13 faith before it declares default and repossesses
14 collateral?

15 BY MS. BRIDGES:

16 Object to form.

17 WITNESS ANSWERS:

18 A. I believe in the - - it states, you know, there are
19 several places where the borrower expressly waves, you
20 know, defenses and in our reasonable assertion if we feel
21 insecure we can take action.

22 Q. Can you tell me where that is?

23 A. Sure. I imagine it's in the Default Section. I mean, so,
24 there are - - anyway, "Events of Default and Acceleration
25 Section."

1 Q. Can you tell me where you are?

2 A. Sure, Page 9. You know, so, Subparagraph (b), "Any
3 warranty or representation made by any Grantor proving to
4 have been false or misleading," you know, we certainly
5 viewed Tim's claim with the reopening as, you know, the
6 application was to Billy as 100 percent, and in material
7 change in management or ownership, DFH in good faith
8 deemed itself to be insecure. So, I'm not sure whether
9 that answers your question, but those were the provisions
10 of the document that I relied on to determine there was a
11 default.

12 Q. You're not a lawyer; right?

13 A. I am not.

14 Q. I'm gonna find out if you counseled with a lawyer before
15 the events of October, the night of October 8th but, what
16 are your good faith reasons for deeming itself insecure?

17 A. I believe a phone call from an attorney telling me I don't
18 have a valid contract would be the picture next to the
19 definition in whatever legal book you don't care to open
20 up.

21 Q. Well, it requires that you exercise good faith; right?

22 A. Sure.

23 Q. Your own contract that you and your lawyers wrote; right?

24 So, what does that mean to you?

25 BY MS. BRIDGES:

1 Object to form.

2 WITNESS ANSWERS:

3 A. I believe I was insecure, I'll answer the question that
4 way, and I believe I had, I made a good faith judgement.
5 Again, an attorney calls me and tells me I don't have a
6 valid contract when I've got \$100,000 sitting on
7 somebody's lot, I'm not sure what else I need to feel
8 insecure, and I will tell you I felt insecure.

9 Q. How long was that conversation?

10 A. A few minutes. I mean, you know, it was not an hour but
11 it wasn't two minutes, so, I'm, you know, I don't recall
12 specifically but it was a reasonable period of time.

13 Q. Will you agree with me that I did not call you and say you
14 don't have a contract?

15 BY MS. BRIDGES:

16 Object to form.

17 WITNESS ANSWERS:

18 A. I wouldn't agree with that. I believe you called and one
19 of your opening salvos was, "You know you don't have a
20 valid contract with Billy Penland," or something very
21 close to that effect.

22 Q. Wasn't the opening, Mr. Haight, actually, "Billy wants to
23 talk to you about the terms of the relationship between
24 DFH and Penland Automotive," and your response was, "Why,
25 what, we have a 2016 Contract"?

1 A. I don't believe that to be the opening interaction but ---

2 BY MS. BRIDGES:

3 Object to form.

4 WITNESS CONTINUES:

5 A. --- it, you know.

6 Q. Wasn't the beginning of the conversation, "We need to talk
7 about what the terms of the relationship are between DFH
8 and Penland Automotive"?

9 A. I certainly recall you being surprised that I hadn't
10 spoken with Billy Penland about this, but very early in
11 the conversation I absolutely recall you stating, "You
12 know you don't have a valid contract."

13 Q. Okay, but before that, wasn't the conversation about "What
14 are the terms, conditions and obligations between the two
15 companies"?

16 BY MS. BRIDGES:

17 Object to form.

18 WITNESS ANSWERS:

19 A. I'm not sure we had a detailed conversation, and I guess
20 I'll answer this: When somebody points a gun in your face
21 when you're getting robbed that's what you remember, I
22 recall from our conversation that, "You don't have a valid
23 contract."

24 Q. Okay, do you - - are there other parts of the conversation
25 maybe you don't remember?

1 A. I think I materially recall the substance of the
2 conversation, I may not remember every word.

3 Q. Okay.

4 A. But I recall asking you if I could call Billy Penland, I
5 recall ---

6 Q. And I said yes; right?

7 A. You did.

8 Q. Okay.

9 A. Yeah, I'm not - - our conversation wasn't necessarily
10 contentious.

11 Q. Do you dis - - our conversation, yours and mine?

12 A. I don't believe it was overly contentious.

13 Q. Okay. Did you believe that Billy Penland was at the
14 auction on October 8th?

15 A. I mean, don't take this wrong, I have no reason to believe
16 or disbelieve.

17 Q. Let me ask you this way: If an attorney calls you and
18 says, "My client's having a disagreement with your
19 company, we need to talk through this, what are the
20 contracts, what are the agreements, what are the
21 obligations" okay, what's your response to that ---

22 BY MS. BRIDGES:

23 Object to form.

24 DIRECT EXAMINATION CONTINUES BY MR. IMHOFF:

25 Q. --- immediately to call yourself insecure and collect the

1 collateral?

2 BY MS. BRIDGES:

3 Object to form.

4 WITNESS ANSWERS:

5 A. If a lawyer would've called me and had that conversation,
6 I might have behaved differently, but that's not the
7 conversation I recall.

8 Q. Let me ask it a different way: What would the purpose of
9 my call being just to tell you that in our opinion you
10 didn't have a valid contract, what would the purpose of
11 that be, Mr. Haight, and you're under oath here?

12 A. I understand. I don't know what your purpose was.

13 BY MS. BRIDGES:

14 Object to form.

15 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

16 Q. As you sit here today under oath, you have no idea why I
17 called to tell you simply that you didn't have a contract
18 with Penland Automotive?

19 BY MS. BRIDGES:

20 Object to form.

21 WITNESS ANSWERS:

22 A. I mean, you're asking me to speculate on your mindset and
23 I'm not ---

24 Q. I'm not saying ---

25 A. --- trying to be cute, I just ---

1 Q. Well, you are because I'm not asking you to speculate, I'm
2 asking you to tell the truth. Isn't the most reasonable
3 response to why I would call and talk to you about the
4 relationship between your company and Penland Automotive
5 is because, as I said during that conversation, it's
6 possible that you don't have a valid contract and you all
7 need to figure out what the terms are in the contract?

8 BY MS. BRIDGES:

9 Object to form.

10 WITNESS ANSWERS:

11 A. And don't you recall me saying, "You know, the customer
12 may not always be right but they're always the customer.
13 Do you mind if I call Billy Penland"?

14 Q. And I said yes; right?

15 A. Right, so, I mean, ---

16 Q. What I'm trying to get at, isn't it true that the basis of
17 the call was not to threaten you that there wasn't a
18 contract, but that you needed to know that my client
19 wanted a new contract and a concrete understanding in
20 writing of what the new terms are, as I've shown you by
21 all the emails today that they did not understand what you
22 say you and Tim negotiated. Wasn't that really the basis
23 of my phone call?

24 BY MS. BRIDGES:

25 Object to form.

1 WITNESS ANSWERS:

2 A. I believe, again, you may have, you may regret the words
3 you used but the inelegant statement of, "You know you
4 don't have a valid contract" resonates and everything goes
5 from there. And your surprise that I had never spoken to
6 Billy Penland about it also resonates with me. So, no, I
7 believe it was a tactic to, again, create fear and, you
8 know, certainly potentially position for negotiation but,
9 you know, it was absolutely a threat.

10 Q. Okay, it was a tactic to create fear and negotiate what?

11 BY MS. BRIDGES:

12 Object to form.

13 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

14 Q. With a company who was not in default, didn't owe you any
15 money, and had paid off three cars two days before?

16 BY MS. BRIDGES:

17 Object to form.

18 WITNESS ANSWERS:

19 A. Except they were in default. Just because we hadn't acted
20 on the default doesn't mean there wasn't a default.

21 Q. Okay, it was a ploy and a threat for what with a company
22 that had paid off three cars two days before and did not
23 owe you any money?

24 BY MS. BRIDGES:

25 Object to form.

1 WITNESS ANSWERS:

2 A. That's not true, they owed us \$95,000, give or take.

3 Q. Okay, I'll redo it again. All right, how is it a threat,
4 an attempt to negotiate with Dealer Financial, for a
5 company who had paid off three cars two days before and
6 wasn't presently in arrears or late on any of its
7 payments?

8 BY MS. BRIDGES:

9 Object to form.

10 WITNESS ANSWERS:

11 A. I don't know what your mindset was or what your
12 conversations were, I'm just telling you my reaction to
13 your statement.

14 Q. I understand that. I'm asking you to exercise some common
15 sense and figure out what the angle, the threat and the
16 negotiation could be from a client who's paying you.

17 BY MS. BRIDGES:

18 Object to form.

19 WITNESS ANSWERS:

20 A. You know, again, you're asking me to speculate about a man
21 I spoke with up to the time you and I talked twice; I'm, I
22 can't do that.

23 Q. Yeah, well, you can and you did, actually, because what
24 you did within a couple of hours is you repossessed all
25 the collateral, so, you did, in fact, read into what I

1 said and speculated and what your response is, and that's
2 why we're talking about it because it has good faith in
3 here; right? What we're talking about is what in your
4 mind was the threat in negotiation that gave you the
5 thought that you were insecure and you were operating to
6 repossess collateral in good faith?

7 BY MS. BRIDGES:

8 Object to form.

9 WITNESS ANSWERS:

10 A. So, again, I use the term secure collateral, but I, again,
11 I go back to I believe the definition of insecure is being
12 told by an attorney that you don't have a valid contract.

13 Q. But you read more into it, remember, you just testified to
14 that? Do you want her to read it back?

15 A. What else did I read into it?

16 Q. You said that it was threat and a negotiating tactic;
17 right?

18 BY MS. BRIDGES:

19 Object to form.

20 WITNESS ANSWERS:

21 A. You know, I believe - - let me put it this way: I believe
22 it was, I took it as a threat. It certainly wasn't bodily
23 harm, but this was not a gentle, "Hey, my client has
24 concerns about the contract and we need to sit down and
25 talk about it," it was, "You don't have a valid contract;"

1 that is the, you know, - - I bet if we lined up 10 people
2 and asked them "Hey, do you think that's a threatening
3 statement," I'm betting nine of them would say yes.

4 Q. We're gonna line up 12.

5 A. Great.

6 Q. But that doesn't answer my question; okay?

7 A. I'll bet on the 12. I mean, you're the one, you know, ---

8 Q. So, that doesn't answer my question.

9 A. I'm sorry, please.

10 Q. You testified that you read into it a threat and an
11 attempt as a bargaining position to negotiate; right?

12 A. Sure.

13 BY MS. BRIDGES:

14 Object to form.

15 WITNESS ANSWERS:

16 A. I don't know if it's a - - I read, and I'm not - - I read
17 into it as a threat later, you know, I'm certain you
18 wanted to negotiate. So, but it was, it was in a
19 threatening salvo and I took it as such.

20 Q. Okay. And what in your opinion at that time on October
21 8th, 2020 was the negotiating that we were going to do?

22 A. I don't know ---

23 BY MS. BRIDGES:

24 Object to form.

25 WITNESS CONTINUES:

1 A. --- That's why I wanted to call your client.

2 Q. Did I ask for anything?

3 BY MS. BRIDGES:

4 Object to form.

5 WITNESS ANSWERS:

6 A. Uh, (whispers) did you ask for anything? I don't think
7 so.

8 Q. Did I demand anything?

9 BY MS. BRIDGES:

10 Object to form.

11 WITNESS ANSWERS:

12 A. Not that I recall.

13 Q. Did I present you with different fees, obligations,
14 anything?

15 BY MS. BRIDGES:

16 Object to form.

17 WITNESS ANSWERS:

18 A. Maybe you should have.

19 Q. See, that's a smartass answer that's gonna keep us here
20 all night. Did I present you ---

21 A. I gotta all the time you need.

22 Q. --- with any fees, alternative, payment, curtailments,
23 anything else?

24 A. No, ---

25 BY MS. BRIDGES:

1 Object to form.

2 WITNESS CONTINUES:

3 A. --- you made a threatening statement.

4 Q. Okay, all right. So, again, you took it as a threatening
5 statement, you've testified to that multiple times that I
6 was attempting to negotiate something. Did I attempt to
7 negotiate anything with you?

8 BY MS. BRIDGES:

9 Object to form.

10 WITNESS ANSWERS:

11 A. No, all you did, which it may have been better, all's you
12 did was state that I didn't have a valid contract.

13 Q. And I gave you access to my client immediately and
14 happily; right?

15 A. Well, first you stated surprise that Billy and I hadn't
16 spoken about this. It was I pushed back and said, "No, I
17 do have a valid contract." You know, we had some other
18 conversation and, you know, after you expressed surprise,
19 that's when I said, "Hey, the customer's not always right
20 but they're always the customer," and I tried to alleviate
21 that surprise by reaching out to your client.

22 Q. I gave you access to my client immediately to try to
23 discuss it; right?

24 BY MS. BRIDGES:

25 Object to form.

1 WITNESS ANSWERS:

2 A. That's right.

3 Q. Right, and I never demanded anything or threatened
4 anything; correct?

5 BY MS. BRIDGES:

6 Object to form.

7 WITNESS ANSWERS:

8 A. I believe you threatened, I believe your statement was a
9 threat.

10 Q. Did I ever say anything, "If you don't do this we are
11 going to do that"?

12 BY MS. BRIDGES:

13 Object to form.

14 WITNESS ANSWERS:

15 A. You did not.

16 Q. Matter of fact, I didn't say anything like that, like
17 we're not gonna pay you, we can just take the cars and run
18 away, we're gonna make you change because we've got you;
19 nothing like that; right?

20 BY MS. BRIDGES:

21 Object to form.

22 WITNESS ANSWERS:

23 A. Not that I recall.

24 Q. It was simply, "You need to talk to Billy Penland and
25 figure out what your contract was because, in our opinion,

1 y'all don't have a valid contract;" right?

2 BY MS. BRIDGES:

3 Object to form.

4 WITNESS ANSWERS:

5 A. Your opening statement, none of that was, "You gotta talk
6 to Billy Penland," your opening statement, my recollection
7 was, "You do not have a valid contract" and then you were
8 extremely surprised that Billy Penland and I had not
9 spoken about this.

10 Q. And so, everything else, the threat and negotiating,
11 that's all what you read into that conversation; right?

12 BY MS. BRIDGES:

13 Object to form.

14 WITNESS ANSWERS:

15 A. I'm the only person talking to you, so, yes.

16 Q. Not what I said?

17 A. What you said was threatening.

18 Q. I didn't try to negotiate with you and I didn't threaten
19 you; right?

20 BY MS. BRIDGES:

21 Object to form.

22 WITNESS ANSWERS:

23 A. You - - I took your statement as a threat.

24 Q. That you don't have a contract?

25 A. That's correct.

1 Q. Beyond that, did I threaten to do anything else like take
2 the cars, keep your money, not pay you back; anything like
3 that?

4 BY MS. BRIDGES:

5 Object to form.

6 WITNESS ANSWERS:

7 A. Not that I recall.

8 Q. So, my point again, through all of this, is you read into
9 it that other than me saying, "We don't think you have a
10 valid contract," you read the threat in that your
11 collateral was insecure, I didn't say it; right?

12 BY MS. BRIDGES:

13 Object to form.

14 WITNESS ANSWERS:

15 A. Well, you know, so, there's more to it obviously. We
16 talked, I called Billy, he had to hang up quickly, he
17 didn't call back, I called him, got his voicemail, I
18 called you, got your voicemail, I don't believe you've
19 returned my call to this day nor has Mr. Penland. The
20 entire synopsis goes, "We have to do something."

21 Q. I'm trying to stick with your mindset based on your
22 contract and its requirement that you exercise good faith;
23 okay?

24 A. I think I've been pretty clear about my mindset.

25 Q. Okay, and so, it's been clear that I did not threaten you

1 with any action or theft or removal, I didn't attempt to
2 negotiate with you, the only threat that you've identified
3 during that conversation was my statement that my client
4 does not believe you have a valid contract. So, I
5 understand Emily thinks that this has been asked and
6 answered, I don't think it has, what was the threat and
7 negotiation that I said or did it all come from your head?

8 BY MS. BRIDGES:

9 Object to form.

10 WITNESS ANSWERS:

11 A. Remove the negotiation, the threat, I believe you may
12 assess this, I assumed you wanted to negotiate because you
13 didn't necessarily say that, but you're the one who
14 uttered the words, "You know you don't have a valid
15 contract."

16 Q. All right, let's take a break.

17 (Off the record at approximately 5:46 p.m.; on the record at
18 approximately 6:05 p.m.)

19 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

20 Q. We started talking, I got a little off track, but put 36
21 and 2 in front you, please.

22 A. Okay.

23 Q. In writing your October 8th, 2020 letter, Exhibit Number
24 6(sic), did you look back at the 2016 Exhibit Number 2?

25 A. I may have to get, certainly to get the date, I guess, so,

1 probably.

2 Q. Well, you state, "Change in ownership structure, change in
3 management structure and our good faith belief that our
4 position is insecure without limitations;" right?

5 A. Yes.

6 Q. And those are actually three things that are under Section
7 7 of, "Event of Default; Acceleration;" is that right?

8 A. That's correct.

9 Q. Okay, so, does that help you recollect if you looked back
10 at the contract to help draft this letter?

11 A. You know, not that, we don't, you know, - - so, sure, I
12 likely looked at the contract to get those words, you
13 know, much of the contract is, or excuse me, much of the
14 letter is, you know, it's not standard but it's what we
15 use. We fill in, I fill in the dates and stuff like that,
16 but yes.

17 Q. All right. So, Section 7 is, "Events of Default;
18 Acceleration," and it says, "The occurrence of any of the
19 following events shall be considered an event of default
20 under this Agreement." Section (a) ---

21 A. Yes, sir.

22 Q. --- "Any Grantor fails to perform any of its respective
23 obligations, undertakings, or covenants under this
24 Agreement, including but not limited to, Borrower's
25 failure to make payment of any outstanding liability as

1 and when due under this Agreement or the Terms of the
2 Schedule;" you see that?

3 A. I do.

4 Q. Did I read it correctly?

5 A. I believe so.

6 Q. Okay, was Penland Automotive in default under Section A,
7 in your opinion, on October 8th, 2020?

8 A. Let's put - - so, the answer is no, we agreed to make the
9 commercial concessions, so, I don't believe there were any
10 outstanding invoices.

11 Q. Section (b) "Any warranty or representation made by any
12 Grantor proving to have been false or misleading in any
13 material respect when made for any schedule, certificate,
14 financial statement, report, notice or other writing
15 furnished by such Grantor to DFH proving to have been
16 false or misleading in any material respect when made or
17 delivered."

18 A. At that point no, I would not say that we were aware of
19 any representation made that was false.

20 Q. Okay, so, they weren't in default under 7(b) either; is
21 that right?

22 A. I don't believe so, no.

23 Q. Okay, (c) "Any damage or destruction of a substantial part
24 of the Collateral occurs and appropriate insurance naming
25 DFH as 'Loss Payee' is not in affect;" does it say that?

1 A. It does.

2 Q. Okay. Was Penland Automotive in default under Section
3 (c)?

4 A. I don't believe so. Yeah, you know, I guess I can't go
5 back and say we were named as the "Loss Payee" but I think
6 - - anyway, I, we did not consider them in default or ---

7 Q. On October 8th, 2020?

8 A. Correct.

9 Q. Under ---

10 A. Section (c).

11 Q. --- 7(c)?

12 A. Yeah.

13 Q. In fact, you'd just done an audit not a week before this
14 to look at the Collateral; is that correct?

15 A. Yes.

16 Q. Okay. (d) "Any Grantor becomes insolvent or consents to
17 the appointment of a trustee or receiver or other
18 custodian for such Grantor or any of its property and
19 makes a general assignment for the benefit of creditors,"
20 etcetera, etcetera; I'm not gonna read the whole thing.
21 Do you believe that, or did you believe on October 8th,
22 2020 that Penland Automotive was in default under Section
23 7(d)?

24 A. No.

25 Q. Okay.

1 A. Let me, I do want to clarify one thing. I would say that
2 we certainly considered the fact that there was a claim of
3 ownership change under (b) but I wouldn't, you know, I
4 would not say that we used that to consider the default.

5 Q. Okay. A little bit different question: You did, in fact,
6 use 7(e) "Any material change in the management, ownership
7 or control of Borrower"?

8 A. That's correct.

9 Q. Okay, (f) let me just ask it.

10 A. I don't ---

11 Q. On October, let me ask it, on October 8th, 2020, did you
12 have an opinion that Penland Automotive was in default
13 under Section 7(f)?

14 A. We - - I don't believe they were.

15 Q. Okay, same question, on October 8th, 2020, did you have a
16 suspicion or a good faith belief that Penland was in
17 default under Section 7(g)?

18 A. We did not consider that as being in default.

19 Q. And section 7(i), same question, did you on October 8th
20 believe that you were insecure or that Penland had
21 defaulted under Section 7(i) of this contract?

22 A. So, you threw (h) in there as well, so, ---

23 Q. No, no, no, I didn't mean to; ---

24 A. Okay.

25 Q. --- (h) you've already talked about.

1 A. Got it. No, I do not believe, we did not consider that to
2 be in default.

3 Q. All right, so, is it fair to say then that you used
4 Section 7(e) and (h) to make your determination that you
5 were insecure and should or could repossess the
6 collateral?

7 A. We secured the collateral based on those, yes.

8 Q. And that's what you wrote in your October 8th, 2020
9 letter?

10 A. Yes, sir.

11 Q. All right. All right, Section 8 says, "Rights and
12 Remedies Upon Default"?

13 A. Yes.

14 Q. Correct?

15 A. Yes.

16 Q. Section (a) is, "Demand immediate payment;" is that right?

17 A. That's correct.

18 Q. All right, what you did in your October 8th letter, but it
19 wasn't delivered until after you repossessed the
20 collateral; right?

21 A. That's correct.

22 Q. That also allows you to ask the client, this is still in
23 (a) "At DFH's request and to the extent a Grantor may
24 lawfully do so, Grantor shall assemble, prepare for
25 removal and make available to DFH at a place designated by

1 DFH which is reasonable and convenient for DFH and such
2 Grantor, such items of Collateral as DFH may deem
3 sufficient to cover all of Borrower's Liabilities to DFH;"
4 does it say that?

5 A. It does.

6 Q. Is that another option?

7 A. It does appear that's another option.

8 Q. Okay, did you offer that to Penland to have them provide
9 the cars and collateral to you without sending a tow truck
10 to come get them?

11 A. We did not.

12 Q. And (b) is, "Initiate proceedings to appoint a receiver;"
13 you didn't do that, is that right?

14 A. We did not.

15 Q. Okay, (c) is, "Execute against bonds," did you attempt
16 that?

17 A. As a floor planner, we're not able to execute against
18 bonds in South Carolina.

19 Q. Is there a bond?

20 A. There is, yeah, I believe the State requires the dealer to
21 have a bond, but that's really more about a consumer
22 transaction.

23 Q. Okay, and then (d), "Take control of any funds generated
24 by the Collateral under DFH's name or applicable Grantor's
25 name demand, collect, receipt for, settle, compromise, sue

1 for, repossess, accept returns of, foreclosure or realize
2 upon any Collateral;" is that what it says?

3 A. That's what it says.

4 Q. It says "repossess" in there; doesn't it?

5 A. It does.

6 Q. Is that the section that you used to repossess the
7 collateral based on Section 7's default?

8 A. I imagine so. I'm not sure, you know, I don't think I
9 referred to that portion of the document, but it certainly
10 looks like that would be appropriate.

11 Q. All right, moving down to the next paragraph it says that,
12 "However, each Grantor agrees that ten days' prior written
13 notice of a public sale date or the date after which a
14 prior sale may occur shall be reasonable notice;" do you
15 see that?

16 A. Where are we?

17 Q. So, it's the paragraph above Section 9.

18 A. Got it. I'm missing the - - I mean, I'm working to read
19 it.

20 Q. It's the second, third sentence it starts with "However."

21 A. Ah, thank you. "Each Grantor agrees that ten days' prior
22 written notice of a public sale or the date," sure, I,
23 that's what the con, that's what it says.

24 Q. Okay, did you provide any written notice of the sale of
25 the collateral to Penland Automotive?

1 A. We did.

2 Q. You did?

3 A. Um-hum.

4 Q. How?

5 A. By letter.

6 Q. Each time it was gonna be sold at each auction?

7 A. We, my understanding is we only have to notify him once.

8 Q. Can you mark that for me? So, was it just one letter or

9 multiple letters?

10 A. It was one letter to multiple people, which you took

11 umbrage with.

12 Q. Yeah, I'm sure. Okay, that paragraph further goes on to

13 state that, "Each Grantor further agrees, jointly and

14 severally, to pay reasonable attorneys' fees and

15 collection costs incurred by DFH in enforcing this

16 Agreement after an event of default by Borrower;" you see

17 that?

18 A. I do.

19 Q. Is there a similar provision for attorneys' fees in this

20 contract if my client is to recover against DFH?

21 A. There's not.

22 Q. Why not?

23 A. The lender writes the contract, so, if any, you know, so,

24 it, I don't know why but we haven't put that in.

25 Q. Okay. All right, and this is a contract again that DFH

1 had an attorney write for it; is that right?

2 A. That's correct.

3 Q. And it's a contract that you use a form for all your
4 contracts; is that right?

5 A. That's correct.

6 Q. All right, and are these terms negotiable?

7 A. I'm sure somebody could negotiate but we wouldn't amend
8 that part.

9 Q. What are under, this contract, your customer's remedies if
10 DFH violates the contract or defaults; if any?

11 A. I guess I'm not sure I consider what their remedies are
12 but they can always take their business elsewhere. I
13 don't believe we can default on this contract.

14 Q. Does the customer have any say with DFH in whether or not
15 DFH feels insecure in its position?

16 BY MS. BRIDGES:

17 Object to form.

18 WITNESS ANSWERS:

19 A. I mean, you know, I, I'm sure that the customer can work
20 to make sure we don't feel insecure, but I believe that to
21 be our determination.

22 Q. Ultimately, the sole decider of whether or not DFH feels
23 insecure is up to DFH; is that right?

24 BY MS. BRIDGES:

25 Object to form.

1 WITNESS ANSWERS:

2 A. Yes.

3 Q. And ultimately up to you; is that correct?

4 A. That's correct.

5 BY MS. BRIDGES:

6 Object to form.

7 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

8 Q. Okay. And is there any process or procedure through which

9 the customer can attempt to make DFH more secure, feel

10 more secure once you believe they're in default?

11 BY MS. BRIDGES:

12 Object to form.

13 WITNESS ANSWERS:

14 A. Well, I believe we have conversations with dealers every

15 day about correcting defaults and feeling more secure.

16 So, certainly interaction with the customer is important,

17 but there's no formal process; if that's your question.

18 Q. Okay, well, it's not only important, but it's fair; isn't

19 it?

20 BY MS. BRIDGES:

21 Object to form.

22 WITNESS ANSWERS:

23 A. You know, again, you know, the lender writes the contract

24 and lends the money, but we work to be fair with our

25 customers, yes.

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

2 Did we make the Notice of - - Number 1? Do you have it?

3 My other question is, why don't I have it.

4 BY MS. BRIDGES:

5 I printed it out; I have it as Exhibit 1.

6 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

7 Q. Do you actually have a business procedure in how to go
8 about remedying, dealing with, communicating with
9 customers who may either be, make you feel insecure or in
10 default?

11 BY MS. BRIDGES:

12 Object to form.

13 WITNESS ANSWERS:

14 A. We do not have a written policy.

15 Q. Do you have written policies and procedures for any way
16 you deal with your customers?

17 A. No, other than the contract.

18 Q. Does Dealer Financial Holdings own any assets?

19 A. I mean, we have obviously member equity and cars and we,
20 you know, and a lien on retail installment contracts. I'm
21 not sure whether you consider those to be assets or not.

22 Q. Does it own any property?

23 A. Other than that, no, I don't believe.

24 Q. Does it have any bank accounts?

25 A. Yes.

1 Q. What are the bank accounts for?

2 A. I guess doing business, you know, sending money in, taking
3 money, sending money out, taking money in, holding money.

4 Q. What were the gross profits of Dealer Financial Holdings
5 for the last three years?

6 A. The last three years?

7 Q. Each year.

8 A. You know, I ---

9 Q. '19, '20, '21.

10 A. Sure. So, we've made distributions to members exceeding
11 I'll say, \$2.5 million to be safe in those three years.

12 Q. Each year?

13 A. No.

14 Q. So, divided by a third?

15 A. You know, sure.

16 Q. Do you have Profit and Loss Statements?

17 A. We do.

18 Q. And do you, can you say what the profit was in 2019?

19 A. So, I mean, I could pull it up and tell you but I don't
20 have it off the top of my head. You know Dealer Financial
21 - - so, but we have a Profit and Loss Statement and we
22 file tax returns, yeah.

23 Q. Does the company pay any taxes?

24 A. No, it's a past through entity, so, we pass on our tax
25 liability to our members.

1 Q. Okay, so, at the end of the year the bank accounts are
2 zeroed out and the company makes no profit, it's all sent
3 out in distributions?

4 A. Pretty much.

5 Q. Okay, and so, you distributed over the last three year
6 around \$2.5 million?

7 A. Yes.

8 Q. Okay, and is one of those members that gets a distribution
9 the corporation?

10 A. The corporation is a member as well, Dealer Financial,
11 Inc., but it mostly gets paid a management fee.

12 Q. How much is the management fee?

13 A. The management fee is roughly 33 cents of net, you know,
14 of what we call, you know, net revenue. So, for every
15 dollar that comes in, we put five cents in reserve, we
16 then deduct reasonable expenses, mostly professional fees
17 such as the cost of litigation, and the rest goes to, you
18 know, a bottom line and roughly 96 cents of every dollar
19 taken in is distributed either in a management fee or to
20 members and we get 30, the Dealer Financial, Inc.
21 management fee is 33 cents.

22 Q. See and that doesn't make sense to me because that math
23 doesn't all work for me. So, is revenue gross or is that
24 net profit?

25 A. (No verbal response).

1 Q. Is revenue just the amount of money that comes in, not
2 taking out any expenses, losses or anything else?

3 A. Most of, you know, so, the investment is designed to be
4 simple for our members to understand and to, you know,
5 assess their risks. So, the operating expenses are
6 handled by Dealer Financial, Inc. taking out, you know, or
7 handled by the management fee. What, you know, is
8 presented to our members again is a, you know, dollar and
9 revenue coming in, you know, setting some money aside for
10 reserve, deducting reasonable professional expenses and,
11 you know, the rest goes, you know, one of two ways, either
12 to members or to Dealer Financial, Inc.

13 Q. Let me ask it a little differently. Revenue comes
14 - - what was the revenue in 2021 for Dealer Financial,
15 Inc.?

16 A. \$2,000,000.

17 Q. \$2,000,000, okay. And ---

18 A. Give or take.

19 Q. --- and so, of that \$2,000,000, does Dealer, Inc. get 33
20 cents on each dollar of that?

21 A. The, you know, the very short net, so, again, you know, 96
22 cents goes to distributable income, which is the, roughly
23 96 cents goes to distributable income, and that gets
24 distributed 67 percent to members, 33 percent as a
25 management fee to Dealer Financial, Inc.

1 Q. Perfect, so, using your \$2,000,000 of revenue in 2021
2 okay, so, we would multiply, if you want to do it you can,
3 ---

4 A. Sure.

5 Q. --- .96 times 2,000,000; right?

6 A. You know, yeah, roughly, okay.

7 Q. All right.

8 A. 1.92.

9 Q. 1.92, and then of that 1.92, approximately 33 percent goes
10 to Corp.; is that right?

11 A. Correct.

12 Q. How much is that?

13 A. Let me do it again because we may be a little high on the
14 distributable income because we distributed a little more
15 than \$1.1 million to members last year.

16 Q. 2021?

17 A. 2021, and so, this comes out with a little bit higher, but
18 again, for the sake of discussion, yeah, because, I mean,
19 we made some Covid concessions and stuff like that, so,
20 anyway. All right, times .33, so, this says \$633,000, the
21 management fee was a little lower than that, but that's a
22 reasonable calculation.

23 Q. An estimate?

24 A. Sure.

25 Q. Okay. And in the corporation, the only shareholders in

1 the corporation are you and Mr. Lanzl; is that right?

2 A. That's correct.

3 Q. Did the corporation make distributions over the last
4 several years?

5 A. It has not, because that's where we pay all our
6 independent contractors, make investments in things like
7 the portal, so, while the Inc. is, you know, profitable,
8 we tend to plow that money back into the business.

9 Q. Okay. I'm obviously getting towards the end so I'm
10 bouncing all over the place.

11 A. Have at it.

12 Q. This will not make any sense to you and it shouldn't and
13 it doesn't, it's not supposed to; okay? Have you ever
14 been a car dealer, a car salesman, a car dealership owner?

15 A. I mean, I'm a license wholesale dealer, but no, I have
16 never operated a car lot.

17 Q. So, have you ever done the day-to-day work to go get the
18 cars, price the cars, clean up the cars, get them sold;
19 that type of thing?

20 A. You know, I would say that I have worked hard to try and
21 understand my customers' business, but no, I have not
22 operated car lot.

23 Q. Do you believe that going to an auction and identifying
24 and bidding on cars and getting them back to your car lot
25 is work?

1 A. Sure.

2 Q. Can everybody do it?

3 A. I mean, you have to be a licensed dealer to get into most
4 auctions.

5 Q. I guess, is it a skill, is it something that you learn or
6 that you work on or that you can perfect over the years?

7 BY MS. BRIDGES:

8 Object to form.

9 BY THE WITNESS:

10 A. I mean, there are good dealers. Like any other open
11 market, there are people who win and lose, so, and there
12 are people who have been in the business many, many years
13 that aren't successful.

14 Q. Well, let's talk about some of the things that a
15 successful dealer in auction would have to know. You'd
16 have to know what a fair price is; right, per car?

17 BY MS. BRIDGES:

18 Object to form.

19 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

20 Q. Generally?

21 A. Sure.

22 Q. Okay, you'd have to know what models are selling what
23 people want?

24 BY MS. BRIDGES:

25 Object to form.

1 WITNESS ANSWERS:

2 A. I'm not sure that always come in to play, but the good
3 ones sure.

4 Q. Right, I'm talking about ---

5 A. You bet.

6 Q. --- generally the knowledge and skills, you have to spend
7 the time there and look at the cars, you generally have to
8 know what you're looking for maintenance-wise, what you're
9 looking for mechanically on some cars that have problems
10 over and over again; you see where I'm going with this?

11 A. Sure ---

12 BY MS. BRIDGES:

13 Object to form.

14 WITNESS CONTINUES:

15 A. --- but not be, I mean, but, so, let me put it this way:
16 A majority of cars are now sold online, without, you know,
17 people having to go to the, Manheim, I believe, says that
18 70 percent of their vehicles were sold to online bidders
19 last year. But again, they still have to bid on the cars.

20

21 Q. My point, and I'll try to shorten it for this late hour,
22 my point is this: Is what Billy Penland did to go to the
23 auction, find those cars, bid on those cars, get them back
24 to his lot, clean them up, get them prepared to sell, is
25 that work and effort?

1 BY MS. BRIDGES:

2 Object to form.

3 WITNESS ANSWERS:

4 A. I mean, I guess you'll have to ask Billy if it's work, but
5 it certainly, you know, I believe it's part of his
6 business.

7 Q. In your opinion?

8 A. Of course.

9 Q. Did he put work and effort into getting those cars back to
10 his that you repossessed?

11 A. I'm betting ---

12 BY MS. BRIDGES:

13 Object to form.

14 WITNESS ANSWERS:

15 A. --- if given a choice, Billy Penland would rather be out
16 hunting or something, but, you, know it is part of his
17 business.

18 Q. You can't answer that question, is it work that took
19 effort in his business to go find, bid, win and get those
20 cars back to his lot and prepare them for sale?

21 BY MS. BRIDGES:

22 Object to form.

23 WITNESS ANSWERS:

24 A. I mean, I don't under, I don't know what Billy Penland's
25 definition of work is, but it certainly is in part of the

1 business. So, some people wouldn't call that work, some
2 people love it, it's a hobby. You know, so, I'm not
3 trying to be vague, but, you know, it is part of the
4 business and, you know, my understanding is, you know,
5 that that's part of what Billy did for his business.

6 Q. Okay. You understand what business you're in right?
7 You're lending to car lots; right?

8 A. Yes, sir.

9 Q. And you understand that they think they're working every
10 day ---

11 A. Oh, sure.

12 Q. --- in what they're doing?

13 A. Yes, sir, ---

14 BY MS. BRIDGES:

15 Object to form.

16 WITNESS CONTINUES:

17 A. --- yeah, yep.

18 Q. Okay, and they spend time and effort and develop
19 experience in what they're doing; right?

20 BY MS. BRIDGES:

21 Object to form.

22 WITNESS ANSWERS:

23 A. There is no lack of confidence in the independent auto
24 dealer space.

25 Q. Right?

1 A. Yep.

2 Q. Okay. I'm just asking so when we go in front of a jury do
3 you think Billy Penland put any effort and work into
4 getting those vehicles on to his lot?

5 A. Sure.

6 BY MS. BRIDGES:

7 Object to form.

8 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

9 Q. That's all I want.

10 A. Okay.

11 Q. I'm not far off, I've just gotta find some stuff. Did
12 Steve Lanzl ever say anything to anyone at the auction
13 that you're aware of?

14 A. Not that I'm aware of, other than me. I take that back, I
15 mean, he did say hello to the one dealer that we ran into
16 coming out the bathroom.

17 Q. Did Dealer Financials' profitability revenue fall with the
18 Covid pandemic?

19 A. You know, we made significant concessions during the first
20 quarter when everything was locked down and basically
21 forgave most fees in a lot of instances if a dealer was
22 shut down we forgave the fees. But quite truthfully, the
23 independent auto dealers have done swimmingly well during
24 Covid, and as a result, we, you know, our sales have gone
25 up.

1 Q. Well, let's break that down. Covid came out in what,
2 February, March 2020?

3 A. Sure.

4 Q. Introduced to the world?

5 A. Yep.

6 Q. Okay, and these conversations that you are having Penland
7 Automotive in the summer June and July of 2020 was right
8 in the thick of the beginnings of Covid; wasn't it?

9 BY MS. BRIDGES:

10 Object to form.

11 WITNESS ANSWERS:

12 A. No, by that time, used car sales were going through the
13 roof. The ---

14 Q. By the summer of 2020?

15 A. Absolutely; they had a banner 2020, 2021, record.

16 Q. And will your Revenue and Profit and Loss Statements
17 support that?

18 A. Sure.

19 BY MS. BRIDGES:

20 Object to form.

21 WITNESS ANSWERS:

22 A. As will the industry's statistics.

23 Q. So, you made concessions in the first quarter of 2020,
24 which is what January through March?

25 A. I mean, we, I, we may have made some concessions into the

1 second, you know, when dealers, when, you know, they were
2 shutting everything, when the government was shutting
3 everything down, you know, we made the assessment that if
4 a government did not allow a dealer to operate, you know,
5 we certainly weren't forgiving capital, but we couldn't
6 make them, we chose not to make them pay fees we waived
7 fees. Shortly thereafter, though, independent auto
8 dealers were deemed essential businesses largely for
9 repairs so people could get to and from work, if they had
10 to go, and with the government doling out a bunch of free
11 money, car sales went through the roof.

12 Q. What quarter?

13 A. Every quarter after, I mean, I'll say every quarter after
14 the first quarter of 2020. You know 2020 was record year
15 for the independent auto dealer and the automotive, you
16 know, new car sales only to be surpassed by 2021.

17 Q. All right. Have you ever, well, I may have asked this
18 before, have you ever failed to close anyone else's
19 agreement, contract, Guaranty in your approximately 10
20 years of business?

21 BY MS. BRIDGES:

22 Object to form.

23 WITNESS ANSWERS:

24 A. So, we certainly have dealers that have been in default
25 for a period of time that we have worked through the

1 default with them.

2 Q. Let me go back. Your testimony is that there's a contract
3 applicable in this case executed in 2016 which was asked
4 to be closed by Karen Willis that you didn't close because
5 Tim Yarger told you not to; right?

6 A. Correct.

7 BY MS. BRIDGES:

8 Object to form.

9 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

10 Q. Have you ever been asked to close another account, or,
11 close and disable or whatever the words were, another
12 account and didn't do it?

13 BY MS. BRIDGES:

14 Object to form.

15 WITNESS ANSWERS:

16 A. I would say that this is a unique situation.

17 Q. Okay, have you ever repossessed someone else's cars based
18 on a contract that had been asked to be closed but a
19 general manager told you not to?

20 BY MS. BRIDGES:

21 Object to form.

22 WITNESS ANSWERS:

23 A. Again, this is a unique situation.

24 Q. Okay, Have you ever been sued for wrongfully repossessing
25 vehicles?

1 A. No.

2 Q. Have you ever been sued for any wrongful acts in the
3 business of Dealer Financial, Incorporated or Dealer
4 Financial Holdings?

5 A. This is the only lawsuit that either company has been
6 served with. Ah, take that back. there was a suit in
7 Florida but was never properly, you know, served or
8 anything like that, but we were aware that somebody,
9 Mid-Atlantic, no, Mid-Atlantic Financing filed suit but we
10 were never served, any of that kind of stuff.

11 Q. All right.

12 A. So, I don't know what that counts, but it was not for
13 repossessing cars.

14 Q. All right. I apologize if I asked you this: Is it your
15 typical policy and procedure to remove the UCC-1 when you
16 are done dealing with a dealership?

17 BY MS. BRIDGES:

18 Object to form.

19 WITNESS ANSWERS:

20 A. We certainly attempt to, you know.

21 Q. Let me ask you, Mr. Haight, what would you accept from a
22 client if they didn't believe that they had a contract, a
23 binding contract or clear terms with you, how would you
24 accept to be contacted with their belief they didn't have
25 a contract?

1 BY MS. BRIDGES:

2 Object to form.

3 WITNESS ANSWERS:

4 A. I mean, you're asking me to speculate and I don't know. I
5 don't believe that any reasonable dealer would have doubt
6 about our terms and conditions.

7 Q. I'll take that answer.

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

9 Do you have the UCC-1S, the stuff that you sent I think on
10 Friday?

11 BY MS. BRIDGES:

12 I don't have it printed.

13 BY MR. IMHOFF:

14 Let me see if I can get it.

15 BY THE WITNESS:

16 You want me to rattle them off for you.

17 BY MR. IMHOFF:

18 I'm scared to look at my emails. That came Friday; is
19 that right?

20 BY MS. BRIDGES:

21 Yes.

22 BY MR. IMHOFF:

23 Supplemental Production.

24 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

25 Q. You said that you do not do the UCC-1s?

1 A. I do not.

2 Q. You know who Elizabeth Fernandez is?

3 A. She is, my understanding, was, may still be, but was a
4 Parker Poe Paralegal.

5 Q. You said that the UCC-1 in place, it says, "All better's"
6 assets and properties, wherever located, including,
7 without limitations, all equipment of any kind or nature,
8 all inventory now owned or hereafter acquired, all
9 additions, accessories, accessions, replacements and
10 proceeds thereof, all documents, accounts, accounts
11 receivable, chattel paper and general tangibles now owned
12 or hereafter required by debtor to gather the proceeds
13 thereof, and all of debtors' books and records relating to
14 the foregoing." Have you ever read that before?

15 A. I have.

16 Q. Okay, do you understand that you have a UCC-1 filed still
17 today that you've renewed on Penland Automotive, LLC and
18 Charles W. Penland, Jr.?

19 A. I imagine maybe even Penland Properties II.

20 Q. Oh, Penland Properties II there at - - forget it.

21 A. Yeah, I mean, so, there was, we filed the UCC at the same
22 time we, you know, we signed the mortgage.

23 Q. So, do you understand that Penland Automotive is no longer
24 on Wade Hampton?

25 A. I've driven down Wade Hampton.

1 Q. So, on behalf of the company, are you making claim to the
2 property, office, paper, cars, cash accounts all at the
3 new Penland Dealership in Laurens?

4 A. I believe we have an all assess claim on Penland
5 Automotive until our floorplan is settled.

6 Q. What about Mr. Penland's personal house?

7 A. I don't know what the courts would say about that but I
8 believe it is part of his Personal Guaranty. Chances are
9 courts don't throw people out of their personal houses
10 though.

11 Q. What about his car?

12 BY MS. BRIDGES:

13 Object to form.

14 WITNESS ANSWERS:

15 A. You know, our - - it is an Unlimited Guaranty.

16 Q. Okay. What about his savings account or his retirement
17 account?

18 BY MS. BRIDGES:

19 Object to form.

20 WITNESS ANSWERS:

21 A. I don't know what the courts would say about retirement
22 accounts but it is an Unlimited Guaranty.

23 Q. Okay, and an unlimited, that means that you have a UCC-1
24 secured right to Mr. Penland, Penland Automotive and
25 Penland II's property, cash, assets everything; right?

1 BY MS. BRIDGES:

2 Object to form.

3 WITNESS ANSWERS:

4 A. I don't believe the, I don't, I don't - - the UCC makes us
5 say secured lender, the Unlimited Guaranty with Mr.

6 Penland gives an unlimited claim on all of his assets.

7 Q. Well, I mean, I'm trying to figure out what you know about
8 the UCC-1 filing that you filed and then renewed. I'm
9 trying to figure out what you think it covers.

10 A. Everything.

11 Q. Everything in all of those companies and personally?

12 A. I mean, so, I would say that I'll put it, my understanding
13 of our UCC is it is an all asset UCC similar to the ones
14 of every other floorplan company. The UCC I believe
15 covers all assets and the Unlimited Guaranty is, you know,
16 is, gives us a right to in all of his assets.

17 Q. Wherever they are Laurens County, bank accounts, car,
18 house, the whole thing?

19 A. Correct.

20 BY MS. BRIDGES:

21 Object to form.

22 WITNESS ANSWERS:

23 A. Whether the courts would grant that or not, you know, is a
24 whole different issue.

25 Q. You mean whether it's legal or not, you're gonna do it?

1 BY MS. BRIDGES:

2 Object to form.

3 WITNESS ANSWERS:

4 A. It's legal and I don't think, courts don't generally throw
5 people out of their primary residence. I, you know, I'm
6 not sure that's a surprise to you.

7 Q. You know what a Damocles sword is?

8 BY MS. BRIDGES:

9 Object to form.

10 WITNESS ANSWERS:

11 A. Isn't that the one hanging over somebody's head?

12 Q. Um-hum. So, you do know.

13 BY MS. BRIDGES:

14 Object to form.

15 DIRECT EXAMINATION RESUMED BY MR. IMHOFF:

16 Q. I'm just making sure I'm getting them all. I'm not gonna
17 hit all of these, but I do want the Statement of Accounts,
18 which we talked about before, especially with how much
19 they owed you and you're claiming in all of those with
20 supporting documentation if you haven't provided it
21 already.

22 A. Okay. What if we don't have it? In other words,

23 ---

24 Q. Tell her. I mean, and if you don't have the auction
25 receipt or the whatever.

1 A. We produced everything we have. So, I would have to go
2 get them and I don't know whether or not - - anyway.

3 Q. Let me ask you this: Was there, on October 8th, was there
4 anything in writing, other than texts between you and
5 Steve that you did, to determine your security, good
6 faith, due diligence; anything like that?

7 BY MS. BRIDGES:

8 Object to form.

9 WITNESS ANSWERS:

10 A. You know, no.

11 Q. Have you been reporting anything from a credit agency?

12 A. No.

13 Q. Do you ever?

14 A. No. I mean, we don't deal with consumers.

15 Q. I asked you about insurance but I think Emily and I can
16 probably work that out. You said DFH is a South Carolina
17 LLC; is that right?

18 A. Yes, sir.

19 Q. It exist in North Carolina, has an office in North
20 Carolina but it's actually a South Carolina LLC?

21 A. It is duly formed in the State South Carolina, registered
22 as a foreign corporation in North Carolina.

23 Q. Okay, it doesn't have any offices in South Carolina?

24 A. No.

25 Q. But does business in South Carolina?

1 A. That's correct.

2 Q. Remember the last car you sold?

3 A. I'd have to look at the spreadsheet.

4 Q. It's on the spreadsheet?

5 A. Yes, sir. On the lefthand side the date of the sale, I
6 believe, is listed.

7 Q. Okay, I think I'm done. You got anything else you want to
8 talk about?

9 A. (No verbal response).

10 Q. I'm finished finally. Answer any questions your attorney
11 has, if she has any.

12 BY MS. BRIDGES:

13 I just have a couple, so, try not to be ---

14 BY MR. IMHOFF:

15 Oh, boy.

16 MS. BRIDGES CONTINUES:

17 Q. --- too lengthy.

18 CROSS-EXAMINATION BY MS. BRIDGES:

19 Q. Okay, all right, ---

20 A. So, now, you're asking me.

21 Q. Just a few questions.

22 A. All right.

23 BY MS. BRIDGES (TO THE COURT REPORTER):

24 If you could hand him back the exhibits.

25 BY THE COURT REPORTER:

1 (Complies).

2 CROSS-EXAMINATION RESUMED BY MS. BRIDGES:

3 Q. All right, throughout your relationship with Penland
4 Automotive, was it your understanding that Mr. Yarger
5 represented Penland Automotive, ---

6 A. Yes.

7 Q. --- that he was an employee there? Did Mr. Penland, Billy
8 Penland ever personally ask you to not leave the 2016
9 financing an arrangement when the pause was taken in 2019?

10 A. No.

11 Q. Did Mr. Billy Penland ever personally ask you to cancel
12 any sort of liens throughout your relationship with
13 Penland Automotive?

14 A. Personally, no, but we - - anyway, no.

15 Q. Okay. Can I have you look at Exhibit 24, which is part of
16 an email sent in August of 2020?

17 A. (Witness complies). Okay.

18 Q. Okay. Also, the same time looking at Exhibit 21.

19 A. (Witness complies). Okay.

20 Q. What was the date of Exhibit 21, which involves the
21 portal?

22 A. It appears to be July 22, 2020.

23 Q. Then on Exhibit 24, the date of this email thread, what
24 was it?

25 A. It appears to be on August 26, 2020.

1 Q. So, that was after the portal access was requested?

2 A. That's correct.

3 Q. And would this have been after this August 26, 2020 email,
4 would this have been after you floored any vehicles?

5 A. I believe so, yeah.

6 Q. Okay.

7 A. If there was an invoice generated, yes.

8 Q. And looking at Exhibit 24 and the top email from Karen
9 Willis, the last sentence it says, "Thanks but we were
10 under the belief that we weren't having fees owed until
11 the car sells. I think Tim is reaching out to John and
12 Dan;" did I read that correctly?

13 A. You did.

14 Q. So, based on this email, was it your understanding that
15 Tim was still involved?

16 A. Well, so, I didn't get this email, but ---

17 Q. In looking at it today?

18 A. Correct, Tim was still involved.

19 BY MR. IMHOFF:

20 Object to form.

21 CROSS-EXAMINATION RESUMED BY MS. BRIDGES:

22 Q. All right, in looking at ---

23 BY THE WITNESS (TO MR. IMHOFF):

24 Now, you're objecting.

25 BY MR. IMHOFF:

1 It's our job.

2 CROSS-EXAMINATION RESUMED BY MS. BRIDGES:

3 Q. Let's flip to Exhibit 29.

4 A. (Witness complies). Okay.

5 Q. This is an email you were showed earlier by Mr. Imhoff.

6 In looking at the top email, the one, two, third sentence
7 reads, "I believe it's an internal problem here, not
8 anything on your end;" did I read that correctly?

9 A. You did.

10 Q. Based on looking at this email, what would be your
11 understanding of the phrase "internal problem"?

12 BY MR. IMHOFF:

13 Object to form.

14 WITNESS ANSWERS:

15 A. I go back to I believe the entire discrepancy, squabble
16 was a Penland Automotive issue, not information coming
17 from Dealer Financial.

18 Q. And looking at Exhibit 39.

19 A. Got it, okay.

20 Q. And ---

21 BY MR. IMHOFF:

22 Exhibit 39?

23 BY THE WITNESS:

24 She - - I'm looking at this.

25 BY THE COURT REPORTER:

1 The last one.

2 CROSS-EXAMINATION RESUMED BY MS. BRIDGES:

3 Q. So, we're looking at Exhibit, let's see Exhibit 35 and 39,
4 so look at those.

5 A. (Witness complies). Okay.

6 Q. So, looking at the bottom half of Exhibit 35, the email
7 from you to what's listed as JD Quincey Javon Davis at, on
8 Thursday October 8th, 2020 at 4:42. In reviewing just
9 that email and Exhibit 39, in your review is that the
10 exact same wording and information?

11 A. I believe it to be to the same.

12 Q. To your knowledge, did you send this information to
13 anybody other, via email or text message to anyone other
14 than Mr. Davis?

15 A. I did not.

16 Q. Okay. Looking at Exhibit 2.

17 A. (Witness complies).

18 Q. Okay, so on Page 10 of Exhibit 2, Section 8, Mr. Imhoff
19 went over some of these provisions with you earlier,
20 specifically subsection (a) at the top.

21 A. Okay.

22 Q. And Mr. Imhoff read some of those sentences. I'd like you
23 to read the two, third sentence under Subsection (a) that
24 begins with "These rights."

25 A. "These rights and remedies include the right to cancel any

1 unfunded advances to enter into any Grantor's premises
2 with or without legal process but without force and to
3 take possession and remove the collateral."

4 Q. And when Mr. Imhoff previously in your deposition was
5 going through this Section of it, he point asked you about
6 this Subsection (a) as well as whether it was your
7 understanding that you could go in and collect, secure the
8 collateral under Subsection (d) specifically. In looking
9 at that sentence, is it your understanding as to whether
10 or not Subsection (a) further gives you that ability?

11 A. Well, and I think that's all negated by the fact that it's
12 my understanding that Billy voluntarily surrendered the
13 cars and the keys to the towing company.

14 Q. But ---

15 BY MR. IMHOFF:

16 Object to form.

17 CROSS-EXAMINATION CONTINUES BY MS. BRIDGES:

18 Q. --- it is but based on the agreement here, Subsection (a),
19 as well as Subsection (d) pursuant to this Agreement, you
20 had the authority to secure the collateral from the
21 premises ---

22 A. That's correct.

23 BY MR. IMHOFF:

24 Object to form.

25 CROSS-EXAMINATION CONTINUES BY MS. BRIDGES:

1 Q. --- assuming you followed the terms of the Agreement?

2 A. I believe I did.

3 Q. I have nothing further.

4 BY THE WITNESS:

5 Is this like a never ending loop?

6 BY MR. IMHOFF:

7 Q. It can be, I mean, I don't think we're gonna do that, but
8 I'm just checking.

9 A. Okay, no worries.

10 Q. Okay, we're done.

11

12 BY THE COURT REPORTER:

13 (Deponent and his attorney chose not to waive reading and
14 signing of the deposition)

15

16 (There being no further questions, the deposition was
17 concluded at approximately 6:56 p.m.)

18

19

20

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24

25

1 CERTIFICATE

2
3 This is to certify that the foregoing deposition of DANIEL
4 B. HAIGHT, was taken by the within court reporter, a Notary
5 Public for the State of South Carolina, duly commissioned and
6 qualified as such, on the 5th day of July 2022 at Parker Poe,
7 Greenville, South Carolina.

8 That said court reporter is not a relative or employee of
9 any of the parties or the attorneys, and further is not
10 of-counsel or attorney for any of the parties to said action
11 and is not in any manner interested in the cause, financial or
12 otherwise.

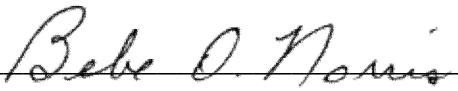
13 That the deponent was duly placed under oath and
14 admonished to speak the whole truth; that the oral deposition
15 was duly taken and transcribed as to the questions propounded
16 and the answers given; that the foregoing 382 pages is a true,
17 accurate and correct record of the testimony given by the
18 deponent together with such changes as said deponent may have
19 made, if any, during the reading over and signing procedure.

20 That the court reporter has retained the original
21 deposition in her possession for the purpose of sealing and
22 filing same with the proper official.

23 That all offered exhibits, stipulations and objections, if
24 any, involved in this cause are duly attached or included
25 herein.

1 In witness whereof, I have set my hand and official seal:

2
3 Date: 07/16/2022

4
5 
6 Bebe O. Norris, Court Reporter
7 Notary Public for South Carolina
8 My Commission Expires 03/02/2028
9



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 III**

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In the Matter Of:

Penland Automotive vs Dealer Financial Holdings

2021-CP-23-00244

TIMOTHY L. YARGER

December 22, 2022



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1078

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

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

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

Plaintiffs,

VS.

Dealer Financial Holdings,)
LLC, Steve Lanzel and Daniel)
Haight,)
Defendants.)

DEPOSITION OF
Timothy L. Yarger

DEPOSITION TAKEN ON:
Friday December 9, 2022
9:05 a.m. - 2:23 p.m.

DEPOSITION TAKEN AT:
PARKER POE ADAMS & BERNSTEIN, LLP
110 East Court Street, Suite 200
Greenville, South Carolina 29601

REPORTED BY: Kaitlin A. Guertin, CVR
JOB #: J8912429

APPEARANCES

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Also present:

Daniel Haight

Charles Penland

Karen Willis

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MONTHS FROM DATE OF CERTIFICATION.

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P R O C E E D I N G S

THE COURT REPORTER: Please raise your right hand.

(The Oath was administered.)

THE WITNESS: I do.

Whereupon, TIMOTHY L. YARGER,
being duly sworn and cautioned to speak the truth, the
whole truth, and nothing but the truth, testifies and
deposed as follows:

EXAMINATION

BY MR. JORDAN:

Q Good morning, Mr. Yarger. My name is Robert Jordan. I'm with the Parker Pope Law Firm. We're here today at our office to take your deposition in a civil lawsuit that's pending here in Greenville County. I think you know this: I represent Dealer Financial, Steve Lanzel, and Dan Haight. Mr. Imhoff represents Penland Automotive and Mr. Penland.

Let me start. Can you just go ahead and state your full name for the record?

A Timothy Lloyd Yarger.

Q Mr. Yarger, have given a deposition before?

A Yeah, I think I have.

Q Okay. Well, this will probably be like -- how many -- do you know how many you've given?

1 A Once.

2 Q Okay. Well, if you have a memory of that this
3 will probably be similar. Let me just go over a couple
4 of ground rules that I hope will make us efficient so
5 that you understand what we're doing.

6 We're here today, we've got a court reporter
7 here taking down everything that we say. So there will
8 be a transcript of everything that is said. That
9 transcript can be used by the lawyers in court at a
10 later date. And the testimony you give today is sworn
11 testimony. It's the same as if you were in court in
12 front of a judgment and a jury; doo you understand that?

13 A I do.

14 Q I'll ask questions first and then Mr. Imhoff
15 will have a chance. And then we may go back and forth,
16 but one thing to keep this efficient, you're doing great
17 job, is when we get into this I need you to verbalize
18 every answer so that she can take down you response.
19 I'm will understand if you nod your head or give me some
20 other signal of what your answer is but I need you to
21 say it; is that fair?

22 A I understand.

23 Q Good. If I ask a question and you don't
24 understand it or you find confusing, will you please ask
25 me to restate it?

1 A Okay.

2 Q If you answer a question, I'm going to assume
3 you understood the question; is that fair?

4 A Fair enough.

5 Q All right. There may be objection from time
6 to time from either lawyer. If that happens, just --
7 you stop speaking, let us finish our objection, and then
8 one of us or the court reporter will direct you if it's
9 okay to answer.

10 This isn't a marathon. So if you need to take
11 a break at any time to go to the restroom, grab water,
12 whatever, just let us know. My general rule is if
13 you'll agree to finish answering the questions on the
14 table, we'll finish that question and then just say --
15 you can say, "Hey, can we have five or 10?" We'll
16 certainly take breaks.

17 A Sounds good.

18 Q Mr. Yarger, let me just go through little
19 background information on you. Can you give us your
20 date of birth?

21 A 9/8/61.

22 Q And where do you reside?

23 A Duncan, South Carolina.

24 Q And have you been in Duncan for a while?

25 A Yes.

1 Q Okay. Quickly, can you give me your education
2 background?

3 A High school and that is it.

4 Q Okay. Where did you grow up?

5 A Ohio.

6 Q And how long have you been in the greater
7 Greenville area?

8 A In South Carolina, in North Carolina, 30
9 years.

10 Q Okay. What about -- I'll ask you about your
11 employment history now. Tell me what you've done as an
12 adult for employment?

13 A Automobiles.

14 Q And what kind of jobs have you had in the auto
15 industry?

16 A General manager, general sales manager,
17 finance directors, sales managers, I've had it all in 40
18 years. I started in 1984 in the auto business.

19 Q How long have you been in -- I call it the
20 Upstate, but greater Greenville area living?

21 A Twenty -- about 25 of those years.

22 Q Okay.

23 A 25-26.

24 Q And for those 25-some-odd years, you've been
25 in the auto industry working at dealerships?

1 A Correct.

2 Q What is your current employment?

3 A I am a partner with a gentleman named Ameen.
4 We have a used car lot.

5 Q What's that lot called?

6 A In Mauldin.

7 Q Mauldin?

8 A It's A & K. And we just purchased a Chevy
9 store in Laurens.

10 Q In Laurens, you said?

11 A Yes.

12 Q Okay. And you'll be a co-owner of those
13 businesses?

14 A One-third of the Chevy store.

15 Q Okay. And the other? The lot in Mauldin?

16 A 40 percent.

17 Q Is this the first time you've had an ownership
18 interest in a car dealership?

19 A No.

20 Q Okay. How many times have you had an
21 ownership interest in a car dealership?

22 A I used to own a Mitsubishi store so -- me and
23 my brother did. I was with Billy for somewhat, I guess.
24 So we called it whatever we called it there. And then
25 me with Ameen. That's about it.

1 Q Okay.

2 A Now, I did own, like, a promotion company and
3 I was all over the United States.

4 Q What was the name of that company?

5 A Top Gun Promotions.

6 Q And when you say "promotion," what was the
7 business?

8 A I went all over the United States and had big
9 sales everywhere.

10 Q Sales of what?

11 A Automobiles.

12 Q So you would get hired by a car dealer to
13 promote --

14 A I go in there. I'd bring a big team of people
15 in there. We do big mailers and we would be there for
16 anywhere from seven to ten days.

17 Q Okay. And how long did you do that for?

18 A Off and on, 8-9 years.

19 Q And you do that all over the country?

20 A Yes.

21 Q What time period did you do that for Top Gun?
22 A decade --

23 A I started. I got out of it. I started --

24 Q Okay. The '80s or '90s or 2000?

25 A Late '90s and the 2000.

1 Q Okay. Is it fair to say you've spent pretty
2 much your entire adult working life in the automobile
3 sales industry?

4 A Yes.

5 Q Tell me how you came to meet Mr. Penland.

6 A I was in -- well, I knew Billy by meeting him,
7 like, at a bar where he was sitting there with his wife
8 and they would be drinking and we would be talking.
9 That's when I was with another gentleman. And -- with
10 another dealership. And we kind of had a good vibes
11 together.

12 And so I'm in Kansas City doing a sale and I
13 get a phone call from a guy named Mike Kennedy. Mike
14 Kennedy calls me up and says, Hey, when are you going to
15 back in town? And I said, Well, I said, we're going to
16 finish this up and I'll be back Monday but then I've got
17 to be in Charlotte to do another sale at Planet
18 Mitsubishi in Charlotte. And he said, Well, when you
19 get in, call me.

20 So to make a long story short, I came in
21 Monday. I called. I said, What's up, Mike? He said,
22 Well, meet me down here at Demetre's, which is right
23 down the street from my home. He said, I want to talk
24 to you. Him and a guy named Tony Porter come into the
25 restaurant and met me and said, okay, this is what's

1 going on. We've got a gentleman that owns a store and
2 said that we're going to use him for the front-face,
3 just his name and his license, but we're going to build
4 and we're getting 50 percent of everything that come
5 through that store and we what you get in there and get
6 this thing up and running for us.

7 So I'm listening, listening. I said, Who are
8 you talking about? And then they mentioned Billy. So
9 first of all, I started feeling bad because they were
10 trying to take advantage of Billy to be honest with you.
11 So we went over -- he said come on, let's go over to the
12 store. When we get to the store they had maybe 20 --
13 maybe 15-20 cars out there which wasn't a lot of cars.
14 And I walked in and --

15 Q What was the store called at the time?

16 A Penland.

17 Q Where is it located?

18 A It was on Wade Hampton Boulevard.

19 Q Okay.

20 A And then I walk in and -- and actually Billy
21 was there and Mike and Tony Porter and they're talking
22 what they were talking. And then they asked me, What do
23 you think? And I said, I'm not interested. I'm not
24 interested in this. And Billy was listening. And so I
25 said, yeah, but I'm not interested in this. This is not

1 for me.

2 So to make a long story short, Mike Kennedy
3 and Tony Porter had to leave. So Billy took me in the
4 back, back office, he shut the door, and he said, What
5 if it just be me and you? I said, What do you mean? He
6 said -- I said, Well, Billy, I'm going to tell you right
7 now -- I don't know -- I want to swear, but the exact
8 words I said was, "You're about ready to get F'd and I
9 don't want to be no part of it."

10 And he's like -- and he said, What do you
11 mean? I said, Man, I'm telling you, these guys, they're
12 not your friends. So he said, But what if we get
13 something together? I said, Well, Billy, I've got a
14 sale. I've got to be in Charlotte next week. I said,
15 But I will do this for you. I said, I'll take a look at
16 what you've got and what's going on.

17 At that time, he only had, like, three banks
18 in there. He didn't really have that many -- I don't
19 know if it was three or four. I don't remember how
20 many. And he didn't really have a lot of cars outside.
21 And I said, Billy, first thing is, is you're not going
22 to sell off an empty shift. You ain't got no cars.
23 You're not going to be able to get this thing up and
24 running. And I said and then you don't have the
25 lenders. And I said there's a lot you have to prepare

1 yourself to get this store up and running.

2 Why don't you help me? Why don't you help
3 you? And then he offered me \$3000 for the week if I'd
4 stay there for him. And I said, Okay. I'll do that
5 since I ain't got a sale coming up. So I stayed.

6 Well, me and Billy right away came close
7 together. And I seen that he was almost to the point
8 where they were ready to shut the door down. And that's
9 why this Mike Kennedy and Tony Porter were in there
10 trying to take advantage of him, okay? So we worked
11 ourselves to the point where we started to get some more
12 banks in there. And Billy called Glen up, which was his
13 floor plan at the time. And then he had AutoBank or
14 something like that. I can't remember what the other
15 one was. And he got a little bit more there and he
16 started to buy cars. Well, then I called Paul Penson
17 and Robbie Gibson and we had Darrell and I started
18 calling a little bit of strength in there to start
19 selling cars.

20 So all of a sudden, bam, we took off and we
21 started selling some cars. And money-flow started to
22 come in. And I had the sale in Charlotte. Well, I
23 called Kenny Reed -- this is a guy that actually was
24 working for me on the road -- and I said, Kenny, you're
25 going to have to handle Charlotte. I said, I'm going

1 stay here in Taylors. And I said I'm helping a good
2 friend of mine and I think we might have something here
3 that I'm going to maybe look into. And I might even be
4 turning over the roadshow to you, is what I told him.

5 And as things went on, it just got better and
6 better and better and better and better. So we got to
7 the point where we were growing to the point I called a
8 guy named Randy, which is Elite Rental Car. And I asked
9 Randy, I said, you know, you put cars out all over the
10 place, would you be willing to put some cars here for
11 us? And he decided -- he said, I'll tell you what I'll
12 do, he said, I'll give you a few let's see how it works.

13 Well, he gave us a few and we sold every one
14 of them. And he said, I'll give you a more few. By the
15 time we got done, me and Billy in less than a year with
16 him -- two years, maybe -- I would say less than two
17 years, we had 40 or 50 of his cars out there on the lot.
18 So we had all them cars out there.

19 Then the AutoBank or whatever -- I don't even
20 remember which one it was. It was one of the other
21 floor plans. Every time you turned around, they stopped
22 you from buying a car if it wasn't done right or if you
23 didn't get it paid off right away or something, they
24 stopped you. So we needed another floor plan.

25 Q Okay.

1 A So I knew John Bethea. So I called John and I
2 knew he was in the floor business. And I brought John
3 in and that's when we met Dan.

4 Q Okay. Let's me stop you for a second. I've
5 got a couple questions. I appreciate that narrative of
6 your -- of how you met Billy and how you got started
7 with the dealership. Let me back up a little bit. I
8 had a couple questions about some of these things.

9 Let me go back. First, the time period. Is
10 like 2015-ish time period? Or do you remember when it
11 was when you started at Penland?

12 A No, I can't remember the exact time. It was
13 maybe '16, '17. I don't remember. I ain't gonna lie.

14 Q Okay.

15 A I don't remember.

16 Q Mike Kennedy and Tony Porter, were those guys
17 investors? Are they car dealers? What are they?

18 A They were going to be his partner and help him
19 get the store up and running again. Because they used
20 to own stores, which they flopped on every one they ever
21 had, but that's neither here nor there.

22 But they were going to help Billy get it up
23 and running and bring the right people in so Billy
24 didn't have to shut the doors down, is what they told me
25 at the meeting when I met them. That he's ready to shut

1 the doors down so we're going to use him, to use his
2 name up there and his license to build something, we're
3 all going to make big money off of him.

4 That's what they said. And that's why I told
5 Billy I wasn't interested because I already knew he was
6 ready to get out. And I'm like, I don't want to be part
7 of this. I told him right up front, I told him I'm not
8 going to be part of it --

9 Q And what was bad about that deal that Kennedy
10 and Porter were presenting?

11 A Because they were going to use him. All they
12 were doing was using him. And what we found out three
13 to four months later, every time we turned around we
14 sold the cars, they were in there marking they sold this
15 and what the gross was and that.

16 So me and Billy one day we went down to Fatz
17 and Billy had the check. And, to make a long story
18 short, we had Mike Kennedy, Tony Porter, Billy, and me
19 and Billy said, You know, this is just not going to work
20 out. You know, I just don't feel that you're there for
21 my best interest. You know, I think you're trying to
22 take advantage of me. Here's the money I owe you.
23 We're done.

24 And then there was a lot of cussing and
25 screaming and almost standing up. And Billy walked

1 outside, got into his Mercedes, and I kind of lost a
2 little bit on Kennedy and told him a few words. And I
3 walked out the door, got in the car, and me and Billy
4 left. We never see them again. Well, I ain't say we
5 never seen them again, we just never dealt with them.

6 Q So that first week when you didn't have a sale
7 and he paid you 3000, what kind of job responsibilities
8 or actions were you taking on behalf of Penland?

9 A Helping him built it. Helping him get some
10 banks in there. Trying to bring some people in there
11 that can sell some cars. Just putting the place on the
12 map pretty much.

13 Q So tell -- this may be read to a jury. Tell
14 us, like, the importance -- you keep saying "we needed
15 to get banks in there." Tell us, in the used car
16 industry --

17 A Well, that means -- okay. So let's say you've
18 got a load of cars. Let's say you've got a hundred
19 cars. You look really good; right? But if you ain't
20 got an avenue to get rid of them, you ain't got nothing;
21 okay? So you've got to -- you can't make ice without
22 water, is what I always say. Do you understand what I'm
23 saying?

24 Q I do.

25 A The "water" is those banks. And you've got to

1 have your lenders because you've got people coming in
2 for all different kinds of credits; you got me? And
3 you've got to have an avenue to get rid of that car
4 through that kind of bank. And then also you want to
5 maximize your gross profit; you understand? So you want
6 to bring the right banks in. So you've got to get the
7 right banks in that dealership. If you don't, you got
8 nothing.

9 Q You can't cut sales because --

10 A You got a hundred cars. Okay. Now go sell
11 them. What are you going to do about them? You've got
12 to have the avenue to get rid of them.

13 Q And early on that first week, were you helpful
14 or did you have any role in trying to source lenders?

15 A Yes, we put on some banks. Billy went out and
16 starting buying cars at the auction. We had cars coming
17 in and as they were coming in, we were selling them.
18 And as they were selling, he was buying more. And we
19 just started to build and build and build. We brought
20 Randy in and then we brought a floor plans in and we
21 started to go to town.

22 Q Okay. You've used the term "floor plan." Can
23 you tell me what you understand that to mean?

24 A Floor plan is you borrow the money -- you've
25 got a line of credit -- I'm going to say a line of

1 credit on them automobiles and you're allowed -- they
2 loan you up to \$700,000, you're allowed to go up to
3 \$700,000 to go buy at an auction up to that point. And
4 anything over that, I guess you can ask for favor or you
5 stop where your line is at.

6 Q Okay. So you get a line of credit from a
7 lender who finances the purchase of the cars; is that
8 correct?

9 A That's the floor plan.

10 Q Okay. And you mentioned a guy named Glen
11 earlier. Who was Glen?

12 A Glen was one of Billy's buddies that loaned
13 him -- and I think at the time when I first walked in
14 the door we had 250,000 with Glen. And then --

15 Q That's a line of credit?

16 A Yes, a floor plan. And then Glen seen, I
17 think, everything was moving in the right direction and
18 he upped Billy on the floor.

19 Q All right. So tell me, you did that first
20 week for 3000. What happened after that first week in
21 terms of what your employment situation was?

22 A Me and him, because I knew that, you know, you
23 have to grow before you ask for the old money dollars.
24 So me and him worked a deal out every week just \$3000 as
25 long as I was there. And he always paid me. He never

1 not paid me.

2 Q How long did you continue on that weekly --
3 weekly deal?

4 A Every week. That's the only thing I ever did.
5 Me and him might have worked some other things out on
6 the side as far as different things that we were doing,
7 but every week I got paid.

8 Q Did you have a job title?

9 A General manager. General sales manager.
10 Whatever.

11 Q Did you ever have an ownership interest
12 Penland Automotive?

13 A So that's where this comes from. So now what
14 happened was is we brought in and we have had -- now me
15 and Billy's got construction going on. We had Penlanad
16 Construction and we were making some money off of it.

17 Q That was separate business that was involved
18 in the residential or commercial construction?

19 A It was residential and commercial. We did
20 whatever to make money.

21 Anyways, and then his son Sean came in and his
22 son Mike came in --

23 Q Into which business?

24 A Into the Penland Automotive. And I felt
25 now -- this is the point where I'm watching a little bit

1 going on, which never did come from Billy, I will say
2 that. Never did. But the kids, I just seen a little --
3 this is us, not you kind of thing. So I came to Billy
4 and we were at a restaurant when he just left American
5 Auto Auction and I -- that night I told my wife, I said,
6 you know what, we need to get something where -- and it
7 wasn't that I didn't trust Billy. I'm going to say that
8 up front. Wasn't that I didn't trust him, but I was
9 going to get something in writing. Because here's all
10 this money that was going out or coming in and I wasn't
11 taking any of it because we needed it for the store; do
12 you understand?

13 Q Yes.

14 A But be damned if I'm going to lose it. So I
15 wrote -- we wrote a contract together where he had 250
16 involved and I had 150 involved. Then that's when we
17 became a partnership on a contract.

18 Q Do you remember how long you'd been at Penland
19 before this occurred?

20 A Oh, it was a couple years at that point.

21 Q A couple years?

22 A Yeah. I was just trying to secure some of the
23 incomes that were all coming in that, you know, he would
24 say, Well, when we get a hundred thousand dollars -- to
25 make a long story short, instead of us -- me and him

1 taking 50/50, we couldn't do it because we had to keep
2 it in the store. So we might take 6000 or we might take
3 5000 or whatever. But we kept in the store to try to
4 keep the store going. So at that point I felt, whoa,
5 because anybody else in that kind of business would want
6 their 50 percent upfront. Or after the job was done,
7 they'd want their money. I didn't do it. I'd let it
8 linger in there to keep this thing going.

9 Q And so was it your understanding before you
10 drafted a document that you did have an ownership
11 interest?

12 A You mean before he signed it?

13 Q Yeah.

14 A I mean, I didn't have anything before he
15 signed it.

16 Q Okay. But you'd talked about the money that
17 was coming in and it needed to go back in the business.
18 Did you think you had any financial interest other than
19 a weekly salary?

20 A Oh, yeah. At that point I did.

21 Q What was that?

22 A Well, I mean, we had -- we did one job for
23 \$127,000. Of course you had cost in your job, but we
24 still -- I think we cleared maybe 60, 70, 80,000. But
25 instead of taking 40 of that thousand or 50 of that

1 thousand or 30 of that thousand in my pocket and Billy
2 taking his 30, we kept it in the company. So at that
3 point, my investment was -- yeah, then my investment was
4 in there. Because I was actually the one over there
5 closing all of the contract deals on the construction.

6 Q Okay. So let me --

7 A Counting working on all the deals I worked
8 out, but we can go over that if you want.

9 Q I'll get to the construction in a second. I'm
10 going to stick with the auto right now.

11 MR. JORDAN: I'll put these two exhibits.

12 Take a quick break.

13 (Exhibits No. 1 and 2 were marked for identification.)

14 Q (BY MR. JORDAN) All right. Mr. Yarger, I'm
15 going to show you -- this is Exhibit 1. This is the
16 deposition notice that we sent to have you appear here
17 today. I believe opposing counsel also may have sent a
18 notice so we may have two notices as exhibits. But
19 that's Exhibit 1. That's a notice that requires you to
20 be here today; do understand that?

21 A Yes, I do.

22 Q All right. The second exhibit I'm going to
23 show you says Exhibit 2 at the top. It may have been
24 used in another deposition as Exhibit A at the bottom or
25 maybe it was used in a court filing. But let me show

1 you Exhibit 2 and take a second to look at that.

2 A I got that, yeah.

3 Q All right. Have you seen that document
4 before?

5 A Yes.

6 Q And what is it?

7 A That's the contract between me and Billy.

8 Q That's the contract you talked about wanting
9 to draft up?

10 A Yes.

11 Q Who drafted this? Do you remember?

12 A My wife did.

13 Q Okay. I see at the bottom there is says,
14 "This is a RocketLawyer.com document." Did your mom --
15 not your mom. Did your wife use that website?

16 A I don't know. I'm not -- I don't know. She
17 pulled it up and said this was -- and she had somebody
18 look at it too and I can't remember what the -- her aunt
19 was a private detective and knows a lot of people. So
20 she did have somebody look at that and see if it was
21 good and he said it would stand. Now you're going to
22 ask who "he" was, I don't know.

23 Q Okay.

24 A It was someone that they knew.

25 Q In paragraph one it says the name is Penland

1 Automotive; do you see that?

2 A Yes.

3 Q So this isn't a construction business, this is
4 the Penland Auto business; correct?

5 A Correct.

6 Q And if you flip back to -- these pages aren't
7 numbered so we're going to go one, two -- it'll be the
8 third page.

9 A Yeah.

10 Q It says "cost." To share the cost, it'd be 25
11 percent to you and 75 percent to Mr. Penland; was that
12 the agreement?

13 A That's what this agreement was, yes.

14 Q And then on the "profits," which is paragraph
15 six, it also says that you will share in 25 percent of
16 the profits and Mr. Penland 75 percent; was that the
17 agreement?

18 A That's what the agreement was, yeah.

19 Q And then if you flip to the last page, is that
20 your signature?

21 A It is.

22 Q And that was signed July the 1st of 2017?

23 A Yep.

24 Q Did Mr. Penland sign this in your presence?

25 A Yes, he did.

1 Q At the time you signed this were you aware of
2 any other partners in Penland Auto?

3 A No.

4 Q Okay. After you signed that document on July
5 1st, 2017, did your role change at Penland Automotive?

6 A No, I just felt more secure. I'll be honest
7 with you, I just felt secure. And, you know, not that
8 anything changed because, you know, we had, I'm going to
9 say, sons -- sons come and go; okay? And we kind of
10 stuck together and did what we had to do to try to make
11 money.

12 Q And the sons you reference, those are Billy's
13 sons?

14 A Yes. And actually one of mine, too.

15 Q Okay. And they worked at various times at the
16 dealership?

17 A Uh-huh.

18 Q And what roles did they perform?

19 A Finance.

20 Q So a customer comes in, agrees to buy a car,
21 the salesperson, then they meet with a finance person?

22 A They would contract it.

23 Q After you signed this agreement on July
24 the 1st, 2017, did you start receiving any profits from
25 the business above your weekly salary?

1 A No.

2 Q And do you know why not?

3 A From what I hear, because I never really got
4 into it but I did, but I didn't, is there wasn't a lot
5 of profits left over, supposedly, after everything, but
6 I wouldn't know because I didn't really go through the
7 books. I trusted Billy and I took what I got. We just
8 kept going on. You know, it was enough to keep
9 everybody happy to the point of surviving, I'm going to
10 use the word, and you know what, it wasn't -- that's
11 just the way it was.

12 Never asked for -- even when it came to the
13 construction money, you know, it was a lot of money that
14 was brought in and we put into Penland. But, I mean,
15 every now and then I might have took five or \$6000 out
16 of it or something like that, but the rest I just
17 said -- I've always told Karen -- I told Karen, just
18 leave it in there. Let's keep it in there. We need it.
19 We need it for working capital. So we did.

20 So, you know, I might have took a few six,
21 seven, eight, I don't know, every now and then off of it
22 but nothing that was -- it was never 50/50 where it
23 should -- you know, where it should've been 35, 40 grand
24 or 30 grand or 20 grand, whatever it may be, I never
25 took that. I didn't feel that the company could do it;

1 do you understand what I'm saying? Could give me that
2 and we needed it to keep things running the right way.

3 Q Okay.

4 A Every now and then I would take a little bit,
5 but not much.

6 Q So do you know who, during your time at
7 Penland Automotive, who kept the books of that business?

8 A Garrett.

9 Q Karen who?

10 A Willis.

11 Q Willis?

12 A Uh-huh. Yes. I'm sorry.

13 Q After you signed the partnership agreement in
14 2017, did you ever ask Karen for you to examine the
15 books of the business?

16 A No.

17 Q All right. I want to back up a little bit.
18 You talked about your early days at Penland and helping
19 with securing banks or lenders, but also for financing.
20 We'll start with banks first. So these are banks or
21 lenders who are going to finance customers who buy cars
22 at Penland Automotive; correct?

23 A Correct.

24 Q How do you go about sourcing or finding a bank
25 to do business with?

1 A Well, the biggest thing is when you have an
2 independent dealership, it's tough; okay? Because --
3 now franchise, they come up that quick. Independent,
4 you have to work or you have to have a rapport. And,
5 you know, I worked from Gateway, we had. And of course
6 they went out, but I worked and got Gateway in there. I
7 got CUDL in there, which got turned down four different
8 times. I finally talked to a lady named Megan, which I
9 knew real well from prior businesses or prior store that
10 I was at. She helped me. I ended up bringing Cap One
11 Bank and AAC in. And I brought -- I brought Anderson
12 Brother Bank in. We brought -- I can't think of all of
13 them.

14 Q Okay. Well, that's a good start. You named
15 five right there. If others come to mind, please let me
16 know. But those five you just named, you say you
17 brought them in. What does that mean you "brought them
18 in?"

19 A It means I call them and contacted them. I
20 said we have a store, this is what we're doing. I need
21 a good, prime -- let's use CUDL as an example. I need a
22 good, prime bank that will come in here that will
23 finance some cars for us. And then get the paperwork
24 together and send it to me and see what we can do. We
25 did, they call me back, yeah, we can't do it. They

1 turned me down. I kind of got them a few other little
2 things, sent back, nope, we can't do it. They actually
3 turned me down four times -- three times. Fourth time I
4 got it done.

5 And I just told the lady at the -- Megan,
6 which is a good friend of mine still today, said put
7 your supervisor on the phone. I said, come on, let's
8 get the supervisor. And I was actually at a steakhouse
9 right down the street and she called -- when she turned
10 me down the last time, this was the third, I said, Come
11 on, get the supervisor on the phone. There's got to be
12 a way.

13 And I walked outside and walked up and down
14 the daggone sidewalk and went back and forth, went back
15 and forth. And the supervisor told Megan, Give him a
16 shot. Give him one shot. So that's one. Then we
17 brought in Trueline and all these other credit unions
18 that come with CUDL. And they finally hooked me up.

19 Q Okay. So with CUDL and Gateway and AAC and
20 Anderson Brothers and Cap One, did Mr. Penland
21 participate with you in those calls with those banks?

22 A Anderson Brothers actually -- me and him went
23 to a restaurant down the street and we met the little
24 girl from Anderson Brothers. And she was on the fence.
25 By the time we ended up with lunch, she activated us.

1 So it was -- Billy was involved with that. Getting that
2 done too.

3 Q Okay.

4 A As well as me. Probably more than me -- more
5 him than me when it comes to Anderson Brothers.

6 Q And what about the other four you named? Did
7 he participate in those negotiations?

8 A No, that was just me.

9 Q Anyone else other than you at Penland who
10 would have, in the early days, tried to secure banks for
11 financing?

12 A No.

13 Q For the benefit of the jury, can you just
14 explain the business model of the difference between a
15 franchise dealership in an independent dealership?

16 A Independent is where you -- franchise, of
17 course, is either a Chevy store, a Ford store, a name
18 brand store. An independent is is you as an individual
19 open up a dealership and buy cars and try to do your
20 best you can to get rid of them and try to build an
21 independent -- a big independent store. But that's the
22 difference.

23 Independent is ten times harder work than a
24 franchise. I mean, franchise, as soon as they know you
25 got a franchise, they come to you. Independent, you

1 have to come to them.

2 Q And Tempest the customers?

3 Q Excuse me?

4 Q And "them" is the customers?

5 A Excuse me?

6 Q "Them" is the customers; right?

7 A What are you -- no. No. I'm talking about
8 the banks.

9 Q The banks. Okay. Yeah. Okay. So you get a
10 GM or Ford store, there's no problem getting lending.
11 You actually probably get it --

12 A More lenders than you want to deal with.

13 Q During this time when you're trying to bring
14 in these banks for Penland Automotive, did Mr. Penland
15 ever tell you that he didn't what you to negotiating
16 with those banks?

17 A No.

18 Q For the benefit of the jury, does a bank who
19 lend to customers of, say, Penland Automotive, is there
20 a financial incentive or advantage of getting good
21 lender in for Penland versus a bad lender?

22 A You better believe it. When we got Cap One
23 bank in, and that was again me. I worked my butt off
24 and got Cap One bank in there. That turned the store
25 real good because Cap bought real good and loaned us

1 good money.

2 And, well, CUDL did too. I mean, don't get me
3 wrong. Trueline, today, is probably their best bank I
4 would think. I don't know. Because Trueline's a good
5 lender.

6 Q So explain how a good lender can help a dealer
7 make money.

8 A The advancements, first of all. When you are
9 an independent, they're going to buy off of clean trade.
10 When you're with the bigger banks, they're going to buy
11 off of retail. The difference between that figure and
12 this figure is three or four grand. Not counting if
13 you've got a halfway decent customer and now you're at
14 retail and you get 120-130 percent advancement. Now,
15 you've just taken this three to four grand difference
16 from here and now you're dumping eight grand over there.
17 So you make more money.

18 Q Okay.

19 A Yeah.

20 Q So a big advantage to an independent dealer to
21 get the right lender in place?

22 A Exactly. That's the biggest. If not, you
23 might as well be in the whole business.

24 Q Now, what about in these early days when
25 you're at Penland, you're pursuing banks and lenders for

1 the customers but you're also looking at floor
2 financing; is that right?

3 A Uh-huh.

4 Q Do you recall the floor financing was or the
5 arrangement was at Penland when you started?

6 A We had 250,000 with Glen, which was Auto
7 Lenders, when I first walked in. Now he ended up
8 getting it up pretty quick on that. And then he had
9 another floor plan and I don't know if it was AutoBank
10 or US Auto. Auto-something, I can't remember what it
11 was. Auto-something that he had, like, I think 150 or
12 200,000 with them or something. Don't quote me on that
13 because I don't know exactly what figure he has with
14 that bank. But they were a pain because every time you
15 buy a car or you sell a car, if they showed up and you
16 didn't have this they deactivated you right down to your
17 counter. You couldn't buy nothing else from them. So
18 if your paperwork wasn't clean or you couldn't have --
19 they stopped your right a way. And that started to get
20 to the point where you couldn't do anything with them.
21 So that's why we went and shopped for new floor plan.

22 Q Okay. I'm going to ask you about that in a
23 second. So is a good floor plan another piece of the
24 puzzle for running a successful dealership?

25 A Better believe it. It's the biggest part of

1 the puzzle. Unless you got your own money. If you've
2 got your cash, I mean, you know, that's a different
3 story.

4 Q Other than these -- in these early days, other
5 than these banks and these floor planners, were there
6 other outside business entities that you went and
7 negotiated with or dealt with on behalf of Penland
8 Automotive?

9 A Yeah.

10 Q Like what types of businesses?

11 A We had a hail damage one time. I mean, it
12 came down like in boulders and I -- lady came in --
13 first lady that came in, she started look at it and she
14 wrote an offer up of like 3700 bucks or something on a
15 car and I went ahead and we went down to the body shop
16 down the street and got an offer that was like \$7800
17 for the same car. So I went back to lady and she was
18 sitting in the middle office, I'll never forget, I threw
19 it, I said, Ma'am, you're at 3600. I said this is the
20 body shop in -- which we didn't use, by the way, but I
21 told her we did. I said this is the body shop and I
22 said he's at 7800. I said that ain't going to work.

23 So all of a sudden, our fees went from \$3700,
24 everything went up to \$6-8,000 apiece. And we ended up
25 getting a pretty good chunk of change, but I negotiated

1 all of that. And the guys even to come in to fix it.
2 And we had a building down the street that we leased and
3 we even a part of that to the guy. It was just -- to
4 the guy that fixed the dents.

5 Q The lady you reference, she was with insurance
6 company?

7 A Uh-huh. She was.

8 Q So during these -- I'm calling it "the early
9 days," but before the signature on the partnership
10 agreement, when you and dealt with an insurance company
11 or a bank or a floor financier or someone on behalf of
12 Penland Automotive, how would you communicate with
13 Mr. Penland about what you were doing on behalf of the
14 dealership?

15 A Well, I told Billy, I said, Three grand, that
16 ain't going to work. I said there's more, I know.
17 That's why we went and we got another appraise down the
18 street at this body shop. Or actually, I did and I came
19 back and I said, you know, these are seven, eight --
20 these are 7,000-dollar claims not 3000. This lady
21 trying to get over.

22 So of course he's, do what you've got to do,
23 Tim, kind of thing. I'll share. There was a deal that
24 he had some bank that tried to get him for some
25 high-high interest rate, it was like 200 or a hundred

1 thousand or something like that. Billy said, Well, get
2 on the phone and try to see what you can do.

3 I negotiated them people down to, like,
4 \$25,000 over a hundred grand for him. I've done all his
5 negotiating. All of it. Every bit of it. Billy wasn't
6 the kind that would get on the phone and negotiate. He
7 was more the guy that sat in the back and bought cars.
8 That was it.

9 Q Before signing this partnership agreement, did
10 Mr. Penland ever try to back out of any deals that you
11 cut?

12 A No.

13 Q Did he ever, to your knowledge, tell anyone
14 that Penland Automotive either entered into a deal with
15 or a contract with that you didn't have authority to
16 speak for Penland Automotive?

17 A No. Not until when I left. Only when I left.
18 And that that blew up.

19 Q How would you guys talk about what you were up
20 to day-to-day? Would you just be in the office and chat
21 about what was going on?

22 A We would talk every morning. He'd come in and
23 we'd talk. Or me and Karen and Billy would be in the
24 office talking. Or me and Billy would talk. Me and
25 Karen would talk without Billy, but we'd always have

1 some kind of conversation of what's going on -- what
2 needs to be going on. Funding that needs to be coming
3 in. Just whatever that daily thing was. Whatever it
4 was.

5 Q And during your time at Penland Automotive, I
6 understand Karen's role was the bookkeeper. And I
7 understand your role and Billy's role. Was there anyone
8 else that participated in these sort of high-level
9 discussions about how to run the business?

10 A No. I mean, we had a finance kid, Joey. He
11 was our finance kid and then we had Sean which is in our
12 finance. Then we had Mike that was our finance. But as
13 far as any -- no, they didn't really make any -- no.

14 Q Okay. I think I interrupt you earlier when we
15 were talking about how you got started with Penland and
16 then you were telling me about the growth of the
17 company. And I think you had gotten to the point where
18 you met John Bethea. Up until that point, was Penland
19 Automotive growing from your perspective?

20 A We were growing by leaps and bounds.

21 Q What kind of growth do you remember
22 experiencing?

23 A Well, I mean, we were -- we didn't have enough
24 cars on the lot to keep us going. Even though we had
25 Randy -- and what happened was how John Bethea came in

1 is Randy and Billy, at the beginning, we were doing real
2 good and then it got to the point where they didn't see
3 eye to eye. So we had Randy to take all his cars off
4 the lot. This is Elite Rental Car.

5 Q Right.

6 A Take them off. Once he took his cars off the
7 lot, with what floor plan we had with what kind of
8 customer base we were trying to build and what we were
9 trying to build, we didn't have enough floor. So we had
10 to go off and find one.

11 Q Okay. And that's where you --

12 A Plus the other company I was telling you
13 about, which I don't remember by the name, he pretty
14 much told them he didn't want them anymore. Or he
15 didn't want to use them. I don't know if he threw them
16 out, but he did say we don't need to use these guy. So
17 that's why we only had Glen at that time.

18 Q Okay. So I interrupted you a while back.
19 John Bethea -- who's John Bethea?

20 A John Bethea is a gentleman I've known for over
21 20 years. He's just a great guy. Best guy in the
22 world. Couldn't ever say anything bad about the guy.
23 He was -- actually left the bank had went in to the
24 floor plan business.

25 Q What bank was he at before the floor plan

1 business?

2 A He was with Wells Fargo. I mean, he's been
3 with a few. Regional Bank, BB&T, Wells Fargo, he was
4 with them.

5 Q Did you know him from the auto industry?

6 A Yes, I've known him 20 years.

7 Q Okay. And he went to Dealer Financial?

8 A Then he went to Dealer Financial, yes. That's
9 where I contacted him for floor.

10 MR. JORDAN: I'll go ahead and mark this. Is
11 this 3?

12 THE COURT REPORTER: Yes.

13 (Exhibit No. 3 was marked for identification.)

14 Q (BY MR. JORDAN) Mr. Yarger, I'm showing you
15 Exhibit 3 which is a loan and security agreement.
16 You'll see in the first sentence it's November 21, 2016.
17 It's agreement between Penland Automotive, Penland
18 Properties, Charles Penland, and Dealer Financial
19 Holdings; do you see that?

20 A Yes, I do.

21 Q Okay. So I wanted to show this to you and
22 we'll talk about it in more detail in a minute, but this
23 was in November 2016. Is that around the time -- I
24 mean, it would've been before this, obviously, that you
25 reached out to John Bethea?

1 A That was probably the time.

2 Q Okay. Just tell me what you remember about
3 reaching out to John and those conversations about what
4 Penland was looking for --

5 A Well, me and Billy talk -- we went to lunch
6 and we were talking about getting more floor. So I
7 said, well, I've got John Bethea. Let me call John.
8 Let me get him in here. Let me see if I can work him to
9 a point and see if we might be able to get a floor plan
10 or something worked out with John. So we come back from
11 lunch and I called John Bethea. I got John Bethea in
12 there.

13 With me and the relationship with me and John
14 Bethea, it took off right away where he started to get
15 everything down and he told us we needed a few things.
16 We gave him a few things he needed, financials and other
17 things, and they submitted it to the office and came
18 back and said -- actually, the first thing he said is
19 we'll give you -- it was just -- and I'm going to use
20 this example.

21 I'm thinking it was 200,000 or maybe it was
22 200 or maybe it was 250. I think it might even have
23 been 250. And I'm like, John, we need more. Of course,
24 this is my job to get all I can get. And I said, No,
25 John, 250 ain't going to do nothing for me. And we kept

1 going back and forth. So he said that his boss told him
2 if we could put up some collateral that he would look at
3 to do more floor for us.

4 So I went to Billy and I said, well, if we put
5 up something that we get more floor. And at that time,
6 we needed it. So what they needed, we did what they
7 needed to put up to get that more floor. And I think,
8 if I remember right, it was 400,000 but don't quote me.
9 But I think it went up from like 250 to 400 or 450 like
10 that quick once we did it. And it was something to do
11 with Billy's property and some other things that we had
12 to put up.

13 Q As collateral?

14 A As collateral. Billy had it done.

15 Q How many times do you think you talked with
16 John Bethea to arrive at this deal that we're looking at
17 in Exhibit 3?

18 A Five, six, seven, eight. That I
19 don't remember.

20 Q Did Billy participate in those calls with you?

21 A Never the calls, but when John would come in
22 every now and then, Billy would sit down and listen to
23 and he'd say, Well, you got this. And Billy -- Billy
24 wasn't a negotiator. Billy didn't negotiate. He had me
25 to negotiate. Billy was kind of get it done and let's

1 keep going on kind of thing. Every now and then he
2 would come in and say a few things.

3 His biggest pet peeve was he didn't want to
4 put all this property thing up. That was his -- but he
5 did it and that's where we got our floor plan. So right
6 away we started floor plan with him.

7 Q Did you deal with anyone else back in 2016
8 with Dealer Financial other than John Bethea to
9 negotiate the terms of this contract?

10 A Yes. Then, after I got with John as far as I
11 got, then I met Dan.

12 Q Who is Dan?

13 A Dan (indicating).

14 Q Dan Haight who's in the room who you just
15 pointed to him.

16 A Yeah, Dan.

17 Q And what did you understand Mr. Haight's role
18 was with Dealer Financial?

19 A My role -- I thought his role was he was the
20 owner.

21 Q And what types of discussions and negotiations
22 did you have with Mr. Haight in 2016?

23 A Well, we had a little -- there was some
24 curtailment things, there was some interest things, and,
25 you know, Billy would keep always saying, Go back and

1 try this, try this, try this. You know, he kind of
2 tried to fill me in to the point where, See if you can
3 get this to get this done, see if you can get this done.

4 So I would get on the phone and I would work
5 the heck out of Dan on the bottom line. And some I won
6 and some I didn't, but it was enough win where me and
7 Billy thought, Well, okay. We'll go ahead. Let's do
8 this.

9 Q And you told me earlier that a floor
10 financier -- that getting good terms with a floor
11 financier and the right floor financier could help a
12 dealership make money; is that right?

13 A You better believe it.

14 Q So that negotiation you're describing was one
15 where the better terms you get for Penland Auto, the
16 better Penland Auto can do financially?

17 A Correct.

18 Q Do you know, did Mr. Haight, in 2016, talk
19 with Mr. Penland about the terms of this contract?

20 A The beginning of the --

21 Q Yes.

22 A Yes, they had a couple little words. They
23 didn't talk a lot. I'm not going to say they didn't.
24 Yeah, they did. They talked. To the point where it was
25 enough for him to give us the 400,000. But he didn't

1 really -- he'd always say, Call Dan. You call Dan.

2 I was always kind of the spokesman because
3 that's always -- he always put me there. But he did
4 talk to Dan. And Dan came in even and we were in the
5 front-office and there was a lot of going back and
6 forth, but before everything's said and done,
7 everybody's shaking hands and walking out the door and
8 we were done.

9 So, yeah, Dan was actually -- and John Bethea
10 was there. I remember that was in the front-office.

11 Q Okay. Well, if you'll look at Exhibit 3 in
12 front of you. It's a loan and security agreement. And
13 if you flip past to page 13 which is the signature page.

14 A Yes.

15 Q Okay. Do you see Mr. Haight signed there as
16 president of Dealer Financial?

17 A I do.

18 Q And then Mr. Penland it looks like signed
19 as --

20 A President.

21 Q As president of Penland Automotive, LLC?

22 A Yes.

23 Q And he also signed for Penland Properties 2,
24 LLC?

25 A Right.

1 Q Do you know what Penland Properties 2 is?

2 A You know, I never got involved in a lot of
3 that property. I know he's got a bunch of property.
4 That he has a big -- where they go out and hunt a lot
5 there. Penland Properties also owned the building that
6 we were in at Penland Automotive. I don't know how much
7 more he owned. I know it was the farm -- not the farm,
8 excuse me. The hunting grounds which was, I guess,
9 worth a lot of money. And then the store itself, he
10 owned that free and clear too. Which was all, I think,
11 part of Penland Properties.

12 Q And you testified earlier about Dealer
13 Financial wanting additional collateral to increase the
14 credit limit. Is that part of --

15 A Well, they gave us a floor. They would give
16 us a floor, but to give us anything more he had to put
17 that up. And that's --

18 Q "That" being some of his property?

19 A Uh-huh. Penland Properties.

20 Q If you flip to the next page after that
21 signature page, it's Exhibit A. It says "term
22 schedule."

23 A What page?

24 Q It's right after the signature page.

25 A There's a lot of signature pages here.

1 Q It's right past page 13.

2 A Okay. Got it.

3 Q Okay. You see at the top where it says
4 "Exhibit A: Term schedule?"

5 A Yes.

6 Q And the bottom is Penland Automotive, LLC; do
7 you see that?

8 A Wait a minute. I'm on the wrong one. Now I
9 got it. Yes.

10 Q Okay. And you see the initial credit limit
11 listed in the second paragraph is 200,000?

12 A Uh-huh.

13 Q And then we've got a paragraph -- the next
14 paragraph, "floor plan fees." Do you see that?

15 A Uh-huh.

16 Q And then if you flip to the next page there's
17 some more financial terms?

18 A Uh-huh.

19 Q As well as the next page has the schedule of
20 fees. And my question is, is we're looking at Exhibit
21 A, are these the types of financial terms that are
22 negotiable with the floor financier?

23 A When you say "negotiable" as far as --

24 Q Well, you testified earlier that you would
25 call Dan and John and try to work on improving the terms

1 for Penland. Are these the types of financial terms
2 that you negotiate when you're trying to get a deal?

3 A Yeah, but there's some that you can't
4 negotiate. There's some things you can go -- you can
5 get a favor done -- let me tell you what negotiating
6 with Dan was. They had where if the car wasn't sold in
7 a certain time that you would pay a big percentage or
8 pay it off. And it wasn't -- it didn't give us a lot of
9 time. So I negotiated to Dan, if I remember right, and
10 I don't know if it was either -- I think it was 120. I
11 think was 120 days. So, Dan, you can't hit me for all
12 this whatever it was, and I can't remember what it was
13 or even what was just to pay it all off. I said you at
14 least got to give me 120. And I think that was our
15 negotiating was. At least give me 120. Give me 120
16 days before you make me pay this damn thing off instead
17 of 90 days or whatever his program was called for at
18 that time.

19 That was my negotiating. To give me a little
20 bit more time to be able to -- because floor plan, if
21 you don't pay the car off, you either pay all these
22 curtailments or some banks will only give you so long
23 and then you've got to pay the car off no matter what.
24 And I think it was 120 I got him up to instead of, like,
25 90 days or something.

1 Q Okay. And that's an advantage to Penland if
2 you get those extra days?

3 A Of course it is. Of course we don't pay for
4 it. Pay it off. That's working capital that you get to
5 keep.

6 Q Do you remember who drafted this Exhibit 3
7 contract?

8 A This contract? The one that --

9 Q Exhibit -- yeah, the one --

10 A Dan, I'm assuming. Dan and -- I'm assuming
11 because he brought it in. So it was Dan. That's when
12 we all went to the front-office. That's when all this
13 was signed.

14 Q Do you recall, did Penland Automotive have a
15 lawyer look at this contract before it was signed?

16 A [Nonaudible response.]

17 Q During this time you're negotiating with --

18 A If he did, he didn't tell me he had a lawyer
19 look at.

20 Q Okay. During your time negotiating this 2016
21 contract with Dealer Financial, did you consult a
22 lawyer?

23 A It was just me, Billy, John, and Dan.

24 Q And then I see on page 13, the signature --
25 that's the signature page I showed you Mr. Haight and

1 Mr. Penland's signatures. Were those signed in your
2 presence; do you remember?

3 A Yes, it was. Yes, they were.

4 Q And then if you look at -- if you flip back,
5 like, three more pages, the Exhibit A terms schedule.
6 You see a signature there of Charles Penland from
7 Penland Automotive?

8 A Yes.

9 Q And again, was this all signed at the same
10 time?

11 A Yes, it was.

12 Q And this was all in your presence?

13 A Yes.

14 Q So if you flip to the next page, the demand
15 note is signed by Charles Penland on behalf of Penland
16 Automotive; same thing? It was signed in your presence?

17 A Yes.

18 Q And then we've got an unlimited guarantee?

19 A Yes.

20 Q Signed personally by Charles Penland. Was
21 that in your presence?

22 A Yes.

23 Q And then, finally, the power of attorney.
24 Same question. Signed in your presence?

25 A Yes.

1 Q All right.

2 MR. JORDAN: Let's take five quick minutes to
3 use the restroom and we'll keep moving on.

4 (Break was taken at 10:03 a.m.)

5 Q (BY MR. JORDAN) Mr. Yarger, we took a break.
6 We had been talking about the financing agreement that
7 Penland Auto signed with Dealer Financial in 2016.
8 After you got started -- well, let me back up and ask
9 you one more question I didn't ask you. You talked
10 about your relationship with John Bethea. How did you
11 choose Dealer Financial?

12 A We needed a floor plan, I knew John did floor.
13 He was a good friend of mine. He was the first one that
14 came to me.

15 Q So did you talk to any others at that time?

16 A No.

17 Q Okay.

18 A Not at that time. We did once we got rid
19 of -- I'm going to say once get got rid of some of the
20 floor plans that we had. And then we had Dan in there.
21 Then Billy wanted to get rid of Dan because he wanted to
22 get his property back. Plus, there was a hundred
23 dollars per deal that we got, like 20-some thousand
24 dollars.

25 I did call the lady named Charna, which I've

1 known forever. And then after we stopped with Dan, we
2 went to Charna. And then we started building a
3 relationship up with Spartanburg Auto Auction. So that
4 would be down the road though. Not at the very
5 beginning. Not when we first put Dan with us. But down
6 the road then we brought in a woman named Charna for a
7 floor plan.

8 Q After Penland signed in 2016 this finance
9 agreement with Dealer Financial, was Dealer Financial
10 the only floor financer?

11 A No, we still had Glen.

12 Q Still had Glen. Okay. Did Glen ever stop
13 financing?

14 A Not right away. We had Glen -- excuse me. We
15 had Glen and we had Dan.

16 Q And how did it go after you signed on with
17 Dealer Financial for the business?

18 A Real good. Fantastic. It went real good.
19 Loved it. And, I mean, even Billy would have to say it
20 was an answer to our prayer at that point. We needed it
21 bad. And it was in at the right time.

22 Q Did Penland Auto continue to grow after the
23 signing of the deal with Dealer Financial?

24 A And then some.

25 Q Before you signed with Dealer Financial, were

1 you -- and I say "you," was Penland Auto turned down by
2 and floor financiers?

3 A Floor plan?

4 Q Yeah.

5 A I don't think so.

6 Q What about banks for lending for consumer
7 financing?

8 A Yeah, some of the banks wouldn't hook me up.

9 Q What were the reasons they gave you?

10 A Wasn't in business. Financials. Wasn't in
11 business long enough as far as for the strong retail
12 that they're looking for. There's all different reasons
13 they'll give you if they don't want to hook you up.

14 Q During the time after this 2016 agreement
15 doing business with Dealer Financial, how does that
16 relationship work? Who was your point person at Dealer
17 Financial after you signed the contract?

18 A John Bethea. And Dan, too. I mean, I don't
19 get me wrong. Dan would call me every now and then. He
20 was a good PBR guy. You know, Dan always wanted to make
21 sure everybody was okay and happy and everything's going
22 good. I mean, he did. He was a hands-on, I want to
23 say. But John most of all. And then the floor plan guy
24 that come in once a week. He was a pretty good old boy.

25 Q And the guy that comes once a week, he does an

1 audit?

2 A Yeah, he does an audit. And that wasn't maybe
3 once a week. It may have been done once every two
4 weeks. I don't remember exactly. I don't think they
5 were there every two. It was like every couple week.
6 Or maybe even -- it got to the point where we had the
7 trust factor going on. So I think it was even once a
8 month. It got to be once a month.

9 Q And for the benefit of the jury, that's a
10 common practice in the automotive industry to have a
11 floor financier?

12 A Yeah. You better believe it.

13 MR. IMHOFF: Object to form.

14 Q (BY MR. JORDAN) In your experience of 30-plus
15 years working in the auto industry, is it common for a
16 floor financier to send an auditor to the dealership to
17 check how things are going?

18 A Yes.

19 Q To check inventory?

20 A Yes.

21 Q Check deal terms?

22 A Yes.

23 Q Okay. So we know from this lawsuit,
24 eventually you stopped doing business with Dealer
25 Financial. Can you tell me what led up to stoping doing

1 business with Dealer Financial?

2 A We -- me and Billy, we decided to go to
3 Spartanburg Auto Auction to look at some cheaper cars
4 even though at that time he thought they were all junk.
5 At that time, you know, it's just -- it's not like a
6 Carolina Auto Auction or American Auto Auction. It's a
7 smaller auto auction. But they sometimes have some nice
8 stuff there. And, of course they did because we bought
9 a lot out of there.

10 But we got in there and I got to met Charna.
11 Now I know Charna. I've known Charna for 20 years, but
12 I introduced Billy to Charna because he really didn't
13 know Charna. Knew of her, but didn't know her. And I
14 got Billy and Charna kind of together and we opened
15 up -- I think at that time that we were going to get a
16 \$250,000 floor plan that she was going to open us up.
17 And I think that's what it was, 250 she allowed me. And
18 once we got that, then we started to build and we had
19 Randy just loading me up with boatloads of cars. That
20 was -- in other words, let me tell you what happened.
21 So we had a bad issue with Randy. We told him to take
22 all his cars off the lot --

23 Q Just so we're all clear, Randy's with Elite?

24 A Elite. And we told him to take all the cars
25 off the lot. And then when we brought -- we got Charna

1 in there. Then I got Randy to start the relationship
2 back again with Billy. And then Randy just loaded me
3 up. When I tell you he loaded me up, I probably had
4 40-45 cars of his on the lot at one time. I mean, he
5 kept sending me. But we sold them. We sold them. We
6 paid him and it was a good relationship at that point.

7 And once we started doing that, Billy felt
8 that his property -- that Dan needs to release his
9 property from Penland Properties. Well, Dan -- that
10 ain't the contract we went into, this is where we were at.
11 And then Billy also said, Well, if he don't release it,
12 he owes us 20-some thousand dollars. Because they take
13 a hundred dollars out on every car that they floor and
14 it was up to 20-some thousand. And Billy said just give
15 me my \$20,000 back and let's go with Charna and we got
16 Glen and we got Randy. And we don't need to have Dan
17 any longer.

18 So I got John Bethea in there and I kind of
19 ate crow a little bit, I'll be honest with you, but
20 that's the way Billy wants it. Can we get our check?
21 So Dan eventually sent us our check and at that point we
22 kind of quit using him at that time.

23 Q Was there ever any problem up until then doing
24 business with Dealer Financial?

25 A Never ever. Never had any issue.

1 Q Charna, do you remember what company she was
2 with?

3 A Spartanburg Auto Auction.

4 Q Do you know her last name?

5 A No.

6 Q Do you remember how much -- what limits she
7 gave you all --

8 A I think she started us at 250.

9 Q Were you on board with stopping doing business
10 with Dealer Financial?

11 A I mean, didn't want to? No. Did we? Yes. I
12 mean, you know, it says Penland Automotive, not, you
13 know. I trust Billy wanted to make that decision and
14 you know what, that was his decision. His biggest
15 problem was he hated them holding his property. That
16 was the biggest problem. He didn't like the holding the
17 property.

18 Q Now we know through this lawsuit, eventually
19 Penland Automotive started doing business again with
20 Dealer Financial; is that correct?

21 A Uh-huh.

22 Q Tell me what you remember about restarting the
23 relationship.

24 A So Glen from Auto Lenders decided he's getting
25 out the business and he said, but he'll hold 100,000

1 with the floor and that was because of some perks for
2 him and -- but it wasn't enough to workout.

3 Q What did you have before with Glen? What was
4 the limit?

5 A One time I think he was -- don't get me
6 quoted. Four? Five? Six? I don't know. We were way
7 up there at one time with Glen. I don't know the exact
8 amount. I'd know it was -- we were up there pretty good
9 with Glen. It could have been four, five, six, I don't
10 remember.

11 Q And so Glen --

12 A It could've been 750. I don't remember
13 exactly.

14 Q But Glen is going to get out of business and
15 wants to reduce the floor; is that correct?

16 A Yes. He is going to reduce -- yeah, he told
17 us that he's going to be out and he said but I'll carry
18 100,000 with the floor with you. He said -- and it was
19 for some perks with him that he was going to get because
20 of carrying that floor and then Billy would have a
21 hundred thousand. But that wasn't nothing. Hundred
22 thousand dollars in car business is nothing. Not if
23 you're doing the volume that you need to sell.

24 Q So what do you do when Glen -- and Glen is
25 Auto Lenders; is that --

1 A Correct.

2 Q What do you do when Glen informs you that he
3 wants reduce the floor to a hundred thousand?

4 A So me and Billy were sitting at lunch and I
5 said we can always -- I can always call John back. And
6 he said, well -- he said, What do you think we can get?
7 And I said I don't know but I'll call John. And as soon
8 as I called call John, he quit talking to me. John
9 wouldn't talk to me. He said you'll have to talk to
10 Dan.

11 And then Dan and I think it's a Steve, if I'm
12 right. Steve is the -- Steve, I think. They got on the
13 phone, both, with me. And they asked me exactly what
14 happened and I told them the truth. Glen's out of the
15 business, he will carry a hundred thousand on floor, and
16 we don't have enough with Charna because at that time it
17 was only 250 with Charna. And I said we don't have
18 enough to make this work. And at that time Randy was
19 kind of pulling back a little bit, not a lot, but a
20 little bit. So we needed -- we needed another floor
21 plan.

22 Q Did you try to anyone other than Dealer
23 Financial at this time?

24 A The only one that came to my mind.

25 Q Okay. And did you -- tell me about --

1 A Well, we did. We went to Charna to try to get
2 it raised. And there were a lot of things that Charna
3 wanted so we kind of just kind of that real quick. And
4 that's when I went back to John. And then he had Dan
5 and Steve called me.

6 Q So at this point, Glen reducing dramatically
7 his limits, I mean, are you able to keep to the volume
8 of business you were doing without any floor plan?

9 A No.

10 Q All right. So how does it go at that point
11 with Dealer Financial?

12 A So then Dan and Steve call me up. I told Dan
13 the truth. I said, Dan, this is what's going on. And
14 he said -- and then Steve was asking me a bunch of
15 questions and Dan. And the said, Well, we'll call you
16 back. And Dan said, I'll tell you what. I'll
17 reactivate you on this contract. He said this is how
18 we're going to do it. And he gave me all of -- it was
19 pretty much -- it was the contract actually is what it
20 was, but it was to a point where it was a little of the
21 money than what we had at first but we could work
22 ourselves back up to our original contract that we had
23 with him. And he said that we'll reactivate you but
24 your contract says this but I'm only going to give you
25 this and let's see how this goes.

1 And so we -- so I'll tell you what we did. So
2 then we went back because I told Billy we need this,
3 this, this, this and we went to Charna. Well, what
4 happened was when we book out the cars, Charna, if we
5 would get her to floor these cars, we would have to come
6 up with \$70,000 compared to what Charna would floor the
7 cars for compared to what we owe them. It was almost
8 like 70 grand.

9 Well, Dan and Steve -- and I say Dan and Steve
10 because John Bethea was out, I had to deal with Dan and
11 Steve only on this -- didn't give me a figure of 70
12 grand. They said, We'll have John Bethea come in here
13 and you and John Bethea, you put the cars out of and
14 John Bethea will get back with me and I'll let you know
15 where we're at. Well, with the grace of God, the way we
16 were at, at that point, he come back and he said we're
17 good. And I was waiting for --

18 Q Who's "he?"

19 A John Bethea came back and said we're good.
20 And I'm waiting to see if there's an amount of money
21 that we have to pay like we were going to have to Charna
22 and we didn't. So I'm thinking, Shit, let's go. We
23 saved \$70,000. Let's go. We went to work.

24 And Billy started buying cars and we went back
25 into the floor plan business -- or back in the car

1 business, I should say. Back in the car business. Not
2 back in the floor plan, back in the car business. So we
3 started buying cars and that's where we went with it.

4 MR. JORDAN: We'll stop and mark this.

5 (Exhibit No. 4 was marked for identification.)

6 Q (BY MR. JORDAN) Mr. Yarger, I'm showing
7 Exhibit 4 here. This is the e-mail from Karen Willis on
8 July 9th, 2020, to John Bethea, krusch, and dhaight.
9 It says -- I'm trying here to let you see the date of
10 July 9, 2020, it says, "Per Billy Penland, please reopen
11 heard floorplan a \$400,000."

12 Can you just describe reopening this deep
13 deal --

14 A Because we have 650 when we left, I think. We
15 worked ourself to the point it started here with the
16 property at four, but by the time we got done with Dan
17 and John, they had us -- and I'll tell you, not just
18 they had us at 650, but if we were even close to 650 --
19 let's say we were at 630 or 640 and let's say Billy
20 would spend 75,000 or 80,000, all I had to do is call
21 Dan or John and even if that money was over the floor of
22 650, they would authorize go ahead, we'll pay for it.
23 So they were really good about that. They'd never ever
24 turned me down on anything.

25 Q Okay.

1 A Ever -- ever. Me and Billy would always -- he
2 always -- they always treated us with kid gloves. And I
3 really do mean that because it got to the point where we
4 didn't have only this amount the left. Well, he would
5 go buy and we'd say how much do we got? Billy would say
6 how much do we got? And I would call to find out what
7 our floor is. And -- but then I talked to John or Dan,
8 either one, and say, you know, if we spent a hundred
9 thousand, we got you. Don't worry about it. We'll
10 cover it. So they would even cover over just because of
11 the relationship that we had at that time.

12 Q So we see this e-mail on July 9th from Karen
13 Willis instructing a reopening for 400,000. Did you
14 sign any new contracts at this time?

15 A Uh-uh.

16 Q And why not?

17 A He reactivated our contract. He didn't ask
18 for a new contract.

19 Q What did you understand the terms to be?

20 A That we were at 650 when we left him, but he
21 wasn't going to give me the whole 650 that he would
22 reactivate this contract. But he said he was only going
23 to give me this amount of money. And then he said we'll
24 see how this goes. And that's exactly what he said to
25 me.

1 Q Was your understanding the terms were the same
2 as you had operated under for all those years?

3 A Yeah. Well, we had to have them. We got Glen
4 wanting his money. So it was like Charna wants 70,000.
5 So I get with Dan and I'm going to say Steve because at
6 that time that's who I had to deal with. And they
7 hooked me up right away and paid off all his cars with
8 Glen. So we were back running again. So we didn't have
9 time for anything else but we were pushed and we got it
10 done.

11 Q And so after July 9th, the date of this
12 e-mail, Dealer Financial did fund money to Penland Auto?

13 A Oh, they paid the cars off. We had to get
14 those cars paid off.

15 Q And they fund money for the purchase of --

16 A Buying cars?

17 Q Yes.

18 A Yes. We had a floor plan with them.

19 Q When you paid off those cars to Glen, did
20 Mr. Penland talk to you about getting a signed contract
21 with Dealer Financial? A new signed contract?

22 A Why? No.

23 Q What about when you started using Dealer
24 Financial money to buy new cars? Did Mr. Penland insist
25 on a written contract at that point?

1 A No.

2 (Exhibit No. 5 was marked for identification.)

3 Q Mr. Yarger, let me show you Exhibit 5 here.

4 It's an e-mail that you were CC'd on --

5 A He'd try to get me to work him a little bit,
6 but no, we never had that.

7 Q I showed you Ms. Willis' e-mail to reopen on
8 July 9th. This is a couple weeks prior on June 23rd.
9 It's an e-mail from John Bethea to Karen and you're
10 copied. It looks like it's requesting financial records
11 from Penland Auto. Do you recall Dealer Financial
12 requiring updated financials in order to proceed?

13 A No.

14 Q Okay.

15 A I don't. Now, they might have talked to Karen
16 but, no. No. What I assumed -- and I'm going to say
17 "assumed." I don't know why I'm here, but I guess
18 that's the problem. But the point is that this here,
19 when we talked to Dan and Steve, they reactivated me and
20 we were fine.

21 Q Okay. If you had not restarted this
22 relationship with Dealer Financial, what would Penland
23 Auto's options to continue --

24 A For me to go to find another floor plan to pay
25 Glen off.

1 Q And how much was owed to Glen again?

2 A I don't know the figure. I'm not gonna lie.

3 MR. JORDAN: Mark this. Six?

4 THE COURT REPORTER: Six. Yeah.

5 (Exhibit No. 6 was marked for identification.)

6 Q (BY MR. JORDAN) Mr. Yarger, I'm showing you an
7 affidavit that you signed. It's called the affidavit to
8 Timothy L. Yarger. If you flip to last page, which is
9 page 4, is that your signature?

10 A Yes.

11 Q And do you recall signing this affidavit?

12 A Yes.

13 Q Okay. It was signed March 30th of 2021.

14 A [Nonaudible response.]

15 Q I'm going to ask you to turn to page 3 of this
16 affidavit and read paragraph -- you don't have to read
17 out loud, but just read paragraphs 14, 15, and 16 and
18 I'll ask a couple questions.

19 (The witness complies.)

20 A Okay.

21 Q In paragraph 14, it says, "Neither Mr. Haight,
22 Mr. Betha --" excuse me. I'm reading the wrong
23 paragraph. Strike that. Paragraph 14 says,
24 "Thereafter, DFH," which is Dealer Financial, "and
25 Penland Automotive agreed to reopen the DFH credit line

1 on the same terms as before."

2 Is that your recollection today?

3 A Yes.

4 Q And that it says, "Rather than execute a new
5 set of documents with identical terms, we agreed that
6 the original Credit Agreement would continue to govern,
7 which was simpler and allowed the line to be reopened
8 faster."

9 Is that your recollection today?

10 A Yes.

11 Q Paragraph 15 talks about a requirement for the
12 payment of interest until a vehicle was sold. Can you
13 tell me what you remember about that issue?

14 A So we get a bill -- I think it was our first
15 bill that came in from the Dealer Finance and they were
16 asking us -- it was four, five, 6000. I can't remember
17 the amount. It was like four or five or six grand. And
18 Billy called me in there and Karen come in and says we
19 see that they're charging us this, this. He's like,
20 man, you gotta help. We've got to do something. Call
21 Dan and see if he can help us out a little bit.

22 So I walked outside and I called Dan and this
23 was in, I think, maybe August. I want to say that
24 because I know -- I don't know what month it was. I'm
25 not gonna lie. But he said I will take you -- and I

1 think it was -- he said, I'll do this. I'll help you
2 out a little bit because you guys -- what you're going
3 through about getting the new floor plan or getting the
4 floor plan taken from you and then getting us back in
5 again and hooking everything up. He said, I'll --
6 instead of charging you, I'll let you go for the
7 quarter. But before the quarter is over, you have got
8 to make sure this money is paid. But you don't have to
9 pay me now, but you do got to pay before the quarter.
10 That's the way these contracts read, he said.

11 So I had to -- so he gave me some leeway on
12 the contract. And so I went to Billy and said okay, we
13 don't have to pay it now, we got to the quarter to make
14 sure it's paid for. And that was about it. We didn't
15 say anything else about it. In other words, he gave us
16 some leeway.

17 Q Okay. Looking at paragraph 16 --

18 A Hold on a moment. I already put it away.

19 Q Sorry.

20 A Okay. All right.

21 Q The discussions and talks you had with
22 Mr. Haight and Mr. Lanzel and Mr. Bethea about reopening
23 the credit line, you state here that Mr. Penland never
24 communicated with Mr. Haight, Mr. Bethea, or anyone at
25 Dealer Financial when you opened the credit line; is

1 that still your recollection today?

2 A Did Billy talk to them?

3 Q Yes.

4 A No.

5 Q So is paragraph 16 still accurate to the best
6 of your recollection?

7 A Yeah, I was the one that negotiated that.

8 Q So after this e-mail in July from Ms. Willis
9 to reopen the line, you've testified that Dealer began
10 funding again for Penland Auto --

11 A Right away.

12 Q -- and paid off the other floor financiers, and
13 started buying cars; is that correct?

14 A Yes.

15 Q Do you know how the relationship at that point
16 ended between Dealer Financial and Penland?

17 A The relationship ended?

18 Q Yes.

19 A I left so I don't know how -- what -- how
20 whatever happened after I left.

21 Q And maybe that's a better question. When did
22 you leave Penland Auto?

23 A Well, I had my cancer surgery in September.
24 So it would be -- I left right, I think, right in
25 September before -- yeah, before my cancer. Actually,

1 the surgery. I left.

2 Q Okay. And why did you leave Penland Auto?

3 A I just didn't feel it was for me anymore. I
4 had options on the table, let's just say that. Some
5 options on the table that it felt was better for me and
6 my family.

7 Q Okay. Now, we looked at the partnership
8 agreement earlier that you and Mr. Penland signed. When
9 you left, was there any --

10 A The deal was he was going to pay me weekly so
11 much and we agreed to an amount for weekly. The day I
12 got out of the hospital for the cancer surgery, it was
13 on a Friday, my wife went over to get that first check
14 and was pretty much told my wife to get the hell off the
15 lot, we don't owe you nothing, we can't pay you, and it
16 was a bad situation.

17 So at that time, I had an attorney that was
18 going to take a lien out on the property, but I got
19 involved with another gentleman so much I didn't even go
20 to that point with that attorney that was going to take
21 lien and I lost. I lost what I had in that store. I
22 was done.

23 Q And so backing up --

24 A With the grace of God, it's a ten times better
25 situation today.

1 Q And so, backing up, the agreement -- when
2 you're leaving Penland Auto and you reach an agreement,
3 you say, with Mr. Penland to pay you out weekly. Is
4 that a payout of your partnership interest?

5 A Yeah, because I knew he didn't have all the
6 money up front. I knew we didn't have the money up
7 front.

8 Q Do you remember the amount you agree to be
9 paid?

10 A I think -- I think we agreed to -- I was going
11 to do, like, a thousand dollars a week until you got me
12 take -- until I got paid out.

13 Q What was the total? Do you remember?

14 A It was 150, of course. That's what the
15 contract says.

16 Q And you were never paid anything?

17 A Not even a dime.

18 Q Did you ever sign any paperwork terminating
19 your interest in Penland Automotive?

20 A Uh-uh.

21 Q Is that a yes or a no?

22 A No. It was just a handshake with me and him
23 out there that he was going to pay me and I walked away.

24 Q During the time up until you left from
25 reopening until the time you left, and it sounds like

1 you had your cancer surgery about the same time, did
2 Mr. Penland ever ask you to get a new written contract
3 from Dealer Financial?

4 A No.

5 Q All right.

6 MR. JORDAN: Jason, let's take five. I may be
7 done.

8 MR. IMHOFF: Okay.

9 (Break was taken at 10:47 a.m.)

10 Q (BY MR. JORDAN) Mr. Yarger, we've had some
11 conversation about the reopening of the relationship
12 with Dealer Financial. One thing that we've heard in
13 this lawsuit was that Penland didn't want to pay
14 interest or fees until a car was sold. Before Dealer
15 funded that 400,000, did you ever go to Dan or Dealer
16 Financial and ask for that terms that Penland not be
17 charged fees or interests until the car was sold?

18 A Yes.

19 Q And what was the answer?

20 A No.

21 Q And who gave you that no answer?

22 A Dan.

23 Q So, Mr. Yarger, you were told no by
24 Mr. Haight, that he would not agree that fees and
25 interests would not be charged until cars were sold?

1 A No.

2 Q After you were told no, did you still proceed
3 with the deal with Dealer Financial?

4 A Yes.

5 Q And did you receive funding after that from
6 Dealer Financial?

7 A Yes. We tried to get him to do it but he
8 wouldn't do it. He did give us a little leeway on some
9 of the -- the bill itself he gave us some leeway on it,
10 but he never -- never not -- didn't -- same thing. It
11 was like we did in 2016. It was the exact same thing.
12 I mean, we tried. We even tried to send him some papers
13 from other floor plan, meaning Charna, saying that she
14 don't do this, this, this. And he said, well, you can
15 do that then you need to go her pretty much is what he
16 said, but he wouldn't do it.

17 Q Okay. At the time you reengaged with Dealer
18 Financial in 2020, is it fair to say that Penland Auto
19 need a new floor financier?

20 A A new floor plan?

21 Q Yeah.

22 A Yeah, that's why I went to them.

23 Q And were you trying to move quickly?

24 A Real quick. Because Glen was done. Glen was
25 getting ready to -- like I said, Glen was going to hold

1 us and give us 100,000. That's all he would go. And
2 for his perks -- for some reason for him, perks. And I
3 don't know the whole situation. He said I'll at least
4 hold a hundred thousand. But then he was done with the
5 rest.

6 Q And so it was in Penland's interest to move
7 quickly at that point?

8 A Yes.

9 Q Did you sense that Dealer Financial wanted to
10 move quickly?

11 A Before called them?

12 Q Yeah.

13 A No.

14 Q Before you call them, had John Bethea or Dan
15 or anyone at Dealer Financial reached out to you to try
16 to reengage?

17 A No. No, I reached out to them.

18 Q So you initiated the discussion?

19 A 100 percent.

20 Q Okay. I think that's all I have right now.
21 I'm going to turn it over to Mr. Imhoff.

22 MR. JORDAN: Jason, do you want to sit there
23 or come over here?

24 MR. IMHOFF: Yeah, I'm going to come over
25 there.

1 MR. JORDAN: Okay.

2 EXAMINATION

3 BY MR. IMHOFF:

4 Q Can I call you Tim?

5 A That's fine.

6 Q Tim, I don't know if we told you at the
7 beginning this, but there there's some rules in South
8 Carolina about depositions. If you don't understand my
9 question, you didn't hear my question, tell me to repeat
10 it --

11 A Okay.

12 Q -- rephrase it, explain it, whatever.
13 Otherwise, I'll assume you heard my question and you're
14 answering that question; okay?

15 A Sounds good.

16 Q When you were at Penland Automotive, were you
17 always a general manager or general sales manager?

18 A Pretty much, yes.

19 Q Had you ever had any other role there?

20 A Besides just doing whatever Billy says to do.
21 Kind of negotiates and all the other shit, no. Pretty
22 much no.

23 Q Was one of your jobs as a general sales
24 manager and general manager to negotiate whatever Billy
25 needed or whatever the shop needed?

1 A Yes, 100 percent.

2 Q That's sort of something you're good at?

3 A That's what he put me at, yeah, I guess.

4 Q All right. And you were always paid \$3000 a
5 month for that?

6 A Well, we had some issues and sometimes we had
7 to go down a little bit on the income per week. Every
8 now and then we'd go down and then it would go back up.
9 But there was always- there was always a gentleman
10 agreement that we'd always made sure each of us -- both
11 of us were taken care of.

12 Q And you worked right next to each other;
13 right?

14 A I don't know about working right next to each
15 other but, you know.

16 Q You worked in the same dealership?

17 A Well, yeah. But he would come in by 9:00 and
18 by 1:00 he was gone. Or 2:00 he was gone. So -- but,
19 yeah, we were working next to each other. Yeah, of
20 course.

21 Q You never testified earlier you talked to him
22 about every day -- every morning; right?

23 A Yeah, every morning.

24 Q Every morning?

25 A Yes.

1 Q Okay.

2 A Except on Saturday.

3 Q If you had issues or questions or concerns,
4 you have access to Billy, talk to Billy, and he would
5 talk to you?

6 A Talked about everything.

7 Q All right. And did you ever get partner
8 distributions from Penland Automotive?

9 A Besides that paper I had signed?

10 Q Partner distributions being distributions to
11 partners of the business of the profits of the business?

12 A No.

13 Q Did you ever put \$150,000 into the business?

14 A Through construction money and other things
15 that me and him did. Money that I got from a cousins
16 and things that me and him came up with, probably more
17 that. And I could swear that.

18 Q You'd never stroked a check for \$150,000?

19 A No, but it was cash money that we worked
20 together that was supposed to split up that I just kept
21 running it into the company.

22 Q Yeah.

23 A But no, never did I ever cut a check -- one
24 check.

25 Q Was there ever a document or an accounting

1 that showed how much capital contribution you were
2 putting into Penland Automotive so that everyone could
3 keep track of that?

4 A Did we keep track of it? Probably no.

5 Q Okay.

6 A Was there? Yeah, of course. We, you know,
7 did a \$280,000 job, we paid our expenses. There was a
8 big, big, big check there. There was a \$127,000 job.
9 We did a big job there. There was a bunch of little
10 smaller ones we did. There were checks there and they
11 all just went into Penland. They didn't ever come to --
12 now, granted, a couple times I took, like, 5000 because
13 we'd have a check and we'd be in the office, it'd a
14 \$45,000 check. Of course, half of that is what?
15 Twenty-two fifty apiece; right? I should've took 22, he
16 should've took 22. I took maybe six or seven grand and
17 we left the rest in the bank.

18 Q Yeah. I get that. Where's the documents that
19 we can see it so that you can a project yourself?

20 A You would have to ask Karen on that. She did
21 all the docs on all the construction and the dealership.

22 Q All right. While you were there, what
23 documents did you ever execute that would bind Penland
24 Automotive?

25 MR. JORDAN: Object to the form. You can

1 answer.

2 Q (BY MR. IMHOFF) Had you signed contracts?

3 A With him, yes.

4 Q Did you sign contracts on behalf of Penland
5 Automotive with floor plan lenders, with consumer
6 lenders, with car sales --

7 A Some contracts I signed.

8 Q Which ones?

9 A I have no clue but -- if it was for me to
10 sign, I signed it. If he needed to sign it, he signed
11 it.

12 Q Did you ever sign a floor plan lending
13 agreement for Penland Automotive?

14 A No.

15 Q Did you ever sign a --

16 A I was a witness, but never signed.

17 Q Did you ever sign a consumer lending agreement
18 with any banks? AAC? Capital One --

19 A No.

20 Q Any of those?

21 A No.

22 Q Why not?

23 A Because it had to be the dealer principal
24 which was Billy.

25 Q What do you mean by "dealer principal?"

1 A Dealer principal is the person that actually
2 has his name on the license of the store.

3 Q Did you have any interest in Penland
4 Properties II?

5 A No.

6 Q Could you sign any agreement that obligated
7 Penland Properties II?

8 A I didn't.

9 Q Okay. Could you sign an agreement that
10 obligated Billy Penland? Do you know what a personal
11 guarantee is?

12 A Yes.

13 Q Can Tim Yarger sign a document that binds
14 Billy Penland under a personal guarantee?

15 A No.

16 Q In front of you, you have some documents that
17 have been introduced as exhibits. Would you pull out
18 the 2016 security agreement?

19 A Which doc is that on? There's so many.

20 Q Number 3.

21 A Got it.

22 Q Tim, on the first page of the first paragraph,
23 who are the parties to this agreement?

24 A Billy and Dealer Finance.

25 Q Anybody else?

1 A Let me look. I see it say Penland Properties,
2 Charles Penland, and Dealer Finance.

3 Q It says Penland Automotive also; doesn't it?

4 A Okay.

5 Q Okay. So how many parties are there to this
6 agreement?

7 A Four, it looks like.

8 Q Okay. Can you sign on behalf of Penland
9 Properties II and obligate them?

10 A No.

11 Q Can you sign on behalf of Charles Penland and
12 obligate him?

13 A No.

14 Q When you said that you renewed this agreement
15 with Dealer Financial in 2000 -- I think it was '21,
16 could you bind Charles Penland and Penland Properties
17 II?

18 MR. JORDAN: Object to the form. You can
19 answer.

20 A Can I bind him on the contract that we signed
21 on the 16th -- 2016?

22 Q (BY MR. IMHOFF) Yes.

23 A No, we didn't have to. We already went with
24 that contract. We didn't have to renew a contract.

25 Q Tell me what that means, you didn't renew a

1 contract.

2 A We didn't have time. We had to move quick.
3 Charna wanted \$70,000. We didn't have the 70 to give
4 her or we weren't going to give her the 70 grand on the
5 cars that booked. So I had to go with the original
6 contract that we used with Dan. And the only one
7 difference on the whole contract was instead of giving
8 me the 650 that we left with, he only gave me 400.

9 But we never -- he never -- Billy never asked
10 for a contract. Dan didn't ask for a contract. Nobody
11 asked for another contract. We just went from the
12 contract that we had and we started buying cars and
13 paying cars off right away.

14 Q So Billy Penland never said at any time after
15 that \$400,000 was acquired, where's my contract?
16 Where's my terms? Why am I getting charged curtailments
17 and interest? That never happened --

18 A The only time that ever came up is when the
19 first bill came along and Karen called Billy in there
20 and it was like \$4000 or something. He said, What is
21 this? And I -- evidentially that's interest. He said,
22 Well, you need to call Dan and work Dan and tell him I
23 can't pay this right now.

24 So I called Dan and I said, Can you help us?
25 We're just getting back into this thing to the point of

1 losing Glen and having issues. I said, Can you help me?
2 He said, I'll tell you what I'll do. I'll let it go
3 until October before you have to pay me that. He said,
4 So you don't have to pay me today, Tim, but by the time
5 October comes along, it's the quarter, I want my money
6 paid by the quarter.

7 Q When's the end of quarter?

8 A It was in October sometime. Don't get me
9 wrong. I don't know date it was.

10 Q Okay. Let me back up.

11 A Okay.

12 Q When that first bill came in, it had
13 curtailments and interest on it?

14 A It had interest.

15 Q It didn't have any curtailments?

16 A No, it was interest.

17 Q Did Billy Penland ever say, Where's my
18 contract? Where are my terms with the Dealer Financial?

19 A Never.

20 Q Never?

21 A Never.

22 Q Have you talked to John Bethea about his
23 testimony in this case?

24 A John's testimony is his. I'm telling you what
25 I know.

1 Q I'm asking if you talked to him --

2 A No.

3 Q Have you been presented with his deposition
4 transcript?

5 A No.

6 Q Do you do what he said about Billy asking for
7 his contract and term?

8 A I have no clue what he said.

9 Q All right. Billy wasn't happy with the
10 interest charge of the first 30 days; is that right?

11 A Billy wasn't happy with none of it, but it was
12 what we had to do at the time.

13 Q Okay. Was Billy happy with interest being
14 charged after the first 30 days?

15 A Probably not.

16 Q Did he ask you to contact Dan at Dealer
17 Financial?

18 A He said, "Work it." Like he's done for three
19 years. Go work it. Go work it.

20 Q Are you aware that Karen was also trying to
21 contact Dealer Financial and telling them that they
22 didn't know or didn't think they were being charged
23 interest?

24 A I don't know if Karen did that or not.

25 Q You don't know?

1 A No.

2 Q Y'all work in that same little office --

3 A I know what happened when it came to a floor
4 plan but I don't want to get nobody in trouble here so
5 I'm just going to say no, I don't know. I don't know
6 about her having a conversation with them. Because
7 there were other things happen that we tried to present
8 Dan to maybe change his contract and I'm not going to --
9 I'm not going to -- you know, I just don't want to --

10 Q It's in your affidavit.

11 A Okay.

12 Q So let me go back; okay? All right.

13 A We took Charna's floor plan; okay? And it had
14 a bunch of shit on it and we started whiting it all out
15 and it wasn't the real floor plan. And then we ended up
16 sending it to Dan and said this is Charna's, can you do
17 it? And it was all bogus. Okay. Now you want to know
18 the truth?

19 Q You asked Dealer Financial and Dan if they
20 could match Charna's floor plan; right?

21 A Yeah, which was bogus. It wasn't the real
22 floor plan. We whited the shit out and sent it over to
23 Dan. And then Dan said, Well, if you can do that, then
24 go with them, not me.

25 Q What did you white out?

1 A The interest rates were monthly, floor plan --
2 the curtailments were after so many days of having the
3 car in stock, and things of that order. We tried to
4 make him see that there was a better floor plan that if
5 you didn't do it this way, we're going this way. And
6 Dan pretty deputy much told me do whatever you want. He
7 really did say if you can get a better one, then I can
8 understand. The exact words he said.

9 Q How did you send it to Dan?

10 A I guess she sent it through an e-mail or she
11 sent it through a fax. I don't know how she sent it.

12 Q Okay. And you think it's Charna's agreement
13 with Billy Penland --

14 A It was Charna's agreement. I got it over --
15 I'm the one that got Charna's agreement and gave it to
16 them and let them look at it. It wasn't as good as
17 Dan's.

18 Q It was Charna's agreement --

19 A Yes.

20 Q Okay. Penland automotive signed by Billy
21 Penland; right?

22 A The one that I got over wasn't signed by
23 Billy. It was one that we were going to compare hers
24 against his and it was bullshit.

25 Q Okay. And what do you think the terms of

1 Charna's floor plan were?

2 A Interest rates each month and curtailments and
3 if you keep the car for so long you've got to -- I don't
4 remember exactly her whole floor plan but it wasn't that
5 good of a floor plan. It was like you paid a percent of
6 the car if you didn't sell it and -- I can't recover.
7 Now Glen's was we didn't have to pay anything. We
8 didn't pay no interest or curtailment until we sold the
9 car.

10 Q Okay.

11 A Once we sold the car, then we had to pay
12 everything to Glen. That's the only one that had that
13 program.

14 Q Did you negotiate the floor plan with Charna?

15 A For the best we could have.

16 Q No, did you do it?

17 A Yeah, actually I did.

18 Q Okay. Did you sign it?

19 A No, Billy did.

20 Q Billy signed it?

21 A Yeah.

22 Q Okay. Did he have ultimate approval on floor
23 plan lending and lender -- consumer lender contracts and
24 that kind of thing?

25 A What do you mean?

1 Q Did he have to ultimately approve agreements?

2 A Well, sure he did. That'd be his name on
3 there. He was the dealer principal. He was the one
4 whose licensed with his name on there.

5 Q Okay. All right. And do you know if Billy
6 Penland ever signed an agreement, a new agreement, with
7 Dealer Financial in 2021?

8 A No.

9 Q Okay. Have you ever seen a floor plan lender
10 not send new documents or updated documents for a floor
11 plan, security agreement, personal guarantee, that kind
12 of thing?

13 A Well, that kind of surprised me, by the way.
14 Because when we talked to them and I talked to Dan and
15 Steve. They reactivated -- they reactivated that for
16 us. They never asked me. Because we were using the
17 contract except from 650 he took me down to 400. So it
18 was the exact same contract that we went into -- they
19 never asked me for contract.

20 Q That surprised you that they didn't?

21 A To be honest with you, with the relationship
22 that we had before I left, no. Because, I mean, we
23 always had a good relationship with them.

24 Q It didn't surprise you?

25 A Not really, it didn't. I wouldn't even think

1 it would surprise me now.

2 Q Okay. All right. Will you agree with me that
3 the relationship between Dealer Financial and Penland
4 Automotive was terminated?

5 A It was, get me my money back, give me my
6 property back, we're going with Charna. Yes. So I
7 guess termination or whatever the hell you want to call
8 it.

9 Q Okay. The reserves were returned? All of
10 them?

11 A \$21,000-some was returned.

12 Q Okay. Do you know what a UCC-1 filing is?

13 A I know what a UCC filing is.

14 Q What is that?

15 A UCC filing is they own everything in the
16 daggone store and their property.

17 Q Okay. If a floor plan lender does their
18 audit, checks their books, and returns reserve money --

19 A It releases a UCC filing.

20 Q -- should they release the UCC filing?

21 MR. JORDAN: Object to the form. You can
22 answer.

23 A I would think they would have to, yes.

24 Q (BY MR. IMHOFF) In your experience, over 30
25 years doing this --

1 A 100 percent I think they would have to release
2 the UCC filing.

3 Q Okay. And does a UCC filing, is that for
4 notice to others lenders of priority of collateral?

5 A Yes.

6 MR. JORDAN: Object to form.

7 Q (BY MR. IMHOFF) And so if Glen or Charna or
8 any other floor plan lender you went to in the summer of
9 2021 went and looked at the UCC-1 files and found Dealer
10 Financial still had a UCC-1 filing, they would ask for
11 that to be removed if that relationship was resolved?

12 MR. JORDAN: Object.

13 A Actually, we had them -- they did ask us about
14 their UCC filing, Dealer Finance. Charna did. Because
15 we had Dealer Finance and we had brought Charna on
16 before we released Dealer Finance. So they already knew
17 we had a UCC filing with Dealer Finance.

18 Q (BY MR. IMHOFF) Who did?

19 A Charna.

20 Q Okay. Did you go to Charna in the summer of
21 2021 and ask Charna to increase the floor plan limit for
22 Penland Automotive?

23 A Yes, we were going to try to get that done.

24 Q No, not "we." Did you?

25 A Yes.

1 Q You did personally?

2 A Yes. He had me on the phone to call her.

3 Q Okay. What did she say?

4 A We need to have some docs. It wasn't that --
5 she gave me to Norma. And Norma told me if we were
6 going to do that, then they had to have some more docs.
7 More things to make the decision.

8 Q Was one of the things that Charna was
9 concerned about the UCC-1 lien filing by Dealer
10 Financial that had not been withdrawn?

11 MR. IMHOFF: Object to form.

12 A I don't think that ever came up. I don't
13 think that ever came up about a UCC filing with Dealer
14 Finance at that point, no.

15 Q (BY MR. IMHOFF) Charna didn't tell you that?

16 A [Nonaudible response.]

17 Q Did Billy tell you that?

18 A Uh-uh.

19 Q Are those noes?

20 A That's no and no and no.

21 Q Okay. Have you talked to Charna about that?

22 A I don't talk to Charna.

23 Q Why not?

24 A Because my partner tried to buy that auto
25 auction, had the check in her grandfather's hand, and he

1 was ready to buy it and she -- over millions of dollars
2 and he walked back and headed that check back to him and
3 said I'm going to my granddaughter try to run it. My
4 partner took his check and he don't have nothing to
5 Charna, which I don't have nothing to do with Charna.

6 Q All right.

7 A And we don't have to because we don't floor
8 cars. We don't floor our cars.

9 Q Let me do it this way. Would the documents
10 that Charna and Penland Automotive and Billy Penland
11 executed be a better representation of what their floor
12 plan agreement was then your memory?

13 A Could be, yeah.

14 Q Okay. And have you ever seen that floor plan
15 agreement other than the time that you claim you whited
16 it out and sent it to --

17 A You mean with Charna?

18 Q Yeah.

19 A I'm the one that first started it. He didn't
20 even know Charna. I introduced him to her. Well, he
21 might have known her, but he didn't know her like I knew
22 her. I'm the one that put him in the office and then
23 all of a sudden a relationship happened between them
24 two. He didn't even use Spartanburg Auto Auction.

25 Q All right.

1 A He thought it was a bunch of junk cars until
2 we started getting down there and there was some decent
3 stuff that came through, he started to buy.

4 Q Well, you're not going to use the auction to
5 have a floor plan; right?

6 A With who?

7 Q With Charna?

8 A No.

9 Q Okay. But you did go, Penland Automotive, the
10 two of you -- Billy Penland and yourself when to Charna
11 to try to increase the credit limit in the summer --

12 A We called her.

13 Q 2021?

14 A We called her.

15 Q And she said --

16 A It was Norma and Norma will tell you what you
17 need to get.

18 Q Did she say no?

19 A No.

20 Q She said --

21 A She said get with Norma and Norma said this,
22 this, this, and this. And I came back to Billy and
23 instead of going through her, Dan reactivated us real
24 quick so we didn't need her anymore. Well, we didn't
25 need her to give us any more floor because we had Dan.

1 Q Do you know if Billy had conversations with
2 her without you?

3 A He could have. I don't know.

4 Q Okay. Do you know whether or not she objected
5 to increasing the credit limit because of the Dealer --

6 A Not with him in her conversation.

7 Q Let me finish --

8 MR. JORDAN: Let him finish the question and
9 he'll let you finish your answer.

10 Q (BY MR. IMHOFF) Do you know if Charna objected
11 to increasing the credit limit because of the Dealer
12 Financial UCC-1?

13 A No, I don't know that.

14 Q You don't know?

15 A No.

16 Q You don't know either way?

17 A Don't know.

18 Q Okay. All right. Did you ask Dealer
19 Financial to match Charna's floor plan?

20 A The one that we sent over, I tried to get him
21 to see if he would do it that way and he said no.

22 Q Okay. But you did ask?

23 A Yes.

24 Q And when you agreed to reactivate, what were
25 the terms of the reactivated agreement?

1 A With Dealer Finance?

2 Q Yeah.

3 A 400,000 instead of 650,000 and we'll see if we
4 can work ourselves back up.

5 Q Okay. What was the interest rate?

6 A I have no clue.

7 Q What was the curtailment amount?

8 A Oh, that was 10 percent. I got him down to
9 5 percent. Or when we first started in '16 it was
10 10 percent and Billy had me work him down -- I think it
11 was 5 percent. Or maybe it was -- I think that's what
12 it was. I can't remember.

13 Q In the summer of 2021, did you and Dealer
14 Finance or Penland Automotive and Dealer Financial
15 exchange terms of the renewed agreement?

16 A Instead of 6 -- yes. I just told you.
17 Instead of 650 -- which we didn't have it in writing at
18 650, by the way. He just took us up to 650. We only
19 had it in writing at 400 but he took us up to 650
20 because we had a great relationship with him.

21 Q How much --

22 A So that was the only difference. He told me,
23 I'm not going to give you the 650 that we had you at.
24 I'm only going to give you the 400 and let you work
25 yourself up.

1 Q Okay. That's back in 2016?

2 A Uh-uh. That was back in 2021 when we're --

3 Q (BY MR. IMHOFF) 2021 he give you \$400,000 as a
4 credit limit?

5 A I think it was 400. We were at 650 if I
6 remember right -- and don't quote because I can't
7 remember the exact numbers. I know we had 650 with him
8 and if he was going to reactivate this contract he said
9 he would give us -- I'm thinking it was 400 or maybe
10 475. I can't remember. But it wasn't going to be the
11 whole 650. But has said I'll let you work yourself back
12 up to that, Tim, is what he said.

13 Q I want you to look at Exhibit No. 3.

14 A On what page? Or what -- oh.

15 Q Exhibit No. 3, yellow sticker. Okay. And I
16 want you to flip all the way back to the Exhibit A terms
17 schedule, which is at the bottom it's DFH numbers; do
18 you see that on the right?

19 A Yeah.

20 Q It's 1416.

21 A Gotcha.

22 Q Was this Exhibit A the terms schedule in
23 November of 2016 for the loan and security agreement in
24 Exhibit No. 3?

25 A I thought it was more.

1 Q Is that a, yes, this is the terms schedule for
2 this loan and security agreement in Exhibit No. 3?

3 A Well, this is what you're telling me it is,
4 yeah.

5 Q And this is what was presented --

6 A I don't know. I thought it was 400. This
7 says 200 here.

8 Q All right. So the credit limit in 2016 was
9 \$200,000 according to this; right?

10 A Oh, I was this is on '16.

11 Q Uh-huh.

12 A Oh, I thought this was in '21.

13 Q Well, there wasn't an agreement in '21; right?

14 A No. But I thought you said that was this the
15 one we agreed to -- I thought you said '21. I'm sorry.
16 When we first started? Yes.

17 Q Okay.

18 A But that ain't what it ended up being.

19 Q Exactly. But this agreement in 2016 has a
20 \$200,000 credit limit; right?

21 A That's what it says, yes.

22 Q So when you renew the 2016 agreement, what is
23 the credit limit in 2021?

24 A I believe he took me to 400,000.

25 Q And that's --

1 A But we were at 650 when we left him.

2 Q Okay.

3 A I'm sorry.

4 Q You're getting my point. So when you renewed
5 the 2016 agreement, the term of the credit limit was
6 actually different in 2021; right?

7 A The amounts? Yes.

8 Q And that's a big deal; right? The credit
9 limit?

10 A Either that or he trusted us.

11 Q That's a material term of the agreement; isn't
12 it?

13 MR. JORDAN: Object to form.

14 Q (BY MR. IMHOFF) Yes, or, no?

15 A Yes.

16 Q Floor plan fees. Do you see that?

17 A Yes.

18 Q Okay. "Floor plan factor means 8 cents per
19 \$100 borrowed or .0008." Do you see that?

20 A Uh-huh.

21 Q Okay. Was that the term of the floor plan
22 factor in 2016?

23 A If you're telling me this is 2016, yes.

24 Q That's not my document. I didn't make that
25 document. I didn't sign --

1 A And I don't got a say so I'm not going to -- I
2 don't know.

3 Q All right. Let's do it this way.

4 A Okay. All I'm telling you is that's it.

5 Q Yeah. If this is the 2016 agreement, which it
6 has been represented that it is.

7 A Okay.

8 Q Was the floor plan factor in 2016 at 8 cents
9 per \$100?

10 A That's what it says, yes.

11 Q Was that a material term of the agreement?

12 MR. JORDAN: Object to form. You can answer.

13 A Yeah, for '16.

14 Q (BY MR. IMHOFF) Okay. Sure. You want to know
15 how much you get and what you have to pay; right?

16 A I agree.

17 Q I mean, simple stuff; right?

18 A 100 percent. Can I ask you a question?

19 Q You can ask, I don't have to answer it.

20 A Okay, that's fair enough. This is the
21 agreement in '16; right?

22 Q That's what's been represented to us.

23 A Why did we spend 650,000 then in '16 and not
24 200,000? That's all I was going to ask.

25 MR. IMHOFF: Will you mark this, please as 7?

1 (Exhibit No. 7 was marked for identification.)

2 Q (BY MR. IMHOFF) I've just presented you with
3 Exhibit No. 7 to your deposition. Can you tell me what
4 this is?

5 A Is it about the property?

6 Q What does it say that it is right there in the
7 top right?

8 A Lease mortgage.

9 Q Would you approve with me that this is Dealer
10 Financial releasing a mortgage -- let's see. What does
11 it say? Unfortunately, I don't have the Exhibit A. But
12 you agree with me that Dealer Financial's releasing a
13 mortgage here?

14 MR. JORDAN: Object to form.

15 A I do.

16 Q Okay. Do you know if a mortgage was required
17 on some property in the 2016 agreement, Exhibit No. 3?

18 A Yeah. Penland Properties.

19 Q Does this release of the mortgage --

20 A It does.

21 Q -- modify --

22 MR. JORDAN: Let him finish the question.

23 Q (BY MR. IMHOFF) Does this release of the
24 mortgage modify the 2016 agreement?

25 MR. JORDAN: Object to form. You can answer.

1 A Does this release modify the '16?

2 Q (BY MR. IMHOFF) Yeah?

3 A No, I wouldn't think so.

4 Q It doesn't?

5 A No.

6 Q So the 2016 agreement says we have a mortgage
7 on your real estate if you read this; right?

8 A Correct.

9 Q And if you sue on this, you could go ahead and
10 foreclose on that real estate if there was a debt owed;
11 right?

12 MR. JORDAN: Object to form.

13 A You could.

14 Q (BY MR. IMHOFF) Right?

15 A Yes.

16 Q Okay. After this was executed, if there was a
17 debt owed, could you foreclose on that real estate?

18 MR. JORDAN: Object to form.

19 A In the 2021 you're saying?

20 Q (BY MR. IMHOFF) Well, this is actually 2019;
21 do you see that?

22 A All right.

23 Q 20th February 2019. Do you see that?

24 A Uh-huh.

25 Q Is that a yes?

1 A I'm saying it was released.

2 Q Okay. So after that date in February 2019,
3 could Dealer Financial foreclose on the property that
4 they released the mortgage on?

5 MR. JORDAN: Object to form.

6 A No.

7 Q (BY MR. IMHOFF) That's a change of the
8 agreement; isn't it?

9 MR. JORDAN: Object to form.

10 A Sounds like it to me.

11 (Exhibit No. 8 was marked for identification.)

12 Q (BY MR. IMHOFF) I've handed you Exhibit No. 8,
13 which is a letter date December 13, 2016 from Dan Haight
14 to Mr. Penland; do you see that?

15 A Uh-huh.

16 Q Okay. And I'll take you down to the third
17 paragraph. "Additionally, we appreciate your concern
18 about incumbering Penland Properties II for the long
19 run. As discussed after November 23, 2017, you may
20 request a credit file review. Should Penland Automotive
21 be in compliance with the floor plan agreement, Dealer
22 Financial will release the mortgage on Penland
23 Properties II." Do you see that?

24 A Uh-huh.

25 Q Okay.

1 A So what was said when we did in 2016 and we
2 held -- we had to put the property up, as long as we
3 would go so long with him that he would review and, at
4 that point, look to release the property in 2016.

5 Q Right.

6 A Okay.

7 Q And that happened. We just saw the mortgage
8 release.

9 A Okay.

10 Q And that's a change to the 2016 agreement;
11 right?

12 A I guess that's why it says it was released
13 there.

14 (Exhibit No. 9 was marked for identification.)

15 Q All right. So I've handed you Exhibit 9. You
16 are not on this e-mail, but can you recognize it as an
17 e-mail from Dan Haight to Karen Willis copying John
18 Bethea on January 22nd, 2018?

19 A Yeah.

20 Q Okay. And again, Tim, if this is what it
21 looks like and what's been represented, okay, I'm not
22 asking you to say that you know who did this or this is
23 the right one or hasn't been modified; okay?

24 A Yeah, because I don't know.

25 Q We'll have people testify, "Yeah, I wrote

1 this."

2 A Okay.

3 Q I'm just saying that if it is what it appears
4 to be --

5 A Okay.

6 Q -- did Dealer Financial in January of 2018
7 change and modify the 2016 agreement in regard to the
8 length you can floor plan cars, the curtailments during
9 that 90-day period, and splitting half and half of when
10 things can be paid?

11 A And the only thing I can say is on this here,
12 is when we got with them in '16, we went back-and-forth,
13 back-and-forth to get the best deal for us. I don't
14 know if this is the deal I worked out. If the deal -- I
15 don't remember. I'm not going to -- I mean, we worked
16 Dan probably a good month after getting our floor plan
17 in '16 to get us in a better situation. I don't know if
18 this is the deal I worked or not. I don't know.

19 Q Okay. Well, read it down here. It says, last
20 paragraph; okay? "Happy to talk through any of those
21 point or if Tim thinks I didn't capture anything
22 accurately." You see that sentence?

23 A Uh-huh.

24 Q Tim, that applies to me that you negotiated
25 this with Dan Haight. Do you have any recollection of

1 that?

2 A Of any of this?

3 Q In 2018, negotiating with Dealer Financial and
4 Dan Haight?

5 A No. I didn't negotiate.

6 Q You don't --

7 A No, the only thing I did was I tried to give
8 him -- to get him to help me with interest rates and
9 curtailments. And he said no.

10 Q 2016 was the original agreement.

11 A Okay.

12 Q 2021, you'd left Dealer Financial and you were
13 going back to them.

14 A Okay.

15 Q This is 2018. This is right in the middle of
16 those two things.

17 A So we've still got --

18 Q You've been with them for two years. You
19 haven't canceled them yet.

20 A Okay.

21 Q Right?

22 A All right. Good. Yes.

23 Q So in 2018, you're with Dealer Financial, but
24 it appears to me that you went back and negotiated with
25 Dealer Financial and Dan Haight to get some changes

1 floor plan terms.

2 A 100 percent I did.

3 Q Is that what you did?

4 A Yes.

5 Q And this document reflects that?

6 A If this is it. I don't remember exactly what
7 I did. We were on the phone couple 3 or 4, 5 different
8 times I tried to get a better deal for us.

9 Q Right.

10 A Yeah.

11 Q And this e-mail appears to be the memoization,
12 the documentation of what y'all negotiated; right?

13 A If this is what you're saying it was.

14 Q Right.

15 A I don't remember. I'm not going to tell you,
16 yeah, if I don't remember.

17 Q So let's just -- in 2018, you were trying to
18 negotiate better terms for Penland; right?

19 A You better damn believe I was.

20 Q Okay. And Dealer Financial agreed with some
21 of your requests and put in this e-mail; right?

22 A A few.

23 Q Okay. And this modifies the agreement terms
24 of the 2016 agreement; doesn't it?

25 MR. JORDAN: Object to form. You can answer.

1 A It would, I guess, yes.

2 Q (BY MR. IMHOFF) Does this modify the terms of
3 the 2016 agreement?

4 MR. JORDAN: Objection. Answer.

5 A As he did us a favor, yes. You're right.

6 Q (BY MR. IMHOFF) I want to point out one other
7 thing to you; okay, Tim? Second paragraph from the
8 bottom says, "I don't think any of these adjustments
9 require use to sign new documents;" do you see that?

10 A Yes, I do.

11 Q Okay. "If you agree, just print this out,
12 sign it, and scan it back to me."

13 A Okay.

14 Q "You will have my original e-mail and I will
15 have your response. That should cover us." Does it say
16 that?

17 A Yes.

18 Q Okay. Do you see a signature on the bottom?

19 A Yes.

20 Q Whose signature is that?

21 A Billy's.

22 Q Why did Billy sign this?

23 MR. JORDAN: Object to form.

24 A Because he agreed.

25 Q (BY MR. IMHOFF) Why didn't you sign it?

1 A Because it has to be signed by Billy.

2 Q Why does it have to be signed by Billy?

3 A Because he is the dealer principal. It's in
4 his name.

5 Q Would you agree with me that Penland -- I'm
6 sorry -- that Dealer Financial required the
7 modifications to the 2016 agreement to be signed on this
8 e-mail?

9 MR. JORDAN: Object to form. You can answer.

10 A Yes. Well, it had to be because there's a
11 signature.

12 (Exhibit No. 10 was marked for identification.)

13 Q (BY MR. IMHOFF) All right. I've handed you
14 Exhibit No. 10, which you can see right at the top it
15 says Amendment to Loan and Security Agreement and other
16 related agreements; do you see that?

17 A Uh-huh.

18 Q All right. This is April 2nd of 2018. Do
19 you see that date?

20 A Uh-huh.

21 Q Yes?

22 A Yes.

23 Q Okay. And who is the amendment amongst? Who
24 were the parties to the agreement?

25 A Penland Automotive, Penland Properties, and

1 Charles Penland. And Dealer financial.

2 Q Four parties to the amendment; correct?

3 A Right.

4 Q The same four parties to the 2016 agreement;
5 right?

6 A [Nonaudible response.]

7 Q Is that a yes?

8 A Yes.

9 Q And you're not one of them; right?

10 A Nope.

11 Q All right. And what is the amendment, if you
12 recall or if you read it, that this Exhibit No. 10 did?
13 It's on the last page.

14 A Rental agreement date of November the 21st
15 2016. \$200,000 to 500,000, an increase. So they
16 increased it.

17 Q So it went up to 500,000; right?

18 A Uh-huh.

19 Q Is that a, yes?

20 A Yes.

21 Q Okay. Is that an amendment of the terms and
22 credit limit that we saw in the 2016 document?

23 A No.

24 Q It's not?

25 A It didn't say 500,000. It said 200,000.

1 Q Right. It's a change. 2016 is 200,000.

2 2018 --

3 A Yeah, they gave us more line.

4 Q It's 500,000; right?

5 A Yeah, they gave us more line.

6 Q Okay. That's a change; right?

7 A Uh-huh.

8 Q That's a, yes?

9 A Yes.

10 Q That's different than the 2016 agreement;
11 right?

12 A Yes.

13 Q Yes. Okay. All right. And as a matter of
14 fact, it actually says on the document, "amendment;"
15 right?

16 A Yes.

17 Q And this is a written document; is it not?

18 A Uh-huh.

19 Q Yes?

20 A Yes.

21 Q Your "uh-huhs" and head nods will not show up
22 if we did not explain that.

23 A Yes.

24 Q Okay. All right. Who signed it?

25 A Billy. And Dan.

1 Q Okay. Who did Billy sign it for?

2 A For Penland Properties and Penland Automotive,
3 LLC.

4 Q There's one more; isn't there?

5 A Guarantee-or [verbatim].

6 Q Guarantor. Which means what to you?

7 A He's the guarantee-or.

8 Q Okay. That's him personally; right?

9 A 100 percent.

10 Q He's personally on the hook for this; right?

11 A Yes.

12 Q So he can't -- he has to sign that; right?

13 A Yes.

14 Q You can't sign that for him?

15 A No.

16 Q He'd be really angry if you did that; right?

17 A It'd probably be wrong to do that.

18 Q And it probably wouldn't be valid; would it?

19 A No.

20 MR. JORDAN: Object to form.

21 Q (BY MR. IMHOFF) All right. So Billy Penland
22 got an amendment in writing; right?

23 A Right.

24 Q It identified an amendment to the 2016
25 agreement; right?

1 A Right.

2 Q And he had to sign it himself three times for
3 three different parties; right?

4 A Right.

5 Q And you couldn't have done those signatures or
6 agreement in 2018; right?

7 A No.

8 (Exhibit No. 11 was marked for identification.)

9 Q All right. I've handed you Exhibit No. 11.
10 You're actually on this e-mail.

11 TimYarger1212@gmail.com; do you recognize that?

12 A Uh-huh. That's my e-mail.

13 Q Do you still have that e-mail?

14 A I sure do.

15 Q Have you gone back to see if you have any
16 e-mails with any of these folks between, say, June
17 of 2021 through today?

18 A No.

19 Q Do you still get e-mails on that account?

20 A Yes.

21 Q All right. All right. Again, assuming this
22 is what it appears to be and it hasn't been modified;
23 okay? Would you agree with me that Dealer Financial,
24 and Dan Haight specifically, negotiated with you, Tim,
25 to change the curtailments going forward to 7.5

1 beginning at the 90 day mark and continuing each month
2 until the vehicle was paid off.

3 A That's what it says, yes.

4 Q Okay. Do you remember negotiating that?

5 A I mean, I negotiated with them.

6 Q Sure. Okay.

7 A Billy kept sending me in to get a better deal.

8 Q If this, in fact, was an agreement between
9 yourself, Penland Automotive, Dealer Financial, is the
10 change to 7.5 beginning at the 90 day part a
11 modification and change from the original 2016
12 agreement?

13 MR. JORDAN: Object to form. You can answer.

14 A Yes.

15 Q (BY MR. IMHOFF) Okay. So, Tim, I have showed
16 you, in front of you here, the 2016 agreement; right?
17 You have that; right? You've seen it?

18 A [Nonaudible response.]

19 Q Yes?

20 A Uh-huh. Yes.

21 Q I've showed you an e-mail that changes the
22 curtailments and the time; right?

23 A Yes.

24 Q I've showed you a release of a mortgage;
25 right?

1 A Yes.

2 Q Okay. Have showed you another e-mail where
3 cars can be floored for 90 days, Exhibit No. 9. No
4 principal curtailments will be done in that 90 days;
5 right?

6 A Yes.

7 Q Okay. And I've showed you an amendment to the
8 security agreement; right?

9 A Yes.

10 Q And all of those things change and modify the
11 2016 agreement; right?

12 MR. JORDAN: Object to form. You can answer.

13 THE WITNESS: Do what?

14 MR. JORDAN: You can answer.

15 A Yes.

16 Q (BY MR. IMHOFF) Okay. When you renewed the
17 agreement with Dealer Financial allegedly in 2012 --

18 A '12?

19 Q I'm sorry. 2021 --

20 MR. JORDAN: Can we go off the record?

21 MR. IMHOFF: Sure.

22 (An off-the-record discussion occurred.)

23 Q (BY MR. IMHOFF) When you discussed with Dealer
24 Financial and Dan Haight and Steve Lanzel in the summer
25 of 2020 to reopen or renew the relationship with Dealer

1 Financial, okay, what were the terms? And who were the
2 parties?

3 A The exact same terms except then I went to
4 Billy and we worked and worked and worked and worked him
5 to try to get better deal for us.

6 Q Let me break it down a little bit more.

7 A Go ahead.

8 Q Who were parties to the renewed agreement in
9 the summer of 2020?

10 A Me, Dan, Steve, and Billy.

11 Q What about Penland Properties II?

12 A No. Well, that is Billy, but okay.

13 Q It's not Billy, it's a company.

14 A Well, okay. Penland Properties I don't think
15 it can spell for itself.

16 Q Okay. They are not -- they were not a party
17 to the 2020 renewal of Dealer Financial floor plan
18 agreement?

19 A If it was, I don't know about it. No.

20 Q You couldn't make Penland Properties a party
21 to the 2020 Dealer Financial floor plan agreement; could
22 you?

23 A No.

24 Q Okay. You've never seen a document executed
25 by Billy Penland on behalf of Penland Properties II to

1 make Penland Properties II a party to that 2020 floor
2 plan agreement with Dealer Financial; have you?

3 A Did not see it.

4 Q Okay. Was Billy Penland a party to the 2020
5 Dealer Financial floor plan agreement?

6 A Yes.

7 Q Okay. How?

8 A Because I went to him after I got off the
9 phone with Dan and Steve and told Billy -- I mean, I
10 wasn't going to make the decision on -- I can't make the
11 decision. It's Billy's decision at the end.

12 Q Well, let's look back at Exhibit No. 3 if I
13 can; okay?

14 A All right.

15 Q All right. Let's flip to the -- let's flip to
16 the signature pages. And again, at the bottom, these
17 are called Bates stamp numbers, Tim, is the Bates stamp.
18 they're the DFH numbers.

19 A Yeah. Okay. What number?

20 Q DFH 1415.

21 A Okay.

22 Q All right. Was Dealer Financial Holdings and
23 Dan Haight a party to the 2020 Dealer Financial Penland
24 Automotive floor plan agreement that you said you agreed
25 to?

1 A Yes.

2 Q Okay. Was Penland Automotive, LLC a party to
3 the 2020 Dealer Financial floor plan agreement?

4 A Yes.

5 Q I'm checking those; okay? Was Penland
6 Properties II? The 2020 --

7 A I don't see it.

8 Q You already said no; right?

9 A No.

10 Q The next signature is Charles W. Penland, Jr.
11 as guarantor and grantor?

12 A Correct.

13 Q Do you know what guarantor means; right?

14 A Yes.

15 Q It means he is personally liable for that;
16 right?

17 A It's on him.

18 Q Okay. Was he a party to the 2020 Penland
19 Automotive/Dealer Financial floor plan agreement?

20 A Yes.

21 Q How, Tim?

22 A Because he had me to call Dealer Finance
23 because we had nobody else. We had Charna. Charna
24 wasn't as good as what Dealer Finance was. So I went to
25 Dan. And then Dan called me back with Dan and Steve on

1 the phone and gave me what I had to do to go to Billy
2 Penland to say this is the deal that we've got that they
3 will do. But their deal is we had 650,000 on our
4 original contract, they'll keep the original but they're
5 gonna only go 400,000. And then they said they'll let
6 us work ourselves back up.

7 Q I know why you did it. I'm asking how you, on
8 a telephone conversation, could make another person a
9 personal guarantee on an agreement?

10 A I didn't. All I had -- all I was was the
11 mouthpiece. I had to go to Billy and get the approval.

12 Q And didn't Billy have to agree to be a
13 personal guarantor on the 2020 agreement between Penland
14 and Dealer Financial?

15 A I would think he would except they used the
16 old contract.

17 Q Did he agree for them to use the old personal
18 guarantee instead of sending a new one that he could
19 read and look at and execute if he should choose?

20 A He 100 percent was okay with it because we
21 were in too big of a hurry, we had to get it done quick.
22 We didn't have time for all this -- now I understand
23 what this -- no, I never did a new contract. We never
24 done a new contract. We was never asked to do another
25 new contract. We were taking for 400 or 650 that we

1 left them with to 400,000.

2 Q Okay.

3 A And that was on the exact same contract. We
4 -- he -- Dan never asked me to sign a new contract.
5 Billy never asked me to get Dan a new contract. He did
6 ask me to work him. Now I ain't gonna lie about that.
7 He said work him. Work him a little harder. Let's get
8 him worked.

9 Q That's what you do, man; right?

10 A That's what I do. Exactly.

11 Q That's right. Let me say --

12 A Ask the man that just bought the Chevy
13 dealership. He'll tell you.

14 Q Let me say it this way; okay? Do you know if
15 Billy Penland ever executed a new personal guarantee for
16 the 2020 agreement between Penland and Dealer Financial?

17 A Didn't think any of it, but no.

18 Q Okay. Could you bind Billy Penland --

19 A No.

20 Q Did Billy Penland agree with Dealer Financial
21 and Dan Haight on the phone or in person about the 2020
22 agreement?

23 A No.

24 Q It all went through you; right?

25 A He made me get back on the phone with Dan and

1 Steve and say this is what we'll do and we made it work.

2 Q And you can't bind him by personal guarantee;
3 right?

4 MR. JORDAN: Object to form.

5 A Nope.

6 Q (BY MR. IMHOFF) So we've got the 2016
7 agreement and, Tim, you may not know this. I'm not sure
8 what you've talked to the lawyers or Dan Haight or Steve
9 Lanzel about; okay? Do you know that they are suing --

10 A I know what this is about now. Huh?

11 Q Do you know that they are countersuing Billy
12 Penland and Penland Automotive for over \$200,000 in
13 attorney's fees based on the 2016 agreement?

14 A I did not know that.

15 Q Nobody's ever told you that?

16 A No.

17 Q All right. Are you a partner of Penland
18 Automotive?

19 A I've got a piece of paper that says I am, but
20 that don't mean nothing.

21 Q If there's a judgment against Penland
22 Automotive --

23 A Will they come to me?

24 Q -- for over \$200,000, is it your opinion that
25 you are or are not responsible to put your share and pay

1 that judgment off?

2 A And, you know what, my wife mentioned that to
3 me. And you know what, I walked away. I never got a
4 cent out of the deal and I guess that's in another
5 courthouse and another time. I'll leave it at that.

6 Q Well, I mean, as we sit here today --

7 A I'll leave it at that.

8 Q Well, I can't, Tim.

9 A Well, I'm going to leave it at that because.

10 Q All right. So let me ask you --

11 A Because you're exactly right. My wife said
12 the same thing. She said if you're there -- if this is
13 this, you need to watch -- but you're right. But you
14 know what? I walked away and I've got everybody and
15 their brother that we made an agreement, I never got a
16 dime out of the deal. I never got one penny out of the
17 deal. I walked away. And if that might be the case,
18 then I might have to handle that down the road.

19 Q Have you ever heard "in for a penny, in for a
20 pound?"

21 A Yes.

22 Q Okay. Can you say one way or another today
23 whether you are a partner at Penland Automotive, which
24 would allow you to take profits and distributions but
25 obligate you to debts and liabilities of the company?

1 MR. JORDAN: Object to form.

2 A I've got a piece of paper that me and Billy
3 have signed. I have never gotten any profit out of it,
4 so if I'm going to pay any debt, then I want to see the
5 profit. And then I'll go back to whatever --

6 Q I heard exactly what you said.

7 A Thank you.

8 Q But I want to know, do you think today that
9 you were a partner for both profits and liability?

10 MR. JORDAN: Object to the form. You can
11 answer.

12 A I got a piece of paper that says what we say,
13 but I walked away. So I would say now, I don't want to
14 have anything to do with it.

15 Q (BY MR. IMHOFF) Dealer Financial has sued
16 Billy Penland. And there's testimony from Mr. Haight
17 that they're suing Penland Automotive, Billy Penland on
18 the guarantee, Penland Properties II for the mortgage.
19 All of that; okay? Based on your verbal discussions
20 with Dan Haight for over \$200,000. And the basis of
21 that -- I'm representing this to you -- so that you can
22 understand -- is that you could bind at least Penland
23 Automotive because you are a partner-owner of Penland
24 Automotive.

25 MR. JORDAN: Object to form.

1 Q (BY MR. IMHOFF) Do you understand?

2 A At the time we did the negotiating, I had this
3 paper signed and I thought it would end up a whole
4 different way as being Billy's -- let's call partner.
5 But it never did. But at the time, we did the
6 negotiating, I felt that this was a strong bond between
7 me and him. Which I found out it wasn't.

8 Q Okay. Did you ever tell Dealer Financial that
9 you were a partner or owner of Penland Automotive before
10 you left Penland Automotive?

11 A I don't know if I ever did or not.

12 Q Do you know if Dan Haight, Steve Lanzel or
13 anyone else at Dealer Financial -- John Bethea --
14 thought --

15 A John Bethea knew.

16 Q Knew what?

17 A He knew the contract that I went into because
18 they were -- some guys were worried -- people were
19 worried about me busting your hump and doing this and
20 doing that and then all of a sudden what happens if it
21 just -- one day it blows up. So yeah, John Bethea knew
22 that.

23 Q Before you left?

24 A Oh, yeah.

25 Q Do you remember ever text --

1 A Actually, I let John look at the contract.

2 Q Do you remembering texting maybe John -- I
3 have a text here -- or maybe Dan, but sending them a
4 copy of the contract after you and Penland Automotive
5 split ways?

6 A A copy of this contract?

7 Q The partnership agreement.

8 A Yes, I do.

9 Q That was after you left Penland?

10 A A week -- yeah, right after I left.

11 Q And I want to go back to what you just said.
12 You shared that contract with John Bethea before you
13 left Penland?

14 A I already know I did.

15 Q When?

16 A I shared it -- I don't know. He was a
17 personal friend so I let him look at it. I showed him
18 that I had interest in this.

19 Q 2017? 2018? '19? '20?

20 A Probably '17-ish when I had it signed. We
21 were still with them. I showed him. Yeah, I had it in
22 my desk.

23 Q All right. I'm going to go back, Tim; okay?
24 The 2016 agreement. I asked you a very broad question.
25 What were the terms that you agreed to on behalf of

1 Penland Automotive in the summer of 2020 specifically?

2 A The agreements to the floor plan?

3 Q Yeah.

4 A That he would open me back up. That he'd --
5 he'd reopen me back up on that floor plan, but he's not
6 going to give me 650,000 but he'd start me out at 400
7 and I could work myself up.

8 Q Okay. So the amount --

9 A Is different.

10 Q -- the time limit was different; correct?

11 A Yes, 100 percent.

12 Q Okay. In 2020 when you reopen this, how were
13 curtailments dealt with?

14 A We paid our curtailments. We paid our
15 interest.

16 Q When and how much?

17 A I don't know. You've got to ask Karen about
18 that. I didn't see if they --

19 Q How would she look if there's not a document
20 in 2020 that details what the terms are?

21 A Because we already knew we went off of -- we
22 already had the contract.

23 Q Which one?

24 A The one from 2016.

25 Q Okay. Well, look back, man. You've got the

1 2016 agreement and then you have these modifications
2 over time that change the agreement.

3 A Well, then I guess she had the modifications.

4 Q Which ones, Tim?

5 A I have no clue. You're asking me -- all I
6 know is you're asking me a question, did I -- was I
7 asked to sign or was Billy asked to sign a new contract?
8 No. Never did he ask us ever sign to a new contract.

9 Q If a contract came and it had a terms and
10 conditions page, just like the 2016 one, you would know
11 exactly what the agreement was, what the terms were, and
12 what's expected of both parties; right?

13 A Yes.

14 Q And would you agree with me that if the 2016
15 agreement had been modified and changed for --

16 A It was modified in '16, '17, and 18.

17 Q That's right.

18 A You just looked at it.

19 Q That's right. It had been modified and
20 changed --

21 A Yeah, because he gave us a better deal.

22 Q I have got to get this on the record, man;
23 right?

24 A I'm sorry.

25 MR. JORDAN: Let him ask his question. And

1 then you get to answer that.

2 Q (BY MR. IMHOFF) And we have seen the 2016
3 agreement had been modified, amended, and changed in
4 the -- let's go through them; okay? The limit -- the
5 credit limit -- right? -- was different?

6 A Yup.

7 Q Okay. The terms of the curtailments were
8 different both how much and when they started; right?

9 A Yup.

10 Q And the interest was changed; right?

11 A Don't know about interest, but, okay, I'm
12 going to say if -- if you say there was, there was.

13 Q And the timing of payments had changed; right?

14 A Yop.

15 Q Okay. Is there anything else more important
16 in a floor plan agreement than how much you get, how
17 much you pay, and when you have to pay it?

18 MR. JORDAN: Object to form.

19 A No.

20 Q (BY MR. IMHOFF) So what were the terms of
21 those three things that you agreed to, other than you
22 told me that the credit limit had changed, when you
23 renewed the agreement in 2020?

24 A The money. From 650 to 400.

25 Q Right. I understand you know that term.

1 A That's all I knew. I didn't go -- he sent
2 everything else to Karen and Karen got it and Billy got
3 it and they got it --

4 Q When?

5 A Whatever he sent it. I don't know. I don't
6 know what he sent. Even if he sent anything.

7 Q Let me show you some things; okay?

8 A I didn't handle that. Karen handled that
9 stuff.

10 Q How are you, Billy, and Karen supposed to know
11 what and when Dealer Financial is charging if it's
12 clearly not what happened in 2016 and it's not in
13 writing in 2020?

14 A Well, I'll ask you a question if you don't
15 mind. You can answer, yes, or, no. If this is the
16 case, why did you spend the money? Why did we go out
17 and spend the money then? We should've asked that -- if
18 you gave a loan, you want to know what you're paying
19 before you go spend the money. But if you go spend the
20 money, then you're assuming what? I'm spending the
21 money.

22 Q Or that the contract's coming; right?

23 A Well, there was never a new contract, but
24 okay, if you say so.

25 Q Why not?

1 A Because they never asked me for one. But why
2 are you spending money then if you don't agree to
3 this -- to the terms?

4 Q How can you agree to the terms if you don't --

5 A Then why are you spending the money? I mean,
6 I'm just being honest.

7 Q Well, you were there spending it; right?

8 A You better God damn believe I was.

9 Q Okay. Then why were you spending it?

10 A Exactly right because I figure we were okay.

11 MR. IMHOFF: All right. Let's mark this --

12 A -- I'll spend it with yours.

13 (Exhibit No. 12 was marked for identification.)

14 Q (BY MR. IMHOFF) Tim, you've never seen this
15 before; okay?

16 A This here?

17 Q You never seen it before?

18 A Okay.

19 Q I will represent to you, as you can see down
20 at the bottom, that this was produced to us by Dealer
21 Financial Holdings; okay?

22 A Okay.

23 Q Do you see that at the bottom it says DFH down
24 there?

25 A Yes.

1 Q Those are their numbers; okay? For the
2 documents. I will represent to you that this has been
3 presented to us as a July 6, 2020 e-mail amongst Dan
4 Haight, John Bethea, and Steve Lanzel; do you see that?

5 A Okay.

6 Q It says commitment package, Penland; do you
7 see that?

8 A Uh-huh.

9 Q Do you have any idea what that means?

10 A Commitment package.

11 Q What do you think that means?

12 A A commitment.

13 Q For the floor plan?

14 A I would think the only thing we needed to do
15 business with them was the floor plan.

16 Q Okay. Flip through the pages.

17 A Dear Billy.

18 Q What's the date?

19 A July the 6th, 2020.

20 Q Okay. Read the second paragraph for me,
21 please.

22 A 750,000 of use of the secure floor plan.
23 Okay.

24 Q Okay. It says "pending execution of
25 acceptable binding documents and additional application

1 information;" doesn't it?

2 A Uh-huh.

3 Q Yes?

4 A Yes.

5 Q Okay. Did you ever get this letter?

6 A Did I?

7 Q Yeah.

8 A No.

9 Q Did Billy?

10 A I don't know if he did or not.

11 Q Do you know if Dan Haight ever sent this
12 letter?

13 A I don't know.

14 Q Did you ever get acceptable binding documents?

15 A I don't know.

16 Q Did you get a new contract that you signed?

17 A Did we get a new contract?

18 Q Yeah. A new security agreement and loan like
19 the 2016 one.

20 A This one here you mean?

21 Q Yeah. Did you ever get a new one to review
22 execute in 2020?

23 A I don't know if he ever did or not.

24 Q Okay. It says, "Please review the proposed
25 terms and conditions. Given your approval, I can have

1 the appropriate documents prepared and available for
2 your signature the week of July 13th."

3 Did you ever get the documents to new the
4 relationship with Dealer Financial?

5 A You gotta ask Karen. I don't know.

6 Q Look at the proposed terms and conditions in
7 2020. Did you ever get this?

8 MR. JORDAN: Object to form.

9 A I don't know.

10 Q (BY MR. IMHOFF) See the floor plans amount?
11 750,000?

12 A Uh-huh.

13 Q That's different than 2016; isn't it?

14 A It sure it.

15 Q Okay. You see the rate fees, .078 cents per
16 hundred dollars. That's different than 2016; isn't it?

17 A Yes, it is.

18 Q Next page, please. DFH 724. See the
19 curtailments? "Vehicles which are 120 days from the
20 date financed, typically are principal curtailment of
21 10 percent of the original amount financed will be due
22 after 60 days from the date financed. And each
23 additional 30-day period after that."

24 Tell me what that means, Tim. You buy a car
25 using the floor plan credit limit, a \$10,000 car. Tell

1 us how that works.

2 A \$10,000, \$1,000.

3 Q Okay. So sixty days after you buy the car,
4 put it on the floor plan, you owe \$1,000 to Dealer
5 Financial; is that right?

6 A A curtailment, yes.

7 Q And ten 30 days after that, so 90 days from
8 the purchase, you another thousand dollars on that
9 \$10,000 car; is that right?

10 A Every 30 days?

11 Q Yeah.

12 A Yep.

13 Q Is that the same as the 2016 terms and
14 conditions?

15 A I gotta look at the '16. I don't know. I
16 thought I got it down to 5 percent when I negotiated
17 with him. I thought. Maybe I didn't. I thought we got
18 it to, like, less. I know what they tried to get from
19 us in '16 but we kept going back and working.

20 Q You don't dispute that Penland Automotive
21 closed/deactivated/ended their relationship with Dealer
22 Financial in February 2019?

23 MR. JORDAN: Object to form.

24 A No, we got our money back from them, the \$100
25 per car, and they got his property -- well, he got his

1 property released probably before that. But anyway,
2 yeah, no. We went to Charna and we had Randy.

3 (Exhibit No. 13 was marked for identification.)

4 Q (BY MR. IMHOFF) You may not have seen this,
5 you probably haven't; okay? Just representing to you
6 what's been produced to us as an e-mail with these dates
7 on it; okay? I want you to look at the bottom e-mail
8 from Karen Willis at 10:28 a.m. on July 7th, 2020?

9 A On Exhibit 13.

10 Q Yes. What does it say?

11 A Karen Willis -- okay. So she wants the UCC
12 filing canceled.

13 Q Why?

14 A Because we're not with them anymore.

15 Q Why do you need the UCC-1 filing canceled a
16 year -- over two years after you've left them?

17 A I guess he was holding the UCC filing on us.

18 Q Okay. And what would that prevent you from
19 doing or getting?

20 A They could prevent a lot of things, one is a
21 floor plan.

22 Q Right. Does this help you remember that in
23 July of 2020, Charna had asked for the removal of the
24 Dealer Financial UCC-1?

25 A I don't remember if she did.

1 Q Okay. Can you think of any other reason why
2 you and Billy and Karen would be asking Dealer Financial
3 to remove their UCC-1 lien to get another floor plan?

4 A No, we were trying to get a personal loan for
5 the store. We were trying to get a line of credit for a
6 personal loan for the store. And when it came up -- and
7 I don't remember the bank we were trying, they said we
8 still had a UCC filing against us. They were asking
9 about it and I went to Billy and said we have a UCC
10 filing still against us and it was something to do with
11 some kind of personal loan we were trying to get for the
12 store. A line of credit or something. I can't remember
13 what it was. That's where the UCC filing came up is
14 because we were trying to get a loan for the store.

15 Q Is that UCC-1 filing, and Dealer Financial's
16 UCC filing specifically, an impediment to you and the
17 store using collateral for other loans and plans?

18 A Yes.

19 Q Should it have been there on the store and
20 your collateral in July of 2020?

21 A No.

22 MR. JORDAN: Can we -- off the record.

23 (An off-the-record discussion occurred.)

24 (Exhibit No. 14 was marked for identification.)

25 Q (BY MR. IMHOFF) I'm handing you Exhibit No.

1 14, hopefully. Would you agree with me that on July
2 28th, the next day, Karen e-mails again and asks that
3 "we need proof that the UCC filing has been canceled.
4 Billy needs proof that it's been canceled before
5 tomorrow."

6 A Yes.

7 Q Okay. And what was the response back?

8 A It says updated when he knows more. I don't
9 know whoever Kim is. But, yeah, I see where she asks
10 for the UCC filing to be released.

11 Q Do you know if it was ever released?

12 A That, I don't know.

13 (Exhibit No. 15 was marked for identification.)

14 Q Okay. This is Exhibit No. 15. Karen Willis
15 e-mails John Bethea, Kim Rusche, Dan Haight, "Per Billy
16 Penland, please reopen our floor plan of \$400,000." Do
17 you see that?

18 A Yes.

19 Q Okay. Look above that. It says, "Karen, per
20 agreement with Billy and Tim, the existing loan and
21 security document packet dated November 21st, 2016, as
22 submitted remains in place. Best, Dan." Do you see
23 that?

24 A Uh-huh.

25 Q Are you on that e-mail?

1 A Yes.

2 Q Have you ever seen this e-mail?

3 A No.

4 Q Have you checked your e-mail to see if this
5 was ever sent by Dan Haight?

6 A No.

7 Q But you're certain you've never seen this?

8 A No.

9 Q Do you know when it was created?

10 A No.

11 Q Do you know if it was created for this
12 litigation?

13 MR. JORDAN: Object to form.

14 A No.

15 Q (BY MR. IMHOFF) You file taxes, Tim?

16 A Yes.

17 Q Have you ever filed taxes for a -- your
18 ownership of the partnership or distributions or profit
19 or anything on the partnership?

20 A With Penland?

21 Q Yeah.

22 A I filed taxes for Penland.

23 Q For your income or for --

24 A Income. Now I will tell you what I have done
25 because of the contract that I have, I have taken it to

1 a CPA and I let everybody look at it that needed to look
2 at it and it's a loss for me. So I'm going to claim a
3 loss for my taxes. The only way I'm going to get my
4 money back.

5 MR. IMHOFF: Let's take a break.

6 (Break was taken at 12:16 p.m.)

7 (Exhibit No. 16 was marked for identification.)

8 Q (BY MR. IMHOFF) Tim, I just handed you Exhibit
9 No. 16 which is a series of e-mails dated July. So the
10 bottom e-mail, which I believe is the first one at
11 9:39 a.m. Karen Willis talks about -- talking to Billy
12 and John, was supposed to call the staff the Malibu
13 process. Do you have any idea what that is?

14 A Uh-uh.

15 Q And then it say, "Dan talked with Tim last
16 night and said we're all good to go. The check already
17 went out." Do you know what that is?

18 A I would assume maybe is that the 21,000 that
19 was sending out?

20 Q For what?

21 A For when we wanted our money back for the \$100
22 per car.

23 Q Well, it's the wrong -- it's the wrong year.
24 This says July 10th.

25 A Oh, I'm sorry.

1 Q So that doesn't help you remember what was
2 going on there?

3 A Unless we did pay off. Either he helped us on
4 maybe pay the payoff on it for us or we bought a car and
5 they sent it to someone that we owe. I don't know.

6 Q So the first or the top e-mail from Karen to
7 Kim July 31st, 10:02 a.m.?

8 A The ACH is good to lend.

9 Q And then the next sentence says what?

10 A "Also going forward, please have Dan
11 speak...the banking and the financing."

12 Q Is that true?

13 A Karen?

14 Q Yeah.

15 A All of it.

16 Q Okay. And do you have any idea why she is
17 asking Kim to have Dan speak directly to her?

18 MR. JORDAN: Object to form.

19 A Because she handles the banking.

20 Q (BY MR. IMHOFF) Okay. All right. Tim, I just
21 want to point out that's at the end of July, July
22 31st; okay? That will be kind of important as we move
23 on.

24 (Exhibit No. 17 was marked for identification.)

25 Q I just handed you Exhibit No. 17; okay?

1 Because it's two pages that means it's an e-mail string
2 so we've got to go to the back page to start; okay? If
3 you'll flip to the second page. So here comes from Kim
4 at Dealer Financial on August 26th, "We'll be scheduling
5 the ACH with this week's floor plan invoice tomorrow
6 afternoon, Thursday, in which has portal" et cetera, et
7 cetera. Okay. August 26th, the same day, Karen Willis
8 says, "I'm totally confused. What invoice?" Do see
9 that?

10 A Uh-huh.

11 Q Okay. Next is, "Karen, that'd be a floor plan
12 invoice generated by the portal if there's been a car on
13 the floor plan 30 days." Do you see that?

14 A Uh-huh.

15 Q Is that a, yes?

16 A Yes.

17 Q Okay. With that the agreement that you would
18 get a floor plan invoice after 30 days.

19 A After 30 days?

20 Q Yeah.

21 A I would think so.

22 Q Where is it in all of the documents that I've
23 shown you that there would be a floor plan invoice
24 generated after 30 days?

25 A Nowhere.

1 Q Tim, on August 26th, 2020, is there
2 confusion about what the agreement is between Penland
3 Automotive and Dealer Financial?

4 A Yes, there is.

5 Q There is, isn't there?

6 A Yes.

7 Q And documents would resolve that; wouldn't
8 they?

9 A On this there is. Yes, that 30 days -- I
10 don't remember 30 days.

11 Q Look at the next ones. Karen says, "Thanks,
12 but we were under the belief that we weren't having --"

13 A Hold on. Okay. Gotcha.

14 Q "Thanks, but we were under the belief that we
15 weren't having fees owed until the car sales. I think
16 Tim is reaching out to John and Dan."

17 Did that help you -- does that help you
18 recollect the discussions with Karen and Billy about
19 what the heck is this?

20 A I don't know if this was "what the heck is
21 this," you need to call him and get on the phone and
22 find out what's going on and, yeah.

23 Q You say "what's going on," I say "what the
24 heck is this?"

25 A Same thing.

1 Q We'll go with what you said, "What is going
2 on;" right?

3 A If that's what you say, yeah.

4 Q Did you get on the phone with them?

5 A I'm sure I did.

6 Q Did you ask them what Karen says we were under
7 the impression -- the belief that we weren't having
8 these owed until the car sales?

9 A That's what Karen said.

10 Q I know that's what Karen said. Is that what
11 you got on the phone talk to Dealer Financial about?

12 A What I got on the phone and talked to Dealer
13 Finance about was they were charging us interest right
14 away and we thought we were going to get a little bit
15 of -- well, I don't know if we thought we were or we
16 please asked help us. And he did. He gave me until
17 October instead of going through the 30 days.

18 Q Well, let me ask you this. Why do you need to
19 beg for help if you have an agreement between the two of
20 you? You should just look at the agreement; right?

21 A Because the agreement -- that agreement we
22 had, we worked the heck out of it.

23 Q It had been changed over the years; right?

24 A Yeah, because I worked the heck out of it.

25 Q You negotiated changes to it?

1 A Yeah, I did. Yes.

2 Q Okay. So in August is it fair to say that
3 Dealer Financial and Penland Automotive don't agree on
4 what the terms are?

5 MR. JORDAN: Object to form.

6 A It seems like it here, yes.

7 Q (BY MR. IMHOFF) Okay. And if you look back at
8 Exhibit No. 2 -- strike that -- Exhibit No. 3 that the
9 term sheet. Can you tell me on Exhibit No. 3, the 2016
10 agreement --

11 A On what one?

12 Q Exhibit 3, the original 2016 loan and security
13 agreement.

14 A Got it.

15 Q Okay. Where the term is or the agreement is
16 that you're being charged 30 days after you floor plan a
17 car. I will tell you that I'm at 1416 at the bottom.
18 Exhibit A terms schedule.

19 A I don't see it.

20 Q When you reached out to them around
21 August 26th, what did you tell them?

22 A Of 2020 you're saying again now?

23 Q Yeah. So let's go back to document that I
24 handed you, 17, the last e-mail in August 2020; okay?
25 Karen says to Kim, We're under the belief we're not

1 having fees owed until the car sells.

2 A Okay. Got it.

3 Q It says you're going to reach out to them;
4 right?

5 A Yes.

6 Q Okay. What did you say then?

7 A I need help.

8 Q Did you say, Where are you getting this that
9 you get to charge 30 days?

10 MR. JORDAN: Object to form.

11 A You know, I actually believe I said -- let me
12 think about the conversation because I was walking in
13 the parking lot talking at the time to Dan. Dan, I
14 thought we were going to not have to pay interest -- I
15 don't remember the daggone thing we put together.

16 And then you said, Well, I'll tell you what.
17 This is the contract. This is what you agreed to but he
18 decided to help me and carry it out till October before
19 I had to pay anything.

20 Q (BY MR. IMHOFF) This debt's coming; okay?
21 There's e-mails from Dan about that. I'll show you.
22 I'll ask you this. Why did you believe that you didn't
23 have to pay interest?

24 A I don't remember -- I guess I got to go back
25 to the beginning of the contract. Back when we first

1 signed it back whenever. When Billy signed it.

2 Q When he said this is the contract you signed,
3 what contract did he tell you signed and agree to here
4 in July of 2020?

5 A Who? Dan?

6 Q Uh-huh.

7 A He never -- the contract was signed and what
8 we agreed to at the very beginning of our relationship.

9 Q Is that what you think he was referring to
10 during that call in August of 2020?

11 A Yes.

12 Q Did you go back and look to see what it said?

13 A No.

14 Q Did you go back and and look and see what
15 amendment had been changed over the years?

16 A No.

17 Q Did you say, You know, Dan, if we had it in
18 writing so we could look at it we could probably avoid
19 all these disagreements?

20 A No.

21 MR. JORDAN: Object to the form.

22 Q (BY MR. IMHOFF) Should you have?

23 MR. JORDAN: Object to form.

24 A I think I could probably get a little loud at
25 the beginning when I was talking to Dan because Billy --

1 when we went in the office, we had all this look like it
2 hit us and we thought we had some more time and that's
3 what I think I called him and he said, Well, I'll give
4 you a little bit of time. And that was -- you don't
5 have to pay it now, but you at least gotta have it paid
6 by the quarter, is what he said.

7 Q (BY MR. IMHOFF) Is it fair to say that you
8 weren't even sure what the terms of the agreement were
9 when you agreed to use the 2016 document?

10 MR. JORDAN: Object to the form.

11 A On every word? Yes, you're exactly right, I
12 don't know every word.

13 (Exhibit No. 18 was marked for identification.)

14 Q (BY MR. IMHOFF) I've just handed you Exhibit
15 No. 8. It's a quick one --

16 MR. JORDAN: 18.

17 MR. IMHOFF: You are correct. I'm sorry.

18 Q (BY MR. IMHOFF) Karen says, "Can we please
19 hold off on the ACH till we determine what is supposed
20 to be going on?" And what she means by that is can we
21 go not pay you these fees until we get some kind of
22 resolution?

23 A Right. That's why they put me on the phone to
24 talk to Dan. Exactly.

25 (Exhibit No. 19 was marked for identification.)

1 Q So the next day, August 28th, do you see that
2 Karen says to Dan Haight directly, "Can you please give
3 me a call so we can work out all the details on these
4 fees," and she gives him the cell phone number; right?

5 A Uh-huh.

6 Q Is that a, yes?

7 A Yes.

8 Q That's what this exhibit, anyway, appears to
9 show; right?

10 A Yes.

11 Q Do you remember why Karen is e-mailing your
12 contact directly without you on it?

13 A No.

14 Q Did you know this happened?

15 A No.

16 Q Do you have any opinion or speculations as to
17 why she did?

18 A Is this after I talked to Dan or before I
19 talked to Dan? I don't know.

20 Q So, do you -- did you ever talk to Dan or
21 Steve or John about why Karen is saying, talk to me?
22 This is the second e-mail we've seen now where Karen
23 is --

24 A No, first time I've seen Karen said this. No.

25 Q Did anybody you ever tell you that Karen

1 wanted talked to Dealer Financial and figure out what
2 was going on?

3 A No. It's usually always Tim, Tim, Tim, Tim.
4 Karen usually talked to Kim. Whoever Kim is.

5 Q So this would be out of the ordinary that
6 she's contacting Dan Haight directly --

7 A That would be true.

8 (Exhibit No. 20 was marked for identification.)

9 Q Okay. So here at 1:02 p.m. on August 28th;
10 okay? I'm just going to go backwards. So going up. On
11 August 28th -- okay -- Karen Willis e-mails Kim and
12 she says -- it's on the second page here, Tim. Second
13 page, top, second paragraph. "As for the invoice," do
14 you see that paragraph?

15 A Uh-huh.

16 Q "I need to speak with Dan." This is the third
17 time she's asking Dealer Financial to contact her; do
18 you agree with me? Based on these e-mails; right?

19 A Yes.

20 Q Okay. "I don't feel like we are getting
21 correct information on our end." She's expressing that
22 she doesn't know or understand what's going on with you
23 and Dan and John and Steve; right?

24 A Okay.

25 Q Did you know she was doing this?

1 A No.

2 Q Did you know Billy was directing her to do
3 this?

4 A No.

5 Q Do you know why she was doing it?

6 A She wanted to find out what was going on.

7 Q Do you know if Dan, Steve, or John ever called
8 Karen and talked to her?

9 A Don't know.

10 (Exhibit No. 21 was marked for identification.)

11 Q I'm going to hand you Exhibit No. 21. This
12 now September 3rd. Do you agree with me that Karen
13 e-mails Kim again and says, "I'm trying to get in touch
14 with Dan to discuss it"?

15 A Yes.

16 Q And y'all are in the same building; right?
17 Talk to each other every day; right?

18 A Not at this time. I'm leaving. September the
19 3rd --

20 Q That's the date you left?

21 A No, my surgery was, like, the 12th. So I left
22 a week prior before I had my cancer operation.

23 Q September 12th was your surgery?

24 A I think it was. I think it was the 12th -- it
25 was either the 12th or the 22nd. I need to check. I'm

1 not sure.

2 Q So you said two weeks --

3 A September was the month that was -- we were --
4 I was disappearing. I was gone.

5 Q Did you do that Karen was doing this?

6 A No.

7 Q Did you have any discussions with Billy or
8 Karen that they're trying to get ahold of Dan to figure
9 this out?

10 A No. Didn't know they a problem. Except the
11 interest that I got him to go till October on. I didn't
12 know any of this.

13 Q You don't think in August or September that
14 you, Billy, or Karen ever had conversations about them
15 saying, Karen sent an e-mail, we were under the
16 impression we did have curtailments and interest until
17 the cars sold? You never had that conversation with
18 them?

19 A I had a conversation with Billy that you need
20 to call Dan, they're trying to charge me \$4300 or
21 4000 -- 4300, you need to find out what's going on. I
22 called Dan, Can you tell it what's going on? I said --
23 and I told Billy and Billy said, Well, we can't pay it
24 right now. We've got issues going on.

25 So I called Dan and Dan said he'd help me, we

1 wouldn't have to pay it today, but he take it to October
2 or something. But he said that it'd have to be paid
3 before the quarter is up or something like that.

4 Q Well, I said it a little bit differently than
5 you but there was consternation/confusion about the
6 charges and the agreement in August and early September;
7 is that fair?

8 MR. JORDAN: Object to form.

9 A Yes. That's why I called him.

10 (Exhibit No. 22 was marked for identification.)

11 Q (BY MR. IMHOFF) I've handed you Exhibit 22.
12 About half an hour later, Karen e-mails again, "I do
13 need to do that but I went to talk to him also. I think
14 we're being told misinformation. I just wanted to
15 straighten this out and hopefully we can figure things
16 out." Do you see that?

17 A Uh-huh.

18 Q Okay. Did you know this was happening?

19 A No.

20 Q Okay. Would you agree with me that they are
21 still trying to get in touch with the top: Dan, Steve
22 somebody?

23 A Yes. It appears right here on this it does.

24 (Exhibit No. 23 was marked for identification.)

25 Q I'm handing you Exhibit No. 23, which is this

1 e-mail you've been talking about from Dan. I'll give
2 you a second to look at it.

3 A Yes.

4 Q Okay. So you are on this e-mail. It came
5 directly from Dan to you and to Karen; do you see that?

6 A I do see that.

7 Q Did you receive this e-mail?

8 A No.

9 Q Why not?

10 A I don't know why I didn't. I just didn't.

11 Q Are you not an e-mail guy?

12 A I'm actually not an e-mail guy.

13 Q All right. But is this something -- this
14 something that you negotiated and talked to Dan about?

15 A To hold off on paying? Yeah. I asked him to
16 hold off.

17 Q So here's your October 1st day -- end of
18 quarter, October 1st, in the third paragraph; do you see
19 that?

20 A Yes.

21 Q You've been telling me for couple of exhibits
22 that you had a conversation and he said I'm gonna help
23 you out, you have to pay --

24 A At the end of the quarter.

25 Q And that's October 1st; right?

1 A Yeah, it was actually October the 1st.

2 Q Let me ask my question again. Now that you
3 see this, is this the writing that memorializes your
4 conversation with Dan Haight about the first 30-day
5 invoice confusion?

6 A Yes.

7 Q Okay. And Dealer Financial now pushes Penland
8 Automotive's obligation of the floor plan to October;
9 right?

10 A First, correct.

11 Q So if it's not resolved, the first notice that
12 Penland Automotive would have that it's not resolved
13 will be October 1st with those September 28th
14 invoices; correct?

15 A Uh-huh.

16 Q Is that a, yes?

17 A Yes.

18 Q And he also gives you some preferred rate of
19 7.5 percent instead of 10 percent et cetera, et cetera;
20 right?

21 A Yeah, we worked him a little bit.

22 Q Okay. I'm going to ask you again, Tim.
23 Either during your discussion with him before this
24 e-mail or response to e-mail, did you say, Can we get
25 this in writing? Can we have a contract? Can we have

1 the written terms so we're not doing this over and over
2 again?

3 MR. JORDAN: Object to form.

4 A I never asked him that.

5 Q (BY MR. IMHOFF) Why not?

6 A I just never did.

7 Q Was Billy asking for it in writing? The
8 terms? Something?

9 A The only thing Billy asked me to do was see if
10 I could get this thing postponed because it was a
11 4300-dollar bill. And that's all I did.

12 Q Okay. I'm not going to make this an exhibit.
13 September 23rd, Karen e-mails Dealer Financial and
14 says you no longer work there.

15 A Right.

16 Q Okay. Does that sound about right?

17 MR. JORDAN: What date?

18 THE WITNESS: September 23rd.

19 MR. IMHOFF: It's exhibit --

20 A The 22nd --

21 MR. JORDAN: Do you want to make that an
22 exhibit?

23 A Yeah, yeah, the 22nd is my cancer operation.
24 Yeah, that's right.

25 Q (BY MR. IMHOFF) Say again? What?

1 A September the 22nd I think was my cancer
2 operation.

3 Q September the 22nd?

4 A The 22nd I think it was because I was in the
5 hospital for those three days and when I came out, that
6 Friday came up and that's when I sent my wife over
7 there. So it was -- yeah, I think it was September
8 the 22nd is when I went in for cancer operation.

9 Q Well, did you know before your cancer
10 operation that you were parting ways?

11 A Yes.

12 Q Were you already looking for another job?

13 A I already had some opportunities.

14 Q So you'd already talked to some people?

15 A I had people calling me.

16 Q Okay. Had you been offered a job at that
17 point?

18 A I had a few opportunities.

19 Q Brockman? Was that one of them?

20 A No.

21 Q Was it the opportunity that you're now with?
22 What's the gentleman's name?

23 A He was one of the opportunities, but it was
24 kind of a month or two away. And then I had another guy
25 wanted me to go in and kind of do what I did at Billy's

1 and try to straighten up what was over on the motor
2 mile. And I went in there for a few months and helped
3 him out, but the opportunity that was offered to me with
4 the gentleman I'm with now, it worked out real good for
5 us.

6 Q From your perspective --

7 A He was selling the property and getting a new
8 store.

9 Q -- why were you going separate ways?

10 A You don't want to know that. And I don't want
11 to really -- I don't want to get involved in that.

12 Q Was it a mutual parting of the ways?

13 A I walked him outside, we walked on the side of
14 the building, and we made a deal. And I left.

15 Q I'm taking your advice that I don't want to
16 know.

17 A You don't.

18 Q I mean, were you telling him you were
19 quitting? Or were you --

20 A I went home to my wife and shared some things
21 with my wife about the store and she said you need to
22 get out of there. And at that time -- and then I also
23 was getting ready to have the cancer operation, I've had
24 opportunities after opportunities being with Penland
25 that has come to me. And this one that came to me, I

1 felt that was the best move for me and my family. And
2 today, it worked out very good.

3 Q All right. I'm happy for you, Tim?

4 A I appreciate it.

5 Q I've got to ask because I've got to know and I
6 think we both know. Do you have an opinion about Billy
7 Penland?

8 A In the very beginning? He was like a brother.
9 I'd took a bullet for him. As time went on at the end,
10 there was just -- I just -- I was done. I was done.
11 Now he's got his opinion, I got my opinion. At the
12 beginning, I'd took a bullet for him.

13 Q An alternate question is this, and it may be
14 objectionable, if you were asked your opinion about
15 Billy's reputation, integrity, and honesty, what would
16 your answer be to a jury?

17 A There's a lot of good things and there's not a
18 lot of good things. I don't know what else -- how else
19 tell you that. I'm not going to have a -- look, it's
20 over. It's done. He went his way. I went my way. I'm
21 doing great, better than I have ever done probably in my
22 entire life for where I'm at today. And it was actually
23 a great decision that I made and I hope the best for
24 him. And that's kind of where I leave it.

25 Q All right. Same question for Karen Willis.

1 If you're asked about her, do you have an opinion about
2 her? Karen Willis' honesty, integrity, reputation.

3 A She's very loyal to Billy.

4 Q Okay.

5 A That's my opinion.

6 Q Do you have an opinion that she's dishonest?

7 A She's very loyal to Billy.

8 Q What about Joey?

9 A Some talent. He's got a little talent. I
10 mean, you know, for what he's got going and what he's
11 got to do, I mean, he could make it work.

12 Q I mean I've asked about his --

13 A He's not in a category of some of the guys
14 that I know, but he's a pretty good -- I mean, he's a
15 good kid. You know, I'm not going to throw stones at
16 the kid. The guy's got a family he's trying to raise,
17 he's trying to help out another one with her kids. Hey,
18 as far as I'm concerned, he's a good kid.

19 Q I'm less concerned about his work ability.
20 I'm more concerned about what you're going to testify
21 about your opinion of their integrity/honesty is?

22 A They're very loyal to Billy.

23 Q Joey also?

24 A Yes.

25 Q Do you find him dishonest? Or lack of

1 integrity?

2 A There is probably some there for him, but I
3 don't know if it's dishonesty because of just of his
4 lifestyle, but job, he's who he is. I mean, he's a car
5 guy.

6 Q All right. Do you have an opinion on Darryl
7 Jeter?

8 A Love him to death. Think the world of him.
9 Even though he is so low to Billy and to the Penlands,
10 but the man's a good guy. That's all I'm going to tell
11 you.

12 Q All right. After you left Penland, you texted
13 and talked to John Bethea, Dan Haight, and Steve Lanzel
14 and said some things about Billy and what he was doing;
15 do you remember that?

16 A Uh-huh.

17 Q What types of things were you telling Steve
18 and John and Dan after you left?

19 A I'd rather not say it.

20 Q Why were you doing that?

21 A I was mad.

22 Q About what?

23 A I'd just come from cancer. I had no income
24 coming in. My wife goes over the first week and they
25 tell her to get the hell off the lot. I was very mad.

1 Today, I'm not as mad.

2 Q What were they telling you?

3 A Get the hell off the lot. Tell my wife to get
4 the hell off the lot.

5 Q No. No. What were Dan Haight and Steve and
6 John telling you about Billy?

7 A They really wasn't.

8 Q You had conversations with them outside of the
9 texts I have; right?

10 A Yeah, but no. That wasn't nothing really --
11 I'll be honest with you, you know what Dan said to me?
12 I wish you the luck. I wish you good luck. You're
13 going to be successful, you're a hard worker, good luck.
14 That's -- Dan and then John Bethea says, Tim, if it's
15 anything to do with Penland, I can't talk to you about
16 it.

17 And I don't know what that was about but he
18 loves me and he loves you and -- and Steve, I'll be
19 honest with you, I don't think I even talked to Steve.

20 Q Did you tell the folks at Dealer Financial
21 that Penland and Billy were out of trust?

22 A No. I didn't even -- no.

23 Q Okay. Did you --

24 A Never did I ever tell them that.

25 Q Have you ever told anyone that Billy and

1 Penland were out of trust?

2 A Never.

3 Q Tim, what does "out of trust" mean?

4 A Means you're selling a bunch of cars and you
5 can't pay for them and you use that money for something
6 else and when they come in and they got to get paid,
7 they don't have the money to pay. So they're out of
8 trust.

9 Q Let me break down; okay? For the injury. You
10 buy a car with money loaned by a floor plan lender;
11 right?

12 A Uh-huh.

13 Q Is that a, yes?

14 A Yes.

15 Q Okay. And the floor plan lenders use that car
16 as collateral for that loan; right?

17 A Right.

18 Q And when you sell that car to someone else,
19 you're supposed to take that sale, and pay the floor
20 plan lender off; right?

21 A That car.

22 Q That car?

23 A Exactly.

24 Q Okay. And if you sell that car you and you
25 don't give that money to the floor plan --

1 A To that car and pay out another car, you're
2 out of trust.

3 Q You're out of trust.

4 A Exactly.

5 Q Which essentially means you've stolen that
6 money, my term, from the floor plan lender and they now
7 no longer have their collateral, but they still have the
8 debt; right?

9 A Exactly.

10 Q Is there a term in your industry that is
11 meaner, nastier, and more detrimental to a car dealer
12 than "out of trust?"

13 A No.

14 Q Is that the worst thing you can say about a
15 car dealer?

16 A That's pretty strong. Just dealt with that
17 for the last two weeks.

18 Q Tell me about that.

19 A So we bought a Chevy store. When we got in
20 there we said no, yes, no, yes -- to make a long story
21 short, they was Chase that was inside the store. They
22 were holding the keys. Chase was \$853,000. We said,
23 okay, so if we make Chase whole, this is part of our buy
24 agreement, then they're going away. We paid Chase
25 \$853,000 upfront cash. Chase go the money, took it, put

1 it in their bank account, and they still sat at the
2 dealership because he said he owns this other dealership
3 in North Carolina called King Street --

4 Q Let me stop you there.

5 A -- and he's out of trust.

6 Q I don't really want to get all this other
7 people's stuff on this record necessarily --

8 A Well, you just asked me --

9 Q I did. I did. I didn't know you were going
10 to go into that much detail. Okay. But somebody had
11 taken a car, sold it, and not paid off their floor plan?

12 A A bunch of them.

13 Q At your dealer?

14 A Yes.

15 Q Okay. And is that -- when you're out of
16 trust, does that diminish the reputation and integrity
17 of that person or dealer --

18 A Person, dealer, and franchise.

19 Q The whole thing?

20 A You better believe it.

21 Q You're diminished in the eyes of the dealer
22 community?

23 A All of it.

24 Q Okay. So is that true at auction houses?

25 A There was some auction houses involved in

1 that.

2 Q No, I'm saying does it diminish that person's
3 reputation in the eyes of --

4 A Oh, yeah. Well, it depends if he's paid his
5 auction house. I mean, if the floor plan's paid the
6 auction, auction don't really care as long as they get
7 their money. But if they're buying cars and then all of
8 a sudden the floor plan holds out says, We're not
9 flooring them, and you take them off the lot, and you've
10 been floored and all of a sudden, wait a minute, they
11 didn't floor, give me my money, then, yeah, that kills
12 it.

13 Q Is the used car or car sale community small?
14 Do y'all kind of know each other or know of each other?

15 A Everybody kind of knows -- yeah.

16 Q So lot's of talk and gossip?

17 A Yes.

18 Q Okay. Do lenders, auctioneers, other buyers,
19 sellers, wholesalers, are they in that group where
20 everybody kind of know everybody and gossip goes around?

21 A I don't knows much lenders as far as dealers.

22 Q What about floor plan lenders?

23 A I don't know if they -- I don't know if they
24 talk that much or not. I don't know if they're allowed
25 to. I don't know if they can.

1 Q You're owner of a dealership right now; right?
2 Partner?

3 A Third.

4 Q Okay.

5 A And then 40 percent of another one.

6 Q If someone told one of your floor plan lenders
7 that you were out of trust, would that be devastating to
8 you?

9 A Yes.

10 Q If someone told one of your floor plan that
11 they were repossessing your cars from your lot, would
12 that be devastating to you?

13 A Yes.

14 Q Have you heard in that small community gossip
15 that Billy Penland and Penland Automotive was out of
16 trust?

17 A No.

18 Q Never heard that?

19 A No, I did not hear he was out of trust.

20 Q Have you heard --

21 A I mean, I didn't hear because I didn't ask. I
22 didn't care. I mean, I didn't care.

23 Q Have you heard that Dealer Financial
24 repossessed the cars --

25 A I heard they come and took the car.

1 Q -- on the lot? Who shared that with you?

2 A Everybody. Matt -- all kinds of people
3 calling me and saying, man, he ain't got no more cars on
4 the lot.

5 Q Everybody's calling?

6 A Everybody.

7 Q Saying this happened?

8 A Saying he's got nine cars left on the lot.
9 I'm like, What?

10 Q This happened --

11 A I said, How about Randy? Randy took his cars
12 too. I'm like, So Randy took his cars, Dealer Finance
13 took their cars. And they said, Yeah, he's got about
14 nine cars on the lot.

15 Q Okay.

16 A But that's from all of the gossipers out
17 there.

18 Q I understand that. Okay. And were people
19 talking about that because it's devastating to a
20 dealership to have their cars repossessed by the floor
21 plan lender?

22 A It's embarrassing.

23 Q How?

24 A Because you were business and now you're out
25 of business.

1 Q And it also says that you took money and
2 misappropriated it in a violation --

3 A And it does. Yes, it does. If anybody's
4 smart that knows the program, yeah, that's the first
5 thing they're gonna say.

6 Q They're out of trust, that's what they're
7 going to say?

8 A Of course, they're going to say they out of
9 trust.

10 Q Out of trust; right?

11 A You don't even need nobody to tell you that.
12 If you see it and you see that, it's over.

13 Q So when a floor plan financier repossesses cars
14 off a lot, the implication and knowledge of folks in
15 that community is that that dealer was out of trust?

16 A Correct. Now I will say this. John Bethea
17 called me up and said, Tim, I know you're getting
18 ready -- this was when I was getting ready to just get
19 out of the hospital. So I was just getting home and he
20 said, Let me ask you this. Me and you have done this
21 for a long time on the floor plan. He said, I go in and
22 I asked Joey for the deal. Now, I gotta be honest. He
23 said, I go in and asked Joey for the deal and the floor
24 plan person and they said, Well, the deal is locked up
25 in the file cabinet. I don't know what's going on with

1 that deal. And he said, Tim, is that typical the way it
2 worked there?

3 I said, No. I said, What works is this, we
4 went ahead and we got a deal, we call it through, we
5 hold it on our desk. Once the deal is funded, then that
6 that deal leaves the finance office and goes into
7 Karen's office and then she does the title work. After
8 she finishes the title work, then she puts it in the
9 file.

10 So he says, Are you trying to tell me that the
11 deal stays on the desk until it gets funded?

12 Yeah, there's no reason to put it in the
13 office. What happens if it don't get funded? He said,
14 Well, I've been in there twice or our guys had been
15 there twice and Joey keeps telling the deals are in the
16 file, we can't pull them. I said, Well, you might have
17 an issue then.

18 So I am going to be honest, I did say it. I
19 said, You might have an issue there, John. Because no
20 deals come off the desk until they're funded. Once
21 they're funded, then they go to Karen. Then Karen does
22 the title work, then she files the deal. So I did say
23 that, I'll be honest.

24 Q What's the implication of that, Tim? What
25 does that mean?

1 A That means they're out of trust. They're
2 using the money for something else.

3 Q All right. And you were gone --

4 A So I did say that.

5 Q You were gone from Penland at the time this
6 conversation took place?

7 A About a week now.

8 Q And John Bethea who works for Dealer Financial
9 was having this conversation with you?

10 A He asked me if this was typical of how we did
11 it there.

12 Q Okay.

13 A And I said --

14 Q Do you know if Dealer Financial audited
15 Penland Automotive?

16 A They audited us all the time.

17 Q Do you know they audited them after your
18 discussion and texts with John and Steve?

19 A Well, I would think they would want to.

20 Q Do you know what the results of that audit
21 were?

22 A They found something wrong, that's why they
23 pulled the cars. I don't know.

24 Q You just said something and then you said, "I
25 don't know."

1 A Well, no. I'm saying I would think because if
2 you're holding the deal on your desk and you're funded
3 and you're coming in there saying, I need to see the
4 deal and the manager of time says it's in the file
5 cabinet, well, then you're hiding something because the
6 deal should be on the desk. And if it's funded, then
7 you should be paying it off. So exactly right.

8 Q Let me break that down.

9 A And they did as me that. He did call me and
10 ask me.

11 Q Did you know that they audited Penland?

12 A No.

13 Q John didn't say we're auditing Penland?

14 A He never said one way or the other. He never
15 said he was going to audit them or anything. He asked
16 me was this typical the way you did it when you were
17 there. How did you do it? And I told him this is how
18 it went step-by-step and that's where I left it. And I
19 did tell him. I said if that's the case you might have
20 a problem. And I did say that.

21 Q I would you expect that after that
22 conversation they would audit Penland Automotive?

23 A I would think so, yes.

24 Q And no one ever told you what happened with
25 that audit; right?

1 A No.

2 Q And then after that, the cars were
3 repossessed?

4 A I got phone calls saying he didn't have any
5 more cars left on the lot.

6 Q Then your assumption is that they must have
7 failed that audit?

8 A My assumption was they took all the cars off
9 the lot. Now not if he agreed or he agreed who agreed
10 to get the hell gone -- excuse my language -- I didn't
11 know what happened.

12 Q Did you hear about the interaction of the auto
13 auctions between Steve and Dan and Billy?

14 A No. Not even what you're talking about.

15 Q You have no idea?

16 A No.

17 Q No one has told you that Steve and Dan --

18 A Steve from his company Steve?

19 Q Steve Lanzel.

20 A Yeah. Okay. No.

21 Q Steve and and Dan followed Billy to it an auto
22 auction with papers in their hand and followed him
23 around that auto auction?

24 A I had no clue about that.

25 Q You don't know about that?

1 A No.

2 Q Okay. Have you had a floor planner follow you
3 around at an auto auction?

4 A No.

5 Q This is the day after they repossessed cars.
6 Have you ever seen a floor plan lender's owner and
7 president follow a dealer around an auto auction?

8 A I don't think I have.

9 Q What --

10 A Ever. No.

11 Q What would you think if you saw that?

12 A I don't know.

13 Q Would it be good?

14 A No.

15 Q They must be wanting to give them more money?

16 A This is news to me. I have no clue.

17 Q Tim, come on, man, what would you think if you
18 saw two principles of a floor plan lending company
19 following a dealer around the day after they repossessed
20 his cars?

21 A I don't know. That's crazy.

22 Q Would you say he's out of trust?

23 MR. JORDAN: Object to form.

24 A Well, they're following him for some reason.

25 Q (BY MR. IMHOFF) What's the reason, Tim?

1 A I have no clue.

2 Q What would you think? What would you guess?

3 MR. JORDAN: Object to form.

4 A It could be -- I don't know. I mean, I have
5 no clue.

6 Q (BY MR. IMHOFF) That's the first time you've
7 heard that?

8 A Yes.

9 Q And you ever seen that before?

10 MR. JORDAN: Object to form.

11 A No.

12 Q (BY MR. IMHOFF) Ever heard of that before?

13 A No.

14 Q Have you ever heard anybody say, anywhere at
15 anytime, John, Dan, Steve, wholesalers, auction, floor
16 plan lenders, other dealers, that Billy Penland was out
17 of trust?

18 A No.

19 Q Nobody's ever said that to you?

20 A Only thing I heard was Billy ain't got no more
21 cars on the lot. He's only got nine cars. At that was
22 a Matt Mu guy that called and told me that.

23 Q Did you ever hear anybody ask you -- did
24 anybody ever ask you if Billy Penland was out of trust?

25 A No. Nobody's asked me if Billy was out of

1 trust.

2 Q Okay. You have one of the Penland cars at
3 your house. You were driving it; right?

4 A Yes.

5 Q A Sonata, I think; right?

6 A Whatever it was. I can't even remember what
7 it was.

8 Q What were your communications with Dan and
9 Steve and John and Dealer Financial about that car not
10 being repossessed from the front of your house?

11 A They did take the car.

12 Q When?

13 A He said you can have it for couple days, but I
14 need to get John to pick it up.

15 Q Who said that?

16 A Dan.

17 Q Why?

18 A Because he picked all the cars up.

19 Q Why wouldn't he pick that one up?

20 A He did.

21 Q Why wouldn't he pick that one up the same day
22 that he had --

23 A I don't know. It might not have been home. I
24 don't know.

25 Q Did he call you ask you if you had a car?

1 A Yes. And I told him the truth. Yes, I did.

2 Q Okay.

3 A But I was -- when they did, I just come out of
4 the hospital. I was on bags and everything else. I
5 didn't need a car. I didn't care if they come got the
6 car or not.

7 Q Do you know when they came --

8 A And then my wife -- the only thing I had a
9 problem with is -- but this is before any of that
10 happened. My wife was driving the car they went crazy
11 to get my wife out so we went and brought her a brand
12 new car and we didn't need the car anyways.

13 Q Do you know how long you had the car before
14 they came and got it?

15 A Before they took all the cars off the lot?

16 Q Your Sonata, the one you had with you, how
17 long did you have it from the day that Penland
18 Automotive's cars were repossessed --

19 A See, I don't -- I think Matt might have called
20 me a week later or something like that. I don't know.
21 I don't know when they took all the cars. I have no
22 clue. I was in the hospital with cancer. I was coming
23 back. I was in bed. I didn't -- I didn't know
24 anything. And I don't mean that by -- I was just out of
25 it.

1 Q I get it. I'm sorry. I'm sure that was a
2 time period -- let me ask it this way. Do you remember
3 how they took the Sonata?

4 A Yeah, they came and got it.

5 Q But how? Did they send a wrecker? Did John
6 come drive it? How did they do it?

7 A You know what, I was in bed. I'd have to ask
8 my wife or my son if they sent a wrecker or -- I don't
9 think they sent a wrecker. I think they just come and
10 got it.

11 Q Did they tell you were there coming?

12 A Yeah. I told them -- he asked me did I have a
13 car and I said, yes. Well, we have to come to get it.

14 Q What's your addressed, Tim?

15 A 414 Old South Road.

16 Q Old South?

17 A Uh-huh. Duncan, South Carolina.

18 Q What's the ZIP?

19 A 29334.

20 Q What's your cell phone?

21 A (864)569-5944.

22 Q And you said you still have that e-mail
23 address; right? Do you check it?

24 A Not really. Every now and then I do. But no,
25 I'm not an e-mailer. I don't e-mail at all, actually.

1 Text me.

2 Q Okay. I asked you earlier and I want to get
3 in this a little bit. We've been here a couple hours
4 and I thought of something else. What agreements or
5 contracts did you sign for Penland Automotive when you
6 worked there, if any?

7 A A few maybe. I don't remember. Just
8 something that I was allowed to sign. If it said Billy
9 on it -- if I was allowed to sign, I signed it -- he let
10 me sign it. If he had to sign it -- if it had his name
11 on there, he signed it. If it didn't have his name or
12 it had my name on there, I signed it.

13 Q Okay. You had asked Billy if you could sign
14 the document?

15 A If it had my name on it?

16 Q No, no, no. If it didn't have anybody's name
17 or if it had Billy's name or Penland Automotive --

18 A Yeah, Billy would say just sign it. If it
19 ain't got nothing to do with me, don't worry about
20 signing it.

21 Q Okay.

22 A But if it had Billy's name, Billy would sign
23 it.

24 Q Can you think of any contract or agreement
25 that you signed?

1 A I can't. I'm sure there was a few but I don't
2 remember.

3 Q Never with a floor plan lender?

4 A Never.

5 Q Never with a consumer lender; right? Is that
6 what you call them? I don't even know --

7 A You're talking about a bank?

8 Q Yeah. A bank that loans to your customers.

9 A I had to sign as a general manager. A bunch
10 of them. You know, they'll ask you for the dealer
11 principal and then who's the GM. Because, remember,
12 dealer principal use the license, but don't mean he has
13 to be at the store. Most of people, even -- even with
14 floor plans, they will make a decision not just because
15 of the dealer principal but the person that actually is
16 running the store is there trust factor there. If they
17 don't trust the person that's running the store, they
18 sometimes they turn you down with the bank or they turn
19 you down for the floor plans. They have to -- there's
20 gotta be a trust factor with a lot of different things.
21 Especially when you're loaning all that kind of money
22 out.

23 Q Are you using Dealer Financial in any of your
24 businesses?

25 A No. We don't floor our cars.

1 Q What does that mean?

2 A I mean, we've got about \$6 million in used
3 cars now with the Chevy store and we own every title to
4 every car. We would floor our new -- we're going to be
5 flooring our new at the Chevy store. That's the only
6 floor plan that man's ever had.

7 Q Have you ever used Dealer Financial since you
8 left Penland?

9 A No.

10 Q Have you ever gotten any commission, bonus,
11 money, anything from Dealer Financial or John Bethea for
12 using Dealer Financial?

13 A Never.

14 Q No kickbacks? Nothing?

15 A Never.

16 Q Nothing?

17 A Never. First of all, if you know John Bethea,
18 that's not even -- no. Never.

19 Q Can you explain to me -- you said earlier that
20 Charna wanted an additional documents to \$70,000; do you
21 remember saying that?

22 A No. The 70,000 was from what the cars we owed
23 Glen -- the value of the cars that we owed Glen compared
24 to what she would loan and it was all -- it was all
25 close to 70 grand we would have had to come up with to

1 Charna. To floor with Charna, even if we did open up a
2 bigger floor plan with her. We still had to pay 70
3 grand if she would have floored those cars. Because we
4 were out of whack. We owed more than what they were
5 worth.

6 Q Mr. Haight explained that's why you do
7 curtailments. You take that 10 percent off so that as
8 the value of the car maybe goes down, it sits there
9 longer, that you have -- the lender doesn't owe full
10 retail on it or full price on it?

11 A Curtailments buys the car down.

12 Q Let me make sure that I understand what your
13 testimony is so we can ask Charna about that; okay?

14 A Yes.

15 Q So you had floor planned cars with Glen -- I'm
16 trying to remember the name of his company --

17 A Glen. Auto Lenders.

18 Q Auto Lenders. And you had bats on those cars?

19 A Correct.

20 Q Charna, according to you, sort did an audit or
21 evaluation of those cars and their value?

22 A She took the days that were in stock, the
23 car's that were in stock, and how she said it because
24 these cars, even though we haven't done it but there's
25 60 days that there's 70 days and we only can loan you so

1 much money. Not to say that she wouldn't have loaned us
2 more money if it was on the first day, but because these
3 cars were out for 60 at 70 and 75 days, instead of
4 giving you a hundred percent value, she was only giving
5 you 60 percent value because these cars had been on the
6 floor for 60 days, 70 days.

7 So it ain't that she wouldn't have loaned us
8 the money if we were at her auction buying, we would
9 have got that. We would have paid it. But because the
10 way we came to her and said this is what's going on --
11 we told her the truth that Glen was going out of
12 business. And when we showed her the list, it had the
13 days in stock. So she wasn't going to loan a
14 hundred percent of that value of that car if you had it
15 for 60 or 65 days. She's only going to loan you the
16 60 percent of it. Dan and John loaned me all of it.

17 Q When did you learn that Charna was making that
18 requirement or not going to be --

19 A She told us that. She told me that.

20 Q You had a conversation with Charna where she
21 told you that specifically?

22 A She told me that and so did Norma.

23 Q Okay. We have some profit/loss and some
24 spreadsheets and documents from Penland Automotive that
25 shows a good amount, but that Penland Automotive was

1 worth millions of dollars, at least gross, over the time
2 that you were there.

3 A Uh-huh.

4 Q Do you think that's right?

5 A I have no clue. It it is, then I got ripped
6 off.

7 Q Were you not looking at the books?

8 A No.

9 Q How many cars --

10 A I trusted Billy and Karen. You know what, it
11 was a situation where we had a -- like I said, I
12 would've took a bullet for him. If it took us -- it
13 took me down to little less money to keep the thing
14 running with him, I was behind him all the way no matter
15 what. So it -- you know what, if it made millions,
16 then, you know what, then I was lied to because every
17 now and then we would talk and say, Well, we only made
18 40,000 this month or we only made whatever this month or
19 this month.

20 And then at one time -- and it really
21 confusing because we did let somebody look at it and
22 say, well, your averaging 30 or 40,000 a month and if
23 you guys do that, you guys a doing money. And I'm
24 thinking to myself, well, if we're doing that, why are
25 we always broke?

1 Q How many cars did you sell a month while you
2 were there?

3 A Thirty, 40 maybe.

4 Q You said you need ice cubes to make ice water,
5 I think, earlier?

6 A For the banks.

7 Q In other words, you need a lot of cars.
8 That's one of the first things you said to Billy when
9 you came onboard.

10 A Can't sell off an empty shelf.

11 Q Can't sell off an empty shelf.

12 A Exactly right.

13 Q If you have nine cars --

14 A Yes.

15 Q -- can you sell 30 cars a month?

16 A Unless you keep replacing them right away,
17 that's the only way. In other words, if you sell two
18 and he goes out and buys three --

19 Q I understand.

20 A -- and you keep it going, yeah, you could sell
21 them. But that's a hard way to live.

22 Q Okay. You want to have a lot of options for a
23 lot of customers on the lot all the time; right?

24 A Of course. It's a variety for them to look
25 at. SUVs, trucks, cars, small cars, sports cars.

1 Q If your inventory is repossessed, does that
2 hurt your ability to sell cars?

3 A Of course it is.

4 Q Would you expect to see a substantial drop-off
5 in sales at Penland Automotive after Dealer Financial
6 repossessed those cars?

7 MR. JORDAN: Object to form.

8 Q (BY MR. IMHOFF) Having been the general
9 manager there for years?

10 A Yes.

11 Q You would expect that?

12 A 100 percent. Unless he found another floor
13 plan or another source to get him more cars.

14 Q Okay. You told me that you have an opinion
15 but do you know why Dealer Financial repossessed the
16 cars?

17 A The only think I can think of is one reason:
18 They were dishonest so they went and got their cars.

19 Q That the Penland Automotive was dishonest?

20 A Why else would you take them? If you're
21 making interests and you're making curtail the right
22 way, why would you take it? It's like a credit card.
23 If you're paying your credit care real good, why would
24 they cancel it?

25 Q That's the only thing you can think of?

1 A Why would it be any other reason?

2 Q It's just -- is that a, yes?

3 A Yes.

4 Q Billy wanted that property -- his hunting
5 property off that Dealer Financial loan agreement;
6 right?

7 A Yes.

8 Q That's like -- I mean, that's his thing;
9 right?

10 A Yes. That was his...

11 Q That drove him nuts; right?

12 A Every day.

13 Q Did that property go back in as collateral for
14 the 2020 loan agreement?

15 A I don't know if he took the property or not.

16 Q Who?

17 A The Dealer Finance.

18 Q Well, what do you mean you don't know?

19 A I don't know if they -- I don't know. With
20 the agreement, I don't know. I don't think they ever
21 did ask for the property. I don't think they did. But
22 maybe they did. I don't know.

23 Q How can you have an agreement if you don't
24 know what's in the agreement?

25 A I agree.

1 MR. IMHOFF: What time is it? Holy smokes.

2 THE WITNESS: I know.

3 MR. JORDAN: I've got, like, five minutes.

4 MR. IMHOFF: I got like 30 maybe. Do you want
5 to just blast through and take a quick break?

6 MR. JORDAN: Do you want to break now and just
7 organize? Is that what you're saying?

8 MR. IMHOFF: No, I could keep going. I just
9 don't -- Tim, how do you feel?

10 THE WITNESS: I'm good.

11 MR. IMHOFF: How do you feel?

12 THE WITNESS: I just want to get out of here.

13 THE COURT REPORTER: I'm all right.

14 MR. IMHOFF: You don't need a break? Just
15 blast through?

16 THE WITNESS: No, I'm good.

17 Q (BY MR. IMHOFF) Look at the affidavit --

18 A Which one?

19 Q -- that you prepared. Your affidavit.

20 A Which number is that?

21 Q I believe it is 6?

22 A Okay.

23 Q Who prepared this affidavit?

24 A Whenever had to come in here. I don't know.

25 Q When did you come in here?

1 A When they called me and said they want to do
2 an affidavit.

3 Q Who called you?

4 A Some girl. Some woman. I don't know her
5 name.

6 Q A lawyer? Paralegal?

7 A Yeah.

8 Q It wasn't Dan or Steve or John?

9 A No. No. It was a woman that asked me to come
10 in. And she gave me an address and I said, What's
11 going on? And she asked me to come in and I come in.
12 She asked me some questions and I answered all of her
13 questions. And she said, okay, we're done and I walked
14 out the door.

15 Q Did you tell them your version of this
16 affidavit before you came in?

17 A No.

18 Q You told her that day?

19 A I didn't even ever -- that's the first time I
20 ever talked to her. When I seen her.

21 Q How long were you here?

22 A Probably an hour maybe. I don't know. Maybe
23 a couple hours. I don't know.

24 Q Did you sign the affidavit when you were here?

25 A I don't know if she had me sign it or not. I

1 don't remember.

2 Q Was it drafted up right there during that hour
3 and you signed it? Or were there revisions to it? Or
4 did she send it to you?

5 A I don't know -- nobody ever sent me anything
6 to sign. So I evidently had to sign it while I was
7 here.

8 Q Do you think you came back in to sign at some
9 point?

10 A No, this is the second time I've ever been
11 here.

12 Q All right.

13 A To be honest, when she called me, I thought I
14 was in trouble. I didn't know what was going on.

15 Q I've said for years, nobody likes calls from
16 lawyers, even if it's good news.

17 All right. Exhibit 6, number 2. "I was a
18 25 percent owner of Penland Automotive." Is that true?

19 A 25 percent?

20 Q "I was a 25 percent owner of Penland
21 Automotive."

22 A That's what the paper says.

23 Q Okay. Is it true?

24 A Evidently not. I didn't get anything.

25 Q Okay. Are you a 25 percent owner of Penland

1 Automotive today?

2 MR. JORDAN: Object to the form.

3 A I mean, I've got a paper saying I am, but that
4 don't mean nothing. I'm taking the loss and putting it
5 against my taxes going on. I don't mean no -- I'm on
6 bigger and better things right now.

7 Q (BY MR. IMHOFF) Okay. You say that you were
8 responsible -- 4 and 6, "During my time at Penland
9 Automotive, I was responsible for handling the
10 dealers -- dealership's relationship with Dealer
11 Financial Holdings;" correct?

12 A Dealer financial, finance companies, and
13 anybody else he had me dealing with.

14 Q Does that mean you ultimately could make
15 decisions and bind the dealership without asking Billy
16 Penland?

17 A No.

18 Q Did Billy Penland have the ultimate decision
19 authority of whether or not you were going to go with a
20 lender, floor plan lender, buy a car, do a deal --

21 A Banks, he didn't care about. He just -- Hook
22 them up, Tim. But anything else like this, he would
23 have the last decision.

24 Q The floor plan lender.

25 A The last word. Yes.

1 Q Let me make sure that's clear for the record.
2 Floor plan lender, Billy Penland --

3 A The last word, he would have.

4 Q -- would have the last word?

5 A Yes.

6 MR. IMHOFF: Did you get it?

7 THE COURT REPORTER: [Nonaudible response.]

8 Q (BY MR. IMHOFF) All right. Did you start
9 using Charna or had you been using Charna, Upstate Auto
10 Auction, Lewis Mason Trust before you closed the account
11 February 2019 with Dealer Financial?

12 A Yes.

13 Q And you were also using Glen and Auto Lenders
14 as a floor plan lender?

15 A Auto Lenders, Charna, and we even had Dealer
16 Finance all at the same time.

17 Q You said in this affidavit that you didn't
18 like the decision to close the account with Dealer
19 Financial --

20 A No, I didn't think it was right to do at the
21 beginning.

22 Q Why?

23 A Because I didn't think the \$21,000 was that
24 important. See, I -- it was all about get my check, get
25 my check, get my check. And after they helped us out as

1 much as they did -- you gotta understand, we went to
2 auctions and, at the beginning, if we were a hundred
3 thousand dollars over when we are ready to buy cars --
4 let's say it was more than a hundred thousand dollars,
5 I'd call John, John called Dan, he'd say give it to
6 them. I mean, you don't have the floor plan people do
7 things like that. And they did. They did -- they went
8 the extra mile. I thought, you know, we kind of took
9 their kindness for weakness a little bit. And I just --
10 I didn't feel good about it. But, you know what, it's
11 Billy's decision, not mine.

12 Q 12, it says that Upstate Auto Auction, which I
13 think is actually the Lewis Mason Trust or something
14 like that, "would not agree to increase its credit limit
15 except on unfavorable terms." Have we talked about all
16 the unfavorable terms such that she was evaluating the
17 cars \$70,000 less? Is that the only unfavorable term?

18 A No. When we wanted to upgrade and get more
19 money, we had to give them some different docs. Some
20 docs, some financials. So they wanted -- we had like
21 250, but if we were going to increase they wanted to see
22 more financials and docs from us. They wanted to see
23 more from us. Plus, when we found out it was \$70,000
24 that we would have to pay her, that went out the window.

25 Q I'm trying to figure out what "unfavorable

1 terms" was referring to.

2 A Well, one was \$70,000 and the other one was we
3 didn't have it. So I guess you could call it anyway you
4 want but we just didn't go any further with her.

5 Q Because of the \$70,000?

6 A For the new floor plan, yes. When we -- when
7 he had me -- because we didn't -- it was 70 -- she was
8 only loaning so much money and we had to come up with
9 that money. So I went to -- I had Dan and John and when
10 Dan had John to come in there and we booked out the car,
11 I figured, okay, they'll probably come back a couple
12 three or 4000. They didn't come back in anything. They
13 didn't ask us for any more money.

14 Q Tim, I just want to make sure that I know the
15 whole world of what you're thinking is unfavorable
16 terms. And I went over two things today. One was
17 timing, you gotta be quick. And two, the \$70,000.

18 Is there anything else that was unfavorable at
19 Upstate Auto Auction's terms that you can think of?

20 A Besides they needed all the docs that we
21 already had with Dan and John so I figured we didn't
22 have to cross that bridge.

23 Q Despite that --

24 A No. There's no other --

25 Q Despite that --

1 A No.

2 Q -- you -- hold on. Those unfavorable terms,
3 your next paragraph says, "I contacted Mr. Haight asked
4 him if DFH would agree to match certain terms offered by
5 Upstate Auto Auction."

6 A Correct.

7 Q So you call them unfavorable in one paragraph
8 and in the next paragraph you say DFH, match them.

9 A And if you keep looking at this, I also say
10 that the floor plan that we really got from Charna that
11 was really going to give it to us, we kind of doctored a
12 little bit.

13 Q And I want to drill down on that. What did
14 you doctor off of that document?

15 A It was in Karen's office and there was some
16 rates and terms and the way she did things and we made
17 sure we -- they whited them out before we sent that to
18 Dan to see if he'll match it. And Dan said no, by the
19 way.

20 Q Can you say what rates and terms they were?

21 A I can't remember because I don't have the
22 floor plan in front of me. I don't remember.

23 Q The testimony has been in this case is that
24 Charna doesn't require interest and curtailment payments
25 until the car sells; is that true?

1 A Yeah, but she also -- what she does require,
2 if you have it so long, you've got to pay something. I
3 can't remember what her floor plan was. There was
4 something in there. We still had to pay though. And I
5 think it was she gave you a 60 -- I think it was over
6 30. It might have been 30. Thirty, 60, 90, if you hold
7 the car, you've got to pay her so much money.

8 Q Well, she's gotta make money at some point;
9 right?

10 A Well, you better believe it.

11 Q So it may not match what other floor plan
12 lenders are doing, but she's got money somewhere?

13 A Right.

14 Q But is the general time --

15 A That's how she stays in business.

16 Q Is the general concept that she doesn't charge
17 30 day, 60 day, 90 day interest and curtailment payments
18 on her floor plan?

19 MR. JORDAN: Object to form.

20 A That, I don't remember it. I don't remember
21 exactly what that floor plan said.

22 Q (BY MR. IMHOFF) Is not having to pay --

23 A I don't know if Charna charges interest or
24 not, I'll be honest with you. I don't know what she
25 does. Maybe she does. Maybe she don't. I don't know.

1 Q Well, we've got her documents and I'm pretty
2 sure she's going to testify.

3 A Yeah.

4 Q Well, if you don't know what she does then how
5 could you negotiate with Dealer Financial --

6 A Because we had it on a paper that they sent --
7 we had her send over the floor plan and it was sitting
8 in Karen's office and we were going over it. But then
9 we were going after Dan. And Dan actually gave us --
10 was giving us more money than what Charna was going to
11 increase us. So, I mean, we went with Dan.

12 Q Are you testifying that you don't know what
13 right now Charna's -- you don't remember --

14 A I'm testifying right now I do not know what
15 Charna's interest rates, terms, or anything is --

16 Q Let me finish.

17 A -- today because I don't remember.

18 Q Today because you don't remember. But
19 obviously you had the sheet at the time?

20 A The sheet was in Karen's office.

21 Q So you would've known then?

22 A Yeah, on her desk.

23 Q All right. Did Billy Penland complain about
24 Dealer Financial throughout the relationship with Dealer
25 Financial because the fees, curtailments were eating

1 into your cash flow?

2 A He was more complained about his property than
3 anything.

4 Q I believe that.

5 A It was.

6 Q But did he also complain that every month or
7 every couple of months from Dealer Financial --

8 A Yeah --

9 Q -- they were charging him curtailments and
10 interest?

11 A Yeah, I believe he did. Yeah, he did. He
12 complained everything. Yeah, about that.

13 Q And is fair then or true then he liked Charna
14 and Glen's programs better where he could pay it after
15 he sold the cars?

16 A He loved Glen's program. Couldn't beat Glen's
17 program. Nobody could beat Glen's program.

18 Q I want to nail -- I want to deep dive into
19 number 14; okay? "Thereafter, Dealer Financial and
20 Penland Automotive agreed to reopen DFH credit line on
21 the same terms as before."

22 A Uh-huh.

23 Q Okay. Who at Penland Automotive agreed to
24 reopen them on the same terms as before?

25 A That'd be Billy. I went to -- I talked to Dan

1 and them and then I went back to Billy and told him what
2 I could get. And he said to do it.

3 Q Will you agree with me that it appears as
4 early as August, when they got the first Bill from
5 Penland -- Dealer Financial, they didn't understand what
6 the agreement terms were?

7 A What I'm hearing, yeah.

8 Q Yeah. Okay. And so I think we can all agree
9 that there was an agreement to reopen the credit line;
10 right? We also talked about all the modifications and
11 changes and amendments to the agreement over the
12 years --

13 A The terms.

14 Q -- the actual terms and what they were.

15 A Yes.

16 Q Can you say that Billy Penland knew the exact
17 terms that he was, quote-unquote, agreeing to in July
18 and August of 2020?

19 MR. JORDAN: Object to form.

20 A I don't think Billy, in my opinion, knew
21 any -- any to the point where you tell him, but then
22 he'll ask you three days later, what's going on?

23 Q (BY MR. IMHOFF) Yeah.

24 A So the bottom line is, it sounds good, let's
25 do it, let's go with it. That's what we did. That's

1 it.

2 Q Do you agree with me --

3 A That's the way he made the decision. I mean,
4 he was pretty much, let's keep this baby rolling.

5 Q You agree with me that Karen tried to reach
6 out to Dealer Financial multiple times, contact me --

7 A That's what it looks like. Looks like, yeah.

8 Q You agree that happened?

9 A Yeah.

10 Q Assuming those e-mails are correct; right?

11 A Yes.

12 Q Okay. Do you know if Dan and Karen ever
13 talked?

14 A No.

15 Q Okay. You left September 23rd, I want to
16 say. Or somewhere around there?

17 A No, the 22nd I was in the hospital so way
18 before that.

19 Q Okay. You left. You're gone; right?

20 A A week before I went in the hospital to have
21 cancer. So whatever a week from the 22nd was.

22 Q You're the main contact and negotiator with
23 John, Steve, and Dan; right?

24 A Yes.

25 Q Okay. And they aren't talking to Karen;

1 right?

2 A I don't know if they're talking to Karen or
3 not.

4 Q And Billy doesn't talk to them; right?

5 A No, Billy doesn't talk to them.

6 Q Okay. And there's a disagreement, clearly, as
7 shown by these e-mails; right?

8 A 100 percent.

9 Q So what do you do, Tim? What do you do if you
10 have a disagreement with one of your
11 vendors/lenders/partners?

12 A You always try to get it put together. You
13 try to make it work.

14 Q Okay. Would you call your lawyer and have him
15 call and find out what was going on?

16 A It would be a good start.

17 Q Is it reasonable to you?

18 A Yes.

19 Q Did you know what happened for the
20 repossession of his cars?

21 A I don't. I didn't even know when they got
22 repossessed. Now I'm hearing they're repossessed. You
23 know what, I even thought when I heard about he had no
24 cars -- I'll be honest with you, someone told me he sold
25 the store. So I thought, well, maybe that's -- hell, at

1 that point I didn't care anymore. And I don't mean that
2 wrong, but I didn't care. I didn't care. I was gone.
3 I was done. I didn't get any money, my wife went over
4 the first day, they told her to get the hell out of
5 there, and at that point there I was done. The way they
6 treated my wife, the whole -- I was good. I'm not in
7 poverty. I didn't need -- I wasn't going to not eat
8 that next day. I was okay.

9 Q Tim, I'm going to ask for your opinion --

10 A And I went out and hustled myself to the point
11 where I'm at now.

12 Q I'm going ask for your opinion on a couple
13 things; okay?

14 A Yes.

15 Q Or your knowledge of it. Would it surprise
16 you to learn that Penland Automotive, in fact, was not
17 out of trust and did not owe Dealer Financial any money
18 at all?

19 A Would that surprise me?

20 Q Yeah.

21 A No.

22 Q Okay --

23 A Because I will tell you that Billy was only --
24 he was always the kind of guy, if you owe 'em, pay 'em.
25 He was that kind of guy. He -- Karen, get them paid.

1 Get them paid.

2 Q Get them paid?

3 A Get them paid.

4 Q Upfront?

5 A And that's one thing he was firm about.

6 Q Okay. Would it surprise you to learn that
7 Billy directed his attorney to call Dealer Financial and
8 find out what the terms were and what the documents were
9 and within hours of that call Dealer Financial
10 repossessed all of the vehicles?

11 A No, I didn't know that.

12 Q You never heard that before?

13 A No.

14 Q Does that surprise you?

15 A Unless they had reasons to do it, but yeah.
16 That would surprise me.

17 Q Okay. Based on all the documents you've seen,
18 do you believe that's a reasonable reaction?

19 MR. JORDAN: Object to form.

20 A The only thing I can say is the only thing I
21 heard is, one, he was selling, or John Bethea asking was
22 this practical how you did your deals. And I said, no,
23 John that ain't it. You keep the deal on the desk.
24 Once you're funded, then the deal goes to Karen, Karen
25 does the title work, and then they put it in the file.

1 He said, So I'm asking you again, Tim, is it typical?

2 No. It would have to had been funded. And
3 they went in there, evidently, for a check -- to check
4 the inventory, they kept telling him the deals were in
5 the file and he couldn't tell him anything. So he kind
6 of blew him off. I'm going to use that word. Any other
7 reason I could think of that happening is because they
8 got reason that he was floating them. That's the only
9 reason I could think. But, with all that said done,
10 right is right and wrong is wrong. Every time there was
11 a car to be owed, he was real firm on getting Karen to
12 pay that car.

13 Q (BY MR. IMHOFF) I'll represent to you --

14 A Very.

15 Q -- that Penland Automotive did not owe and was
16 not in arrears and was not out of trust to Dealer
17 Financial the day they repossessed the cars off of
18 Billy's lot.

19 MR. JORDAN: Object to the form.

20 A I guess they had no reason.

21 Q (BY MR. IMHOFF) I don't have any other
22 questions for you, Tim. Answer any questions counsel
23 might have.

24 MR. JORDAN: Let's take five and see if we can
25 be efficient.

(Break was taken at 1:42 p.m.)

FURTHER EXAMINATION

BY MR. JORDAN:

Q Mr. Yarger, I'm going to jump around a little bit and just plug a couple holes in some follow-up questions I have. I'll try to be quick on this and it's not going to be linear. I'm just going to jump around to a couple topics we've covered today.

We talked about the 2020 deal in reopening the business with Dealer Financial. We've looked at your affidavit about that. I want to make sure, when Mr. Imhoff was questioning you, after you negotiated with Dan Haight and Dealer Financial in 2020 we're going to reopen, did you go to Billy Penland and get his approval?

A Yeah, I had to.

Q Would you have gone forward with that deal without Billy's approval?

A No, of course not.

Q And I asked you this earlier. After you guys reopened, the money was lent; correct? I mean, the before plan was in place and you guys accessed it; correct?

A We used to it, yes.

Q All right. I'm going to show you one exhibit.

1 Can you look at number 11? It's a short one.

2 A I don't know if I can see anymore.

3 Q Exhibit 11 is a November 13th, 2018, e-mail
4 from Dan. And you're copied on this. It's also to
5 Karen. And Mr. Imhoff showed you this earlier. This
6 was an e-mail from Dan. It says, quote, "Tim and I have
7 agreed that curtailments going forward will be 7.5
8 beginning at the 90 day mark and continue each month
9 until the vehicle is paid off."

10 So that's a change of the deal and the terms
11 of doing business with Dealer Financial; correct?

12 A Yes.

13 Q And Billy Penland has not signed this e-mail;
14 correct?

15 A Yes.

16 Q And that's 2018 and then y'all continue to do
17 business until 2019 before taking a break; is that
18 correct?

19 A Yes.

20 Q Did Billy Penland ever demand that this change
21 in the agreement or this amendment be reduced to writing
22 and signed by him?

23 A To do what now?

24 Q Did he ask that this be -- that he sign this
25 and that he sign some agreement memorializing that the

1 curtailment was changing?

2 A No.

3 Q Y'all didn't --

4 A He said to work him. He'd always tell me to
5 try to work Dan to see if we can get a better deal.

6 Q So you got this e-mail from Dan and y'all
7 moved forward with these terms?

8 A Yes.

9 Q In 2019, when you made the switch and stopped
10 with Dealer Financial, you've testified about
11 Mr. Penland wanting the 20-odd-some thousand back;
12 correct?

13 A Yes.

14 Q Okay. At that time, Mr. Haight has testified,
15 I believe, that he spoke with you and that you made a
16 comment that we'll be back someday or something to that
17 effect; do you remember that?

18 A Probably I did, yes.

19 Q Do you think --

20 A Yeah, because I felt bad. I felt bad. I felt
21 that they tried for us. I'm not saying that they had
22 the best, best program, but it was something that we
23 were working it. And the biggest thing was that I -- I
24 appreciated with Dan and John is if we were close to our
25 floor of what they loaned us and we needed to go buy

1 more cars, they would -- Billy would call and say, Well,
2 see if he'll give you another hundred thousand. And
3 then I would call John, John would call Dan, and it
4 wouldn't be minutes later, go buy whatever you want.
5 That that was told to us. So we did.

6 Q In the times that happened, did y'all draft up
7 contract and have Mr. Penland sign it?

8 A No.

9 Q And did Dealer honor the agreement that you
10 made over the phone to fund you above the floor?

11 A Yes. Every time. Never turned me down.
12 Never turned us down.

13 Q In 2019 when you took a break from Dealer
14 Financial, and I know you went with another floor
15 lender, you got the 20,000 back, did Mr. Penland come to
16 you and demand that you get a release of his personal
17 guarantee?

18 A Say that again now.

19 Q When you stopped in 2019 with Dealer, did
20 Mr. Penland ever come to you and say, Go to Dealer
21 Financial and get a release of my personal guarantee?

22 A He said get our money that they owe us, makes
23 sure my property has no lien on it, and that's about it.
24 That's what he told me.

25 Q Do you remember asking that Dealer Financial

1 provide a release of his personal guarantee?

2 A No.

3 Q You were sharing a bunch of documents from
4 August and September and I know in September you started
5 having to deal with your cancer and that you departed
6 Penland around the time. You were shown e-mails
7 between, I guess, Ms. Willis and Dealer Financial asking
8 about different questions about payment. Are you aware
9 that in July of 2020 Dealer reopened the floor plan of
10 400,000 per the e-mail that was received from
11 Ms. Willis, funding occurred, and that Dealer Financial
12 actually sent invoices to Penland that included fees,
13 and that those were paid without complaint. Were you
14 aware of that?

15 MR. IMHOFF: Object to form.

16 A No.

17 Q (BY MR. JORDAN) Okay. Would you expect, and
18 you've already testified, when a bill came in,
19 Mr. Penland was good about saying, "We owe it, pay it;"
20 is that correct?

21 A Yes.

22 Q You'd heard that before from him?

23 A A lot of times.

24 Q And if I represent to you that bills came in
25 that had fees in the bill before a car was sold and that

1 those were actually paid by Penland without complaint?

2 MR. IMHOFF: Object to form.

3 A Yes.

4 Q (BY MR. JORDAN) All right. See if you can
5 find 20.

6 A I do got 20.

7 Q Okay. This is an e-mail thread between
8 Ms. Willis and several folks, but really mostly Kim
9 Rusch at Dealer Financial. If you turn to the second
10 page. At the top -- Mr. Imhoff actually read this to
11 you but he only read a portion of it. And this is in --
12 on August 208th of 2020. In that second paragraph, he
13 read to you, "As for the invoice," and this is coming
14 from Ms. Willis, "I need to speak with Dan. I don't
15 feel like we are getting correct information on our
16 end."

17 That was what was read to you. The next
18 sentence says, "Not through any fault of you guys,"
19 meaning Dealer, "but honestly, to pay that invoice,
20 would mean we can't pay off sold units. We just don't
21 have the cash flow during these times to cover that
22 much."

23 Do you recall in late August of 2020 that
24 Penland Auto was having cash flow problems?

25 A I mean, yeah. Yeah. Yeah, because we

1 reduced -- yeah. Yeah. We did.

2 Q And do you remember what the nature of what
3 was causing those cash flow problems?

4 A I don't know the reason. Our overhead was too
5 low.

6 Q You may have answered this question for
7 Mr. Imhoff, but we've got a statement here from
8 Ms. Willis, "not through any fault of you guys,"
9 referring to Dealer Financial. These e-mails in late
10 August and September, did Ms. Willis or Mr. Penland ever
11 come to you and say we never agreed to pay any fees or
12 interest before cars were sold, why are we getting bills
13 like this?

14 A No, what was told to me was we got a bill for
15 \$4300, and it's hitting us right away soon as we
16 connected with them and that maybe was 30 days later. I
17 don't know the exact time and said can you call Dan and
18 get this worked out?

19 Q Okay.

20 A And that's what I did.

21 Q And look at 22 really quick, if you can find.

22 A I can find it. Twenty-two, I got it.

23 Q All right. You saw this earlier too.
24 Mr. Imhoff gave you this exhibit. Ms. Willis e-mailing
25 Ms. Rusch. Now September 3rd of 2020. Mr. Imhoff read

1 half of it to you but the last two sentences say, "I
2 believe it's an internal problem here, not anything on
3 your end, but that's just between us girls." Do you
4 know what the internal problem she's talking about, what
5 that was?

6 A Money flow. Cash flow.

7 Q You were asked earlier about your decision to
8 leave Penland Automotive and I know we went over your
9 partnership agreement a lot and you responded to
10 Mr. Imhoff you didn't want to discuss all the reasons,
11 you just decided you had a better option elsewhere for
12 you and your family; is that correct?

13 A Correct.

14 Q And respecting that, is it fair to say that
15 one of the reasons you left was that you had concerns
16 about the business practices at Penland Auto?

17 A I had concerns about a lot of things there.

18 Q Is it fair --

19 A Business practices and cash flow, money flow,
20 honesty. As much as I tried to do why I was there, that
21 I felt that I was being shunned little bit. And when
22 you feel like you're not wanted anymore, get the hell
23 out. And that's what I did. Which, it all turned out
24 good.

25 Q All right. You were asked towards the end of

1 Mr. Imhoff's questioning about an audit that was done
2 after you left. It was about the repossession of the
3 cars. I will represent to you that Mr. Haight has
4 testified that he got a call from Mr. Imhoff and that
5 Mr. Imhoff told him that you don't have a contract. And
6 in fact, that's what they say in this lawsuit. So
7 that's not surprising.

8 But Mr. Haight received a call from his
9 dealer's lawyer saying you do not have a contract. I'll
10 also tell you that Mr. Haight's testified he made
11 efforts to reach Mr. Penland and to find a resolution.
12 When that didn't occur, he took steps to protect his
13 collateral.

14 My question to you is you've been in this
15 business 30-plus years, have you ever called up a floor
16 financier after taking money from them, buying cars, and
17 told them, ha ha, you don't have a contract?

18 A No.

19 MR. IMHOFF: Object to form.

20 Q (BY MR. JORDAN) What would you expect a lender
21 to do if someone who's frankly borrowed hundreds of
22 thousand dollars from you and told them, you don't have
23 a contract? Would you expect them to take steps to
24 protect their collateral?

25 A Yeah.

1 Q Looks like you were with Penland, and I'm sort
2 of ballparking, about four years; is that about right?

3 A About close to it.

4 Q It sounds like for a period there y'all had a
5 good growth and good success; would you agree with that?

6 A We did.

7 Q Do you know after you left who took over your
8 responsibilities as general manager and general sales
9 manager?

10 A No, I didn't care. I don't mean that in
11 disrespect, I didn't care.

12 Q When you left, had you groomed anyone to do
13 your job?

14 A No.

15 Q When you left, in your opinion, was there
16 anyone there that could do the job as well as you did
17 it?

18 A No. There is probably someone that thought he
19 could, but that's neither here or there.

20 Q When Dealer reprocessed in, the seven I
21 believe, in 2020 from a Penland, do you know how many
22 cars were on the lot at that time?

23 A I don't.

24 Q Would you be surprised if it was less than 20?

25 A Yes, I would be -- I would be surprised.

1 Q You talked about Randy come pulling cars as
2 well. Do you know whether Randy pulled his cars before
3 or after Dealer repossessed --

4 A I think what I heard was -- only hearsay, is
5 what I heard was when he'd seen all the cars being
6 pulled off the lot, he come and got his. Is what I
7 heard.

8 Q Did Upstate Auto ever extend -- I'll say you
9 all, Penland, were you ever at auction when you were
10 dealing with Upstate Auto and called them and said, Hey,
11 we need more money above our limit? Did that ever
12 occur?

13 A You know, I think I had. I think I did call
14 Charna and say -- I asked her what our floor would be
15 and she said, well, you've got about 70,000 left. But
16 to be honest, I think if we spent a hundred there, she
17 went ahead and allowed us to do it, yes.

18 Q Did she require a signed contract with
19 Mr. Penland's signature before doing that? Or was that
20 done via phone call?

21 A No. No.

22 Q In your experience over 30-plus years dealing
23 with floor financiers, have you been able, over the
24 years, to work amendments for deals over the telephone?

25 A Say that again now.

1 Q Over your 30-plus years, have you been able to
2 work with floor financiers and get changes to the terms
3 of your deal over the phone when something comes up,
4 like you're at an auction and you see cars you want and
5 you're tapped out?

6 A Yes.

7 Q And that gets done, sometimes, without signing
8 a formal contract; right?

9 A Correct. It's a trust factor, I guess, that
10 kicks in at that time.

11 Q During your time with Penland, was there ever
12 a situation where a dealer got in touch with you and
13 said you all haven't paid your cars, we have a problem?

14 A At Penland.

15 Q Yeah.

16 A No.

17 Q I gone one more for you.

18 A Randy called a couple times, but he'd want to
19 be paid before the deal was funded if the car was there,
20 but I don't remember anybody ever threatening me they
21 were going to pull our floors or something like that,
22 no. Don't remember that ever.

23 Q So y'all built a -- "y'all" being Penland.
24 Penland built a good track record over four years doing
25 business with Dealer Financial; correct?

1 A I thought we had a great relationship there at
2 the beginning. And then when we ended it and we came
3 back again, I thought it was real good. That's how I'll
4 just say. It was real good that we were able to -- as a
5 matter of fact, I think that me and John -- welcome home
6 or something like that.

7 Q When you came back?

8 A "Welcome home." That was John Bethea. He
9 said, Welcome home. We're back.

10 Q After you came back and were home, did John
11 Bethea or anyone at Dealer stop by the dealership from
12 time to time during that period from July until when you
13 left in September to check in with things?

14 A You mean when we had the floor plan with
15 Dealer Finance?

16 Q Yes --

17 A Yeah, John would always come in.

18 Q Would he ever talk to Mr. Penland during those
19 time?

20 A Oh, yeah. Every now and then he would.

21 Q Do you ever recall Mr. Penland talking to John
22 and demanding an updated contract?

23 A No.

24 Q Okay. The last thing I'm going to show you
25 here is this is 6. This is your affidavit. You've

1 testified when Mr. Imhoff was questioning you about this
2 affidavit you came into the Parker Poe Law Firm and that
3 lawyer; is that correct?

4 A Uh-huh. Something like that.

5 Q And the lawyer, after talking to you, typed up
6 this affidavit; is that correct?

7 A Correct.

8 Q Did you review it before signing it?

9 A She had me to do it. She wanted me to
10 proofread.

11 Q And we've been through a lot of this today.
12 Having been back through it now, I know it's --

13 A I do remember proofreading this.

14 Q Would you have signed it if anything in here
15 was not true to the best of your recollection?

16 A No.

17 Q You understood that this was a sworn
18 statement?

19 A Yes.

20 Q And to the best of your recollection today,
21 the statements still remain true?

22 A Yes.

23 MR. JORDAN: I think that's -- one second.

24 Q (BY MR. JORDAN) Mr. Imhoff asked you questions
25 about Mr. Penland, Ms. Willis, and other folks at

1 Penland Auto and your opinion of them in terms of
2 honesty, integrity. I'm going to ask you the same
3 questions about folks at Dealer Financial. I'll start
4 with Dan Haight. Do you have an opinion as to
5 Mr. Haight's character and honesty and integrity?

6 A Very well-trusted. Concerned with others. I
7 mean, just good guy all around.

8 Q Do you ever feel like he was dishonest in his
9 dealings with you?

10 A No. Never did I.

11 Q What about John Bethea? Your opinion of his
12 honesty and integrity?

13 A There's no man built better than John Bethea.

14 Q And you dealt with him --

15 A And I mean that sincerely.

16 Q You dealt with him for years; correct?

17 A Yes. Yes, he's the salt of the land.

18 Q Do you ever feel like he was dishonest with
19 you?

20 A He don't even know the word.

21 Q Sounds like you don't know Steve Lancel very
22 well; is that fair?

23 A Yeah, I don't.

24 Q Anyone else at Dealer Financial or did you
25 primary deal with Dan and John?

1 A Dan and John. I talked to -- had Steve on the
2 phone a couple times but if you put him in front of me,
3 I don't think I could pick him out of the lineup.

4 MR. JORDAN: That's all I have.

5 FURTHER EXAMINATION

6 BY MR. IMHOFF:

7 Q I'm going to try to be quick, Tim, so you can
8 get out of here. You were asked some questions about
9 the representation of the conversation that I had with
10 Dan Haight. And I'm going to ask you about that again,
11 but I'm going to point out some of the things that we
12 looked at today that were left out of the question that
13 was asked. Okay?

14 A Okay.

15 Q The question was, don't you want to protect
16 your collateral that you've loaned money out; right?

17 A Yes.

18 Q One of things that was left out of that
19 opinion was: Does Billy Penland pay his bills?

20 A Does Billy Penland pays bills?

21 Q Yes.

22 A Yes.

23 Q Did I -- one of the other alternatives to
24 going and repossessing hours after that call,
25 repossessing the cars off a dealer's lot after a long

1 period of time, isn't another option to send the
2 contract and agreement that you had already drafted in
3 July and drafted a letter saying, we're sending you the
4 new agreement for you to review and execute? Isn't that
5 another alternative to repossessing the cars off the
6 lot?

7 A Yeah.

8 Q Send the contract in writing; right? Right?

9 A Right.

10 Q Okay. So assuming that's an option. Assuming
11 that we know that Billy Penland pays his bills. Assume
12 with me that Billy Penland and Penland Automotive was
13 100 percent up-to-date on everything that they had paid
14 to Dealer Financial; okay? Assume with me that these
15 are correct. That immediately upon receiving the first
16 invoice in August, Penland Automotive contacted Dealer
17 Financial and said, we don't understand your invoice.
18 Why are you billing us? Or how you're billing us?

19 A He had me get on the phone with Dan.

20 Q Right away; right?

21 A Yes.

22 Q And that they disagreed immediately in August;
23 right?

24 A More -- you know, the way I took it is we got
25 a bill for \$4300, you need to call Dan and see if he can

1 help us out with this.

2 Q Well, Karen's e-mail says we were under the --
3 we were under the understanding that we didn't owe
4 interest and curtailments yet; right? That's what she
5 said?

6 A Yeah, exactly.

7 Q Okay. All those facts. And assume for me
8 that the audit came back and Penland Automotive was not
9 out of trust and all of the cars were there, do you
10 still believe, after that long relationship with Dealer
11 Financial, that a reasonable reaction to there's no
12 executed written contract and we have a disagreement
13 about what the terms is, is to go and repossess the cars
14 off a dealership's lot hours later?

15 MR. JORDAN: Object to form.

16 A Not if you're not out of the trust.

17 Q (BY MR. IMHOFF) Last question. When did you
18 get diagnosed with cancer?

19 A Probably about four months prior than when I
20 went to surgery.

21 Q Did you do chemo or any of that stuff?

22 A No, they wanted me to but I went ahead and
23 took another route which turned out great for me.

24 Q Okay. I don't have any other questions.
25 Thanks for coming.

1 A I appreciate it.

2 MR. IMHOFF: We're done.

3 (The deponent was explained his right to read
4 and sign the transcript of the deposition and chose
5 to waive that right.)

6 (The deposition concluded at 2:23 p.m.)

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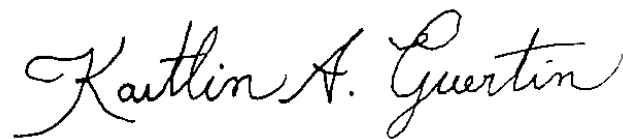
C E R T I F I C A T E

I, KAITLIN A. GUERTIN, a Stenomask Reporter
and notary public, within and for the State of South
Carolina, do hereby certify:

That TIMOTHY L. YARGER, the witness whose
examination is hereinbefore set forth, was first duly
sworn by me and that this transcript of said testimony
is a true record of the testimony given by said witness.

I further certify that I am not related to any
of the parties to this action by blood or marriage, and
that I am in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 21st day of December, 2022.



Kaitlin A. Guertin, CVR

My Notary Commission Expires: November 6, 2030

	8912429 Tim	4:14	147:25	78:13, 18
Exhibits	othy.L.	130:13		
	Yarger.		8912429 Tim	\$20,000
	EXHIBIT6	8912429 Tim	othy.L.	57:15
8912429 Tim	4:8 67:5	othy.L.	Yarger.	\$200,000
othy.L.	189:17	Yarger.	EXHIBIT20	98:9, 20
Yarger.		EXHIBIT13	4:22	110:15
EXHIBIT1	8912429 Tim	4:15	149:8	121:12, 24
4:3	othy.L.	135:3, 9	8912429 Tim	123:20
24:15, 19	Yarger.		othy.L.	
8912429 Tim	EXHIBIT7	8912429 Tim	Yarger.	\$21,000
othy.L.	4:9	othy.L.	EXHIBIT21	191:23
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EXHIBIT2	8912429 Tim	4:16	150:10, 11	some
4:4 24:23	othy.L.	136:24, 25	8912429 Tim	90:11
25:1	Yarger.	137:1	othy.L.	\$25,000
144:8	EXHIBIT8	8912429 Tim	Yarger.	38:4
	4:10	othy.L.	EXHIBIT22	\$250,000
8912429 Tim	103:11, 12	Yarger.	4:24	56:16
othy.L.	147:14, 15	EXHIBIT15	152:10, 11	\$280,000
Yarger.		4:17	8912429 Tim	79:7
EXHIBIT3	8912429 Tim	137:13, 14	othy.L.	
4:5	othy.L.		Yarger.	\$3000
41:13, 15	Yarger.	8912429 Tim	EXHIBIT23	14:3
43:17	EXHIBIT9	othy.L.	4:25	20:24
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50:6	104:14, 15	EXHIBIT16		\$3700
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24 98:2	8912429 Tim	139:7, 8, 9	\$	\$400,000
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12	4:12	Yarger.	\$10,000	137:16
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othy.L.	110:12	4:19	134:2, 9	\$4000
Yarger.	8912429 Tim	140:24, 25		83:20
EXHIBIT4	othy.L.	8912429 Tim	\$100	\$4300
4:6 63:5,	Yarger.	othy.L.	99:19	151:20
7	EXHIBIT11	Yarger.	100:9	210:15
8912429 Tim	4:13	EXHIBIT18	134:24	220:25
othy.L.	113:8, 9	4:20	139:21	
Yarger.	205:3	147:13		
EXHIBIT5	8912429 Tim	8912429 Tim	\$127,000	\$45,000
4:7 66:2,	othy.L.	othy.L.	23:23	79:14
3	Yarger.	Yarger.	79:8	\$6
	EXHIBIT12	EXHIBIT19	\$150,000	180:2
		4:21		

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\$7800	10:03	117:20	8:18	42:22
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\$853,000	10:28	97:20	77:18	200,000
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	10:47	15	149:9	42:21
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