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In the Supreme Court

S.C. Supreme Court

APPEAL FROM PICKENS COUNTY

Court of Common Pleas

The Honorable Doyet A. Early, III

Case No. 2012-CP-01554

Appellate Case No. 2014-000642

Julie Freeman,

Appellant-Respondent,

v.

J.L.H., LP a/k/a Hendrick Honda of Easley,

Respondent-Appellant

RECORD ON APPEAL

Vol. I

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RECORD ON APPEAL

INDEX

VOLUME I (PP. 1-500)

I. ORDERS

1. Order dated January 30, 2007
Re: Establishing Complex Case Designation for Pretrial Purposes Only 1
2. Order dated July 31, 2007
Re: Denying Motion to Dismiss 2
3. Order dated September 2, 2007
Re: Final Order and Judgment 5
4. Order dated January 31, 2008
Re: Plaintiff's Rule 41(a) Motion to Voluntarily Dismiss Certain Defendants and
Defendant's Rule 59E Motion to Reconsider the Denial of their Motions to
Dismiss on Certain Grounds 13
5. Order dated January 11, 2010
Re: Declaratory Judgment.....27
6. Order dated July 2, 2010
Re: Dismissal of Appellant and Respondent Appeal of the Order filed January 11,
2010.....40
7. Order dated July 11, 2012
Re: Judge Early Assigned to Case 43
8. Order dated August 31, 2012

Re: Severing Cases for Separate Trials and Dismissing Claims for Civil Conspiracy	44
9. Order dated December 18, 2012	
Re: Plaintiff Julie Freeman’s Motion for Declaratory Judgment as to Defendant Hendrick Honda	46
10. Order dated March 20, 2013	
Re: Plaintiff’s Motion to Compel Discovery and Hendrick Honda of Easley’s Second Amended Motion to Establish Procedural Requirements, Declare the Scope of the Plaintiff Group, and Require Plaintiff to Give Notice to the Plaintiff Group	48
11. Order dated May 14, 2013	
Re: Notice to the Plaintiff Group	51
12. Order dated September 5, 2013	
Re: Denying Defendant’s Revised Motion for Judgment on the Pleadings	59
13. Order dated September 10, 2013	
Re: Defendant’s Motion for Summary Judgment, Defendant’s Motion in Limine, and Plaintiff’s Motion to Deem Certain Paragraphs in Plaintiff’s Third Amended Complaint Admitted.....	68
14. Order dated January 7, 2014	
Re: Consent Order Regarding Attorney Fees and Costs	72
15. Order dated March 13, 2014	
Re: Granting Plaintiff’s Motion to Double the Damages Award in this Case.....	74
16. Order dated March 13, 2014	

Re: Denying Plaintiff's Motion for Prejudgment Interest	76
17. Order dated March 13, 2014	
Re: Denying Defendant's Motion for Judgment Notwithstanding the Verdict, or, in the Alternative, a New Trial	80
18. Order dated March 31, 2014	
Re: Denying Defendant's Motions for Reconsideration dated March 26, 2014	111

II. PLEADINGS

1. Complaint.....	113
2. First Amended Complaint.....	129
3. Third Amended Complaint	202
4. Amended Answer to Third Amended Complaint	219

III. PRETRIAL MATTERS

1. Defendant's Status Conference Memorandum Outlining Procedural Posture of Case and Background Information on Law and Facts	236
2. Plaintiff's Motion Unopposed by Carmax to Certify Class for Settlement Purposes Only and for Preliminary Approval of Settlement Agreement	257
3. Second Amended Motion to Dismiss for Lack of Standing, Improper Joinder, and Other Grounds and for Other Relief of Defendants Rick Hendrick Chevrolet, LP, J.L.H. Investments, LP d/b/a Hendrick Honda, Hendrick Honda of Charleston, Hendrick Honda Honda Cars of Rock Hill, Rick Hendrick Dodge, Rick Hendrick	

Import Showplace, Rick Hendrick Jeep-Eagle, LP, and Rick Hendrick Honda Cars Co.....	314
4. Notice of Motion and Motion to Dismiss Without Prejudice	323
5. Plaintiff Freeman’s Notice of Motion and Motion for Declaratory Judgment	342
6. Plaintiffs’ Memorandum in Support of Motions for Declaratory Judgments.....	345

VOLUME II (PP. 501-1000)

6. Plaintiffs’ Memorandum in Support of Motions for Declaratory Judgments	501
7. Reply to Defendants’ Memoranda in Opposition to Plaintiffs’ Motion Asking the Court to Issue a Declaratory Judgment Interpreting the Statutes Governing this Case Under Rule 57,SCRCP.....	672

VOLUME III (PP. 1001-1500)

7. Reply to Defendants’ Memoranda in Opposition to Plaintiffs’ Motion Asking the Court to Issue a Declaratory Judgment Interpreting the Statutes Governing this Case Under Rule 57, SCRCP (cont.)	1001
8. Memorandum of Defendant Hendrick Honda of Easley in Opposition to Plaintiff Julie Freeman’s Motion for Declaratory Judgment	1104
9. Transcript of Hearing on Motion for Declaratory Judgment dated November 23, 2009.....	1272
10. Hendrick Honda of Easley’s Second Amended Motion to Establish Procedural Requirements Declare the Scope of the Plaintiff Group, and Require Plaintiff to Give Notice to the Plaintiff Group.....	1277
11. Defendant’s Second Revised Motion for Judgment on the Pleadings.....	1298

12. Defendant's Motion in Limine and For Summary Judgment, or in the Alternative, for Partial Summary Judgment	1307

IV. TRIAL TRANSCRIPT

1. Jury Voir Dire

The Juror and the Court	1316

2. Argument on Pre-Trial Motions.....1317

Ruling.....	1320

Ruling.....	1324

Ruling.....	1325

Ruling.....	1326

Ruling.....	1327

Ruling.....	1328

Ruling.....	1330

Ruling.....	1331

Ruling.....	1333

Ruling.....	1334

3. Opening Statements

By Plaintiff's Counsel.....	1335

4. Testimony & Motions

Deposition testimony of Don Pendleton, Defendant's 30(b)(6) corporate representative, published by Mr. Thomas and Mr. Moore	1336

Testimony of Thomas Pendarvis Direct Examination	1345

By Dave Butler, Counsel for Plaintiff	
Cross Examination	1348
By James Becker, Counsel for Defendant	
Testimony of Julie Freeman Hair	
Direct Examination	1355
By Brady Thomas, Counsel for Plaintiff	
Cross Examination	1366
By James Becker, Counsel for Defendant	
Redirect Examination.....	1406
By Brady Thomas, Counsel for Plaintiff	
Plaintiff's Publication of Exhibit No. 2 into Record by Mr. Thomas	1408
Deposition Testimony of Randy Watkins Published by Mr. Thomas and Mr. Moore.....	1409
Stipulation and Publication of Plaintiff's Exhibit 17	1417
Directed Verdict Motions	1418
Testimony of Randall Clement	
Direct Examination	1429
By James Becker, Counsel for Defendant	
Cross Examination	1491
By Brady Thomas, Counsel for Plaintiff	
Testimony of Don Lee Pendleton	
Direct Examination	1494
By James Becker, Counsel for Defendant	

VOLUME IV (pp.1501-2000)

Direct Examination continued	1501
By James Becker, Counsel for Defendant	
Cross Examination	1519
By Brady Thomas, Counsel for Plaintiff	
Testimony of Danny Collins	
Direct Examination	1537
By James Becker, Counsel for Defendant	
Cross Examination	1558
By Dave Butler, Counsel for Plaintiff	
Redirect Examination.....	1564
By James Becker, Counsel for Defendant	
Testimony of Joseph Phillips	
Direct Examination	1566
By James Becker, Counsel for Defendant	
Cross Examination	1572
By Dave Butler, Counsel for Plaintiff	
Testimony of Michael Thompson	
Direct Examination	1574
By James Becker, Counsel for Defendant	
Counsels' argument, and Trial Court's rulings, on Jury Charges motion	1593
Testimony of Michael Thompson	
Cross Examination	1612

By Dave Butler, Counsel for Plaintiff	
Trial Court's ruling on Defendant's renewed motion for directed verdict	1614
Closing Arguments	
By Dave Butler, Counsel for Plaintiff.....	1616
By Brady Thomas, Counsel for Plaintiff	1617
 5. <u>Jury Charges, Verdict, and Deadline for Post Trial Motions</u>	
Defendant's Request to Charge (Pre-Charge).....	1618
Defendant's Requests to Charge	1621
Defendant's Proposed Verdict Form	1646
Charges to the Jury.....	1649
Verdict.....	1666
Grant of Ten Days to file Post Trial Motions	1667
 6. <u>Post Trial Motions</u>	
Defendant's Motion for Judgment Notwithstanding the Verdict, or in The	
Alternative, A New Trial or a New Trial Nisi Remittitur	1668
Plaintiff's Motion to Recover Attorney's Fees and Costs	1683
Plaintiff's Motion to Double the Damages Award in This Case	1699
Plaintiff's Motion to Add Prejudgment Interest	1701
Defendant Hendrick Honda of Easley's Motion for Reconsideration	1707
Defendant's Motion for a Directed Verdict	1709
 7. <u>Exhibits</u>	
a. Plaintiff's Trial Exhibit 2	1719

Notice: Closing Fees

Admitted into evidence 1720

b. Plaintiff's Trial Exhibit 3(a)..... 1721

Hendrick Honda Sales Worksheet

Admitted into evidence 1722

b. Plaintiff's Trial Exhibit 5 1723

Hendrick Honda Purchase Receipt

Admitted into evidence 1724

c. Plaintiff's Trial Exhibit 9 1732

The South Carolina Consumer Protection Code

Admitted into evidence 1729

f. Plaintiff's Trial Exhibit 17.....1730

Closing fees collected from August 29, 2002 to August 29, 2006

Admitted into evidence 1731

g. Defendant's Trial Exhibit 1 1725

South Carolina Department of Consumer Affairs Administrative Interpretation

Admitted into evidence 1735

h. Defendant's Trial Exhibit 3 1736

South Carolina Department of Consumer Affairs 2002 Registration

Admitted into evidence 1737

i. Defendant's Trial Exhibit 4 1738

South Carolina Department of Consumer Affairs 2003 Registration

Admitted into evidence 1739

j. Defendant's Trial Exhibit 5	1740
South Carolina Department of Consumer Affairs 2004 Registration	
Admitted into evidence	1741
k. Defendant's Trial Exhibit 6	1742
South Carolina Department of Consumer Affairs 2005 Registration	
Admitted into evidence	1743
l. Defendant's Trial Exhibit 7	1744
South Carolina Department of Consumer Affairs 2006 Registration	
Admitted into evidence	1745
m. Defendant's Trial Exhibit 10	1746
Notice Closing Fees	
Admitted into evidence	1747
n. Defendant's Trial Exhibit 11	1748
Julie Freeman Hair deal jacket documents	
Admitted into evidence	1801
o. Defendant's Trial Exhibit 17	1802
Transaction Compliance Policy	
Admitted into evidence	1820
p. Defendant's Trial Exhibit 18	1821
Transaction Compliance Policy	
Admitted into evidence	1841
q. Defendant's Trial Exhibit 19	1842
Transaction Compliance Policy	

Admitted into evidence	1868
r. Defendant's Trial Exhibit 20	1869
Transaction Compliance Policy	
Admitted into evidence	1898
s. Defendant's Trial Exhibit 21	1899
Hendrick Automotive Group Retention policy	
Admitted into evidence	1905
t. Defendant's Trial Exhibit 22	1906
A Dealer Guide to Federal Records Retention and Reporting	
Admitted into evidence	1927
v. Defendant's Trial Exhibit 23	1928
South Carolina Department of Motor Vehicles Dealer and Wholesaler Manual	

VOLUME V (pp.2001-2028)

v. Defendant's Trial Exhibit 23 continued.....	2001
South Carolina Department of Motor Vehicles Dealer and Wholesaler Manual	
Admitted into evidence	2013
w. Defendant's Trial Exhibit 26.....	2014
Hendrick Honda Easley Closing Cost Allocation Interviews 2003-2007 and Summary	
Admitted into evidence	2021
x. Defendant's Trial Exhibit 32	2022
Michael W. Thompson CV	
Admitted into evidence	2028

V. CERTIFICATE OF COUNSEL

VI. PROOF OF SERVICE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
HEATHER HERRON, ET. AL.	)	CIVIL ACTION NO.: 06-CP-02-1230
	)	
Plaintiffs,	)	
vs.	)	ORDER ESTABLISHING
	)	COMPLEX CASE DESIGNATION
	)	FOR PRETRIAL PURPOSES ONLY
CARMAX AUTO SUPERSTORES, INC., ET.	)	
AL.	)	
	)	
Defendants.	)	

This matter comes under the Administrative Order by the Supreme Court regarding Complex Case designation dated July 26, 2006. A status conference was held in this case on January 12, 2007. At that time, the question of designating the case as complex for pretrial purposes only was raised. The Court made inquiry as to the various issues and motions raised in this matter. In accordance with the authority as Chief Administrative Judge for this Circuit, the Court sua sponte designates this matter as complex for pretrial purposes only and assigns the matter to the Honorable Doyet A. Early, III. The parties also agreed to submit a proposed scheduling order for briefing of the motions to dismiss. The designation of this case as complex for pretrial purposes only does not waive any parties' rights.

BASED UPON THE FOREGOING, IT IS THEREFORE ORDERED that this case is designated as complex for pretrial purposes only and that this is assigned to the Honorable Doyet A. Early, III, to hear and handle all pre-trial motions and other matters pertaining to this case.

AND IT IS SO ORDERED.


 Hon. Doyet A. Early, III
 Chief Administrative Judge
 Second Judicial Circuit

, South Carolina
 January 30, 2007

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

Case No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiffs,

VS.

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

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

ORDER DENYING MOTIONS TO DISMISS
I, Liz Godard, Clerk of Court for the County of Aiken, South Carolina, do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

AUG 01 2007

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

Deputy Clerk

This matter comes before the Court by way of Motions to Dismiss by the defendants on the following grounds: (1) lack of standing of the plaintiffs; (2) Rule 23, S.C.R.C.P. and its relationship with S.C. Code Ann. § 56-15-110(2); and (3) failure of the plaintiffs to plead civil conspiracy adequately. These motions were heard before the Court in Bamberg, South Carolina on April 4, 2007.

ME
This action was initiated on August 21, 2006, and the present Amended Complaint before the court alleges three causes of action:

1. Violation of S.C. Code Ann. § 56-15-10;
2. Civil Conspiracy;
3. Declaratory judgment to determine rights and legal relations under S.C. Code Ann. § 56-15-10 and/or S.C. Code Ann. § 37-2-307.

FILED 7-31 2007
Liz Godard
C.C.P. & G.S.
3:45 PM
Deputy Clerk

A motion to dismiss a claim pursuant to Rule 12 must be considered solely on the basis of allegations set forth on the face of the complaint in question. The motion will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. A judgment on the pleadings is considered to be a drastic procedure by our courts. Therefore, pleadings in a case should be construed liberally, and the trial court must presume all well pled facts to be true so that substantial justice is done between

the parties. *Overcash v. South Carolina Elec. and Gas Co.*, 364 S.C. 569, 614 S.E.2d 619, 620 (S.C. 2005).

"All properly pleaded factual allegations are deemed admitted for the purposes of considering a motion for judgment on the pleadings." *Hous. Auth. of the City of Columbia v. Cornerstone Hous., LLC*, 356 S.C. 328, 588 S.E.2d 617, 620 (Ct.App. 2003).

"The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. ... The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." *Doe v. Marion*, __ S.C. __, 645 S.E.2d 245, 247-48, 2007 W.L. 1321978 (S.C. 2007).

Applying these principles to the Amended Complaint before the Court, the Court finds first, that the Amended Complaint sufficiently pleads facts supporting standing of the plaintiffs to proceed under the three causes of action pled. Second, at this stage of the proceedings there are sufficient allegations of civil conspiracy in the Amended Complaint to avoid dismissal.

Concerning the relationship between S.C.R.C.P. 23 and S.C. Code Ann. § 56-15-110(2), I find that Section 56-15-110(2) creates a substantive right. Because 1985 Act 100 (the Act enacting the Rules of Civil Procedure) is inapplicable to substantive rights, I find that the 1985 Act neither repealed S.C. Code Ann. § 56-15-110(2) nor required that a complaint asserting rights under § 56-15-110(2) include a requirement that the plaintiff plead and prove the class certification requirements of S.C.R.C.P. Rule 23.

This Order is made in the framework of Rule 12(b)(6) motions and is based solely upon the pleadings. After the facts are developed in discovery, the defendants are free to reassert at a later date any or all of the issues addressed in this Order.

AND IT IS SO ORDERED.

W. A. Early, III

The Honorable Doyet A. Early, III
Judge of the Second Judicial Court

July
June 31 2007
Bamberg, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Heather Herron, et al.,

Plaintiffs,

vs.

Defendant CarMax Auto Superstores, Inc.; et
al.

Defendants.

) IN THE COURT OF COMMON PLEAS
)
) FOR THE SECOND JUDICIAL CIRCUIT
)
)

Civil Action No.: 06-CP-02-1230

mc 25, 736

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

FINAL ORDER AND JUDGMENT
I, L. J. Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina, do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

UCI 02 2007

L. J. Godard
C.C.P. & G.S., Aiken County, S.C.

I. INTRODUCTION Deputy Clerk

*126
#1*

This matter came before the Court on the joint motion of Plaintiffs and Defendant CarMax Auto Superstores, Inc. ("CarMax"), for an Order finally approving the class action settlement of the claims against CarMax and entering judgment in accordance with the Class Action Settlement Agreement. The Court preliminarily approved the settlement and plan of notifying the Settlement Class by Order filed April 4, 2007. On Wednesday, September 5, 2007, this Court held a hearing to consider whether to finally approve the settlement and enter judgment thereon. After considering the Class Action Settlement Agreement, the affidavit filed by the Settlement Administrator, the parties' submissions, and after holding a hearing at which Class Members had the opportunity to object to the settlement, this Court, for the reasons set forth herein and as more fully detailed below, finds: (a) that the settlement is fair, reasonable, adequate, and in the best interests of the Class; (b) that absent Class Members' interests are adequately represented by the Named Plaintiff Alison Dannert, Class Counsel, and the claims asserted in this action; (c) that all aspects of the settlement, including the Notice to the Class, satisfy the requirements of due process and that absent Class Members' due process rights are

FILED 10-2 2007

L. J. Godard
C.C.P. & G.S.

Alison Dannert
Deputy Clerk

R.000005

protected; and (d) that the settlement should be and is hereby approved, judgment entered thereupon, and this action should be and is hereby dismissed with prejudice as against CarMax.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court adopts the definitions of terms set forth in the Class Action Settlement Agreement.

On April 4, 2007, in its Order preliminarily approving this settlement, this Court conditionally certified the Class. This Court reaffirms its findings that the prerequisites for class certification contained in Rule 23, SCRPC, have been met. Specifically, for the reasons set forth in this Court's previous order, there are common questions of law and fact; the Plaintiffs' claims are typical of those of the Class; the Plaintiff Alison Dannert and Class Counsel have adequately represented the Class; and the Class Members are too numerous to be joined as parties. For purposes of this settlement, the "Class" and the "Settlement Class" are defined as follows:

All persons or entities (1) who purchased a motor vehicle (2) from CarMax's Columbia and/or Greenville, South Carolina store(s), (3) who paid a \$99.00 administrative fee and/or a \$149.00 administrative fee (4) during the time period from August 28, 2002 through March 21, 2007.

Further, all persons within the Class who did not elect to exclude themselves from ("opt out of") the Class as provided for in the Class Action Settlement Agreement are "Class Members."

Also, in accordance with this Court's Preliminary Approval Order, and pursuant to the terms of the Class Action Settlement Agreement, the Class was notified of: the Action; the Settlement; their rights to make an appearance in the Action, object to the Settlement, and/or exclude themselves from the Settlement; and of the hearing held on Wednesday, September 5, 2007, in Aiken, South Carolina.

Brown Greer, PLC, is serving as the Settlement Administrator for purposes of this settlement. As outlined in the affidavit of William G. Atkinson, filed with this Court on June 15, 2007, the Settlement Administrator was provided with a list of the names and addresses of the

persons believed to be members of the Class. *See* Atkinson Affidavit at ¶ 5. The Settlement Administrator discovered and removed duplicative entries in the data as appropriate to prevent redundant notice. *Id.* at ¶ 5. The Settlement Administrator then updated these addresses using the U.S. Postal Service's National Change of Address Database. *Id.* at ¶ 7. The Notice, which was previously approved by this Court, was mailed to members of the Class via first class mail on May 18, 2007. *Id.* at ¶ 7.

In addition, notice of the settlement was provided to the Class by means of an official website on the internet at www.dannertsettlement.com. The Settlement Administrator made the official settlement website available as of August 18, 2007, and it has been continuously available since that date. *Id.* at ¶ 8.

This Court has carefully considered the Notice provided to the Class and finds that the means of disseminating the Notice was the best practicable, and was reasonably calculated, under all of the circumstances, to apprise the interested parties of the pendency of this Action and their rights therein, including the right to exclude themselves from the settlement and the right to object to it. This Court further finds that the Notice and plan of notice afforded the absent members of the Class due process insofar as their claims in this Action are concerned, in accordance with the Due Process Clauses of both the State and Federal Constitutions.

This Court finds that all members of the Class were given an opportunity to exclude themselves from the Class and this Settlement. Only thirty (30) persons have elected to exclude themselves from the Class.

This Court finds that all of the Class Members were given the opportunity to object to the proposed settlement. No such objection has been received by any of the parties or the Court. Further, no Class Members appeared at the Final Hearing on September 5, 2007, to voice an objection.

This Court has previously found and hereby reiterates its conclusion that the interests of the Class Members are now and have been represented by Class Counsel A. Camden Lewis, Michael E. Spears, Richard A. Harpootlian, and Gedney M. Howe, III, and by Named Plaintiff Alison Dannert in their prosecution and settlement of the Action as against CarMax.

This Court concludes that the settlement is fair, reasonable, and adequate, and in the best interests of the Class Members. The settlement affords substantial benefits to the Class Members. It provides for certain prospective relief and for retrospective relief, including Settlement Certificates redeemable for three to six years as provided for in the Settlement Agreement and certain Cash Payments upon completion of the Cash Claim Submission as provided for in the Settlement Agreement. Continuing litigation would have proved risky, expensive, and complex, with neither side assured of success on the merits or recovery of damages. Class Counsel and counsel for CarMax have informed the Court and the Court finds that the settlement is the result of arms' length negotiations. Class Counsel are experienced in class action litigation generally and in the "dealer fee litigation" particularly. Finally, no one objected to the settlement. All of these factors favor approval of the settlement as fair, reasonable and adequate.

ORDER

Having carefully considered the terms and conditions of the settlement and the Notice provided to the Class, the Court hereby ORDERS that:

- 12*
#4
1. The Class Action Settlement Agreement and the settlement contained therein is APPROVED as fair, reasonable, just and adequate.
 2. The Class Action Settlement Agreement is ADOPTED by the Court and made a part of this Order as if fully set forth herein.

3. The Notice and method used to provide Notice of the proposed settlement, which was previously APPROVED by this Court in the Preliminary Approval Order of April 4, 2007 is DEEMED to have been fully complied with and is DEEMED adequate to protect the due process rights of all Class Members. The Notice plan was the best practicable and was reasonably calculated, under all of the circumstances, to apprise the parties of the pendency of this Action and their rights therein, including affording them an opportunity to present their objections, if any, and/or exclude themselves from, or "opt out of," this Action.

4. Alison Dannert is found to be a representative party who has fairly and adequately protected the interests of the Class. The following attorneys are found to be able to and have fairly and adequately represented the Class and are designated as Class Counsel: A. Camden Lewis, Michael E. Spears, Richard A. Harpootlian, and Gedney M. Howe, III.

5. The claims against CarMax in the Action shall be and are hereby DISMISSED with prejudice. Further, CarMax shall be REMOVED as a named defendant in this Action and, accordingly, its name shall be REMOVED from the caption in this Action on all subsequent documents filed and/or served by any and all parties remaining in the Action.

6. The Class Action Settlement Agreement fully and finally resolves all Named Plaintiffs' Claims and all Class Claims against CarMax, and it shall be the exclusive remedy of the Named Plaintiffs and the Class Members for all Class Claims against CarMax. Further, a release of all Class Claims and Named Plaintiff Alison Dannert's claims is intended and shall be effectuated according to the terms of the Settlement Agreement. Additionally, this Order and the Settlement Agreement shall be construed as a covenant not to sue CarMax by all Named Plaintiffs, including Alison Dannert, both in their individual and representative capacities. Finally, this Order shall constitute a bar to the assertions of Class Claims by Class Members according to the law of South Carolina.

7. The Named Plaintiffs and the Class Members are hereby enjoined and prohibited from prosecuting in any state or federal court, any pending action or filing any new action, either directly, individually, representatively, or in any capacity, asserting any claims against CarMax arising out of or relating to the subject matter of this Action.

8. All claims against CarMax by individuals who properly excluded themselves from, or "opted out" of, the settlement are dismissed without prejudice to such individuals' rights to bring actions in their individual capacities only.

9. Class Counsel's Petition for attorneys' fees, costs and expenses shall be awarded in accordance with a separate order entered in conjunction with this Order.

10. CarMax shall pay Named Plaintiff Alison Dannert the sum of One Thousand Dollars (\$1,000.00), with such payment to be made in accordance with Paragraph 7.1 of the Class Action Settlement Agreement.

11. CarMax shall not be required to make any payments or do anything other than is required by the Class Action Settlement Agreement.

12. No judgment as to attorneys' fees, costs and expenses shall be entered by Class Counsel prior to the expiration of forty-five (45) days following the Effective Date as provided for in the Settlement Agreement, and such judgment shall only be entered in the event that CarMax has failed to fulfill its monetary obligations as to the payment of Class Counsel's attorneys' fees, costs and expenses under the Settlement Agreement.

AE
#6
13. Pursuant to paragraphs 8.6.1 and 8.6.2 of the Class Action Settlement Agreement governing cy pres distribution, forty percent (40%) of the Post-Settlement Distribution Balance, if any, shall revert to CarMax, and forty percent (40%) of the amount represented by those settlement checks, if any, that are not timely negotiated as required by paragraph 8.4.3 of the Settlement Agreement, shall revert to CarMax. The remaining sixty percent (60%) of the Post-

Settlement Distribution Balance, and sixty percent (60%) of the amount represented by those settlement checks that are not timely negotiated as required by paragraph 8.4.3 of the Settlement Agreement, shall be distributed in three (3) equal shares, at the time and in the manner provided for in the Settlement Agreement, to the following charitable organizations: (1) The Juvenile Diabetes Research Foundation (South Carolina Chapter); (2) Big Brothers Big Sisters of Greater Columbia and the Upstate; and (3) YMCA of Columbia and Greenville.

The one-third (1/3) share designated for the Juvenile Diabetes Research Foundation (South Carolina Chapter) shall be distributed to:

The Juvenile Diabetes Research Foundation -- South Carolina Chapter
Attn: Executive Director Campbell Manning
37 Villa Road
Suite 109
Greenville, SC 29615
Federal I.D. No. 23-1907729.

The one-third (1/3) share designated for Big Brothers Big Sisters shall be divided equally between the following two (2) entities, so that each shall receive a one-sixth (1/6) share:

Big Brothers Big Sisters of Greater Columbia, Inc.
Attn: President Julie Tovey
P. O. Box 2559
Columbia, SC 29202-2559
Federal I.D. No. 57-0570422

Big Brothers Big Sisters of the Upstate, Inc.
Attn: President Terry Hypes
620 N. Main Street
Suite 102
Greenville, SC 29601
Federal I.D. No. 20-4243553.

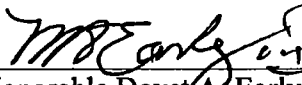
The one-third (1/3) share designated for the YMCA of Columbia and Greenville shall be divided equally between the following (2) entities, so that each shall receive a one-sixth (1/6) share:

YMCA of Columbia, Inc.
Attn: President Brian Madden
1420 Sumter Street
Columbia, SC 29201
Federal I.D. No. 57-0314423

YMCA of Greenville, Inc.
Attn: President Scot Baddley
YMCA of Greenville
601 E. McBee Ave., Ste. 212
Greenville, SC 29601
Federal I.D. No. 57-0314424.

14. This Court shall retain continuing jurisdiction over the Action for all purposes necessary and proper for the consummation, administration, supervision, and management of the settlement; for disbursement of settlement benefits; to effectuate the Final Order and Judgment; and for any other necessary and proper purpose.

AND IT IS SO ORDERED this 2nd day of September, 2007.



The Honorable Doyet A. Early, III
Circuit Court Judge

Aiken, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Case No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiffs,

v.

Dick Dyer & Associates, Inc., et al.,

Defendants.

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[Handwritten signatures and initials]

**ORDER
ON
PLAINTIFFS' RULE 41(a) MOTION
TO VOLUNTARILY DISMISS CERTAIN DEFENDANTS
AND
DEFENDANTS' RULE 59(e) MOTION TO RECONSIDER
THE DENIAL OF THEIR MOTIONS TO DISMISS ON CERTAIN GROUNDS**

I. PROCEDURAL POSTURE AND FACTUAL BACKGROUND

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Plaintiffs filed their original Complaint against certain Dealers in Aiken County on August 29, 2006, with four Plaintiffs suing 51 motor vehicle dealerships located in thirteen counties. Plaintiffs filed a "Corrigenda" correcting the original Complaint on September 1, 2006. Plaintiffs filed their First Amended Complaint in this case on October 31, 2006, with eight Plaintiffs suing some 324 dealerships ("Defendants" or "Dealers") located in forty-one counties. Each named Plaintiff alleges he or she bought one vehicle from a single Dealer.

As set forth more fully in the First Amended Complaint, Plaintiffs allege among other things that (1) Defendants charged closing fees in violation of the South Carolina Regulation of Manufacturers, Distributors and Dealers Act ("the Dealers Act") contained in South Carolina Code Ann. §§ 56-15-10 to -600 (2006), and failed to comply with requirements in South

Carolina Code Ann. § 37-2-307 (2002) (the "Closing Fee Statute"); (2) Defendants engaged in a civil conspiracy; and (3) Plaintiffs request that the circuit court issue a declaratory judgment finding Defendants' practices illegal and granting other relief.

Defendants moved to dismiss the First Amended Complaint based on lack of standing; improper joinder; Rules 12(b)(1), (2), (3) and (6), SCRPC; failure to plead the requirements of Rule 23, SCRPC; and other grounds.

This Court denied Defendants' various motions to dismiss by Order filed August 1, 2007. Defendants on August 10 and 13, 2007, timely served two Joint Motions to Amend or Reconsider the denial of the motions to dismiss pursuant to Rule 59(e), SCRPC.

Plaintiffs on October 11, 2007, moved pursuant to Rule 41(a), SCRPC, to voluntarily dismiss without prejudice all parties named in the First Amended Complaint, filed October 31, 2006, except for the seven named Plaintiffs and the seven Defendants from which those Plaintiffs purchased a vehicle.¹

 A hearing was held before this Court on November 30, 2007, on Plaintiffs' motion to voluntarily dismiss certain Defendants and Defendants' motions to reconsider. Numerous lawyers for Plaintiffs and Defendants were present, with A. Camden Lewis presenting the Plaintiffs' motion and arguments and James Y. Becker, Bradford N. Martin and Steven W. Hamm presenting Defendants' motions and arguments.

This case is related to two other cases before this Court: Janet L. West-Cox et al. v. Cale Yarborough Honda, Inc. et al., Case No. 2007-CP-02-1154 (Complaint filed in Aiken County on

¹ The eighth named Plaintiff in the First Amended Complaint, Alison Dannert, has settled her claims against Defendant CarMax Auto Superstores, Inc., and is no longer involved in this litigation.

Aug. 20, 2007) (the West-Cox case); Howard Adams et al. v. Action Ford Mercury, Inc. et al., Case No. 2007-CP-02-1232 (Complaint filed in Aiken County on Sept. 4, 2007) (the Adams case).

II. PLAINTIFFS' MOTION TO VOLUNTARILY DISMISS CERTAIN DEFENDANTS

The majority of Defendants apparently have consented to Plaintiffs' Rule 41(a) motion to dismiss. Some Defendants have opposed this motion. I find that granting Plaintiffs' Rule 41(a) motion to dismiss serves judicial economy and is in accord with Rule 1, SCRPC, and thus, Plaintiffs' motion is granted. All Defendants in this case are hereby dismissed without prejudice pursuant to Rule 41(a)(2), SCRPC, except the following:

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1. Heather Herron v. Land Rover of Columbia;
 2. Natalie Armstrong v. Galeana Chrysler Jeep, Inc.;
 3. Michael Ritz v. Taylor Investments, Inc. d/b/a Taylor Toyota, Inc.;
 4. Julie Freeman v. J.L.H. Investments, d/b/a Hendrick Honda of Easley;²
 5. Christine Watts v. Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW;
 6. Michael Blease v. Dick Dyer & Associates, Inc.; and
 7. Michael Watts v. Toyota of Greenville, Inc.

Defendants, including those which have consented to Plaintiffs' Rule 41(a) motion to dismiss and those which have not, have moved or reserved any and all rights they may have to seek the payment of their attorney's fees and costs by Plaintiffs. Defendants also have reserved any and all rights they may have with regard to any applicable statute of limitations if Plaintiffs

² The First Amended Complaint incorrectly asserts that Ms. Freeman purchased a vehicle from Rick Hendrick Honda Cars Co.

should refile this lawsuit against them. I express no opinion on these motions or issues and reserve ruling on them until a later date. Before I rule on such motions, the parties will be allowed to prepare memoranda and affidavits in support of or opposition to the motions, and present their arguments at a hearing.

III. DEFENDANTS' MOTIONS TO RECONSIDER

I grant Defendants' motions to reconsider in part and modify my earlier ruling on the issue of a Plaintiff's standing to sue Dealers with whom he or she did not transact any business. I deny Defendants' motions to reconsider in part, reaffirming my earlier rulings on the issues of the applicability of Rule 23, SCRPC. I reserve any rulings on the issues of improper joinder and venue until a later time.

A. STANDARD FOR DECIDING MOTION TO DISMISS

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A trial judge may dismiss a claim when the defendant demonstrates the plaintiff's failure to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Rule 12(b)(6), SCRPC. When considering the motion to dismiss for failure to state a cause of action, the trial court must base its ruling solely upon the allegations made on the face of the complaint. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999). If the facts and inferences drawn from the facts alleged in the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a cause of action is improper. Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987). When it is determined that a plaintiff does not have standing to prosecute, the court must dismiss the action. Brock v. Bennett, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct. App. 1994).

B. STANDING

In my Order filed August 1, 2007, denying Defendants' motions to dismiss, I ruled that the First Amended Complaint sufficiently pled facts supporting standing of the Plaintiffs to proceed under the three causes of action in the First Amended Complaint, and that at this stage of the proceeding, there were sufficient allegations of civil conspiracy in the First Amended Complaint to avoid dismissal. I now reconsider and clarify my ruling on the issue of standing, reversing it to a limited extent.

Defendants' motion to dismiss is granted with regard to a named Plaintiff's claims against "no-sale Defendants," i.e., Defendants with which a named Plaintiff did not transact any business. Otherwise, Defendants' motion to dismiss on this ground is denied.

 In short, I conclude that a named Plaintiff has standing to pursue all three causes of action, on behalf of himself or others, against the Defendant from which that particular Plaintiff purchased a vehicle. However, a named Plaintiff does not have standing to sue, on behalf of himself or others, any Defendant with which he did not transact any business. A named Plaintiff may later gain standing to sue Defendants with which a named Plaintiff did not transact any business by presenting evidence sufficient to create a genuine issue of material fact that particular Defendants conspired on the charging of the closing fee with the Defendant from which the named Plaintiff purchased a vehicle.

Standing is a "fundamental requirement for instituting an action," without which "[n]o justiciable controversy is presented." Brock v. Bennett, 313 S.C. 513, 519, 443 S.E.2d 409, 412-13 (Ct. App. 1994). As a result, upon determining a plaintiff has no standing to prosecute a cause of action, the court must dismiss the action. Id.

To have standing, a party must prove all elements that constitute the "irreducible constitutional minimum of standing":

First, the plaintiff must have suffered an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Sea Pines Assn. for the Protection of Wildlife, Inc. v. S.C. Dept. of Nat. Resources, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001) (internal quotes and ellipses omitted). An injury in fact is a particularized harm that affects the plaintiff in a personal and individual way. Id. at 602, 550 S.E.2d at 292. Plaintiffs bear the burden of demonstrating each of the three elements. Sea Pines, 345 S.C. at 601, 550 S.E.2d at 291.

A plaintiff may not sue a defendant with whom he or she has had no dealings because the law precludes a plaintiff from suing a defendant "unless the plaintiff has suffered an injury at the hands of the defendant." Gardner v. S.C. Dept. of Revenue, 353 S.C. 1, 23 n.14, 577 S.E.2d 190, 201 n.14 (2003). In Blum v. Yaretsky, 457 U.S. 991 (1982), the United States Supreme Court explained that

[i]t is not enough that the conduct of which the plaintiff complains will injure *someone*. The complaining party must also show that he is within the class of persons who will be concretely affected. Nor does a plaintiff who has been subject to injurious conduct of one kind possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject.

Id. at 999 (emphasis in original).

In the present case, when considering solely the allegations made on the face of the First Amended Complaint, each named Plaintiff has sustained no injury from any of the Dealers with which he or she did not conduct any business, and he or she is not in immediate danger of a

direct injury from any of these Dealers. A named Plaintiff cannot establish standing because there simply is no causal connection between the injury alleged (a closing fee illegally charged by a Dealer that sold a vehicle to an individual Plaintiff) and the challenged actions of the other Dealers (which did not sell a vehicle to Plaintiff). The injury suffered by each named Plaintiff is fairly traceable to the challenged action of only the Dealer from which he or she bought a car, not every other Dealer in the state. A decision in the named Plaintiff's favor would not redress the injuries allegedly suffered by people who bought vehicles from other, unrelated Dealers. Furthermore, each named Plaintiff has a personal stake in an action only against the Dealer with which he or she did transact business. The mere fact that other Dealers may charge a closing fee simply does not give Plaintiffs standing to sue every Dealer in the state that charges such a fee.

Accordingly, a named Plaintiff does not have standing to sue, on behalf of himself or others, any Defendant from which a Plaintiff did not purchase a vehicle or transact any business. Stated conversely, a named Plaintiff who alleges he or she has been charged an illegal motor vehicle closing fee has standing to sue, on behalf of himself or others, only the Defendant which sold a vehicle to that particular Plaintiff. As explained further in Section E below, a named Plaintiff may gain standing to sue other Defendants with which he or she did not transact any business if that Plaintiff, during discovery, obtains evidence sufficient to raise a genuine issue of material fact on whether certain Defendants engaged in a civil conspiracy with regard to the charging of a closing fee.

2. Impact of S.C. Code Ann. § 56-15-110(2) on standing

South Carolina Code Ann. § 56-15-110(2) (2006) does not confer standing for Plaintiffs to sue Dealers with which they did not conduct any business. Under § 56-15-110(1), "any person *who shall be injured in his business or property* by reason of anything forbidden in this

chapter may sue therefor [sic] in the court of common pleas." (Emphasis added.) This subsection simply gives an injured person a right to sue a Dealer with which he or she did business for damages, but in no way indicates that person may sue every other Dealer in South Carolina. To be liable under this provision, a Dealer must have participated in wrongdoing against a Plaintiff who bought a vehicle from that Dealer. Jackson v. Speed, 326 S.C. 289, 302, 486 S.E.2d 750, 756 (1997); Rowe v. Hyatt, 321 S.C. 366, 468 S.E.2d 649 (1996). The named Plaintiffs were not injured in their person or property by dealers with which they did no business. Therefore, Plaintiffs have no claim under § 56-15-110(1) against those Dealers with which they did no business.

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This ruling is consistent with the South Carolina Supreme Court's decision in Gardner v. S.C. Dept. of Revenue, 353 S.C. 1, 577 S.E.2d 190 (2003), in which the plaintiffs brought an action for violations of the South Carolina Debt Setoff Act and, like the Plaintiffs in this case, they sued defendants with which they had not conducted any business. The plaintiffs alleged that public agencies which collected debts by seizing an individual's state income tax refund under the Debt Setoff Act had failed to comply with the Act's notice provisions. The plaintiffs sued defendant class members that had *not* collected debts from them, but had collected debts from other persons using the Act. The Supreme Court held that the plaintiffs could not sue persons who did *not* collect debts from them and at whose hands they had suffered no injury. Gardner, 353 S.C. at 23 n.14, 577 S.E.2d at 201 n.14.

3. Impact of civil conspiracy claim on standing

The mere assertion of a civil conspiracy cause of action does not confer standing on Plaintiffs to sue Dealers with which they did not transact business. Any use of the conspiracy

allegation to circumvent standing requirements would involve applying the "juridical links doctrine."

The South Carolina Supreme Court has expressly rejected the "juridical links" doctrine, finding that it runs counter to previous decisions that a plaintiff may not sue a defendant unless the plaintiff has suffered an injury at the hands of the defendant. Gardner, 353 S.C. at 23 n.14, 577 S.E.2d at 201 n.14; Edisto Fleets, Inc. v. S.C. Tax Commn., 256 S.C. 350, 182 S.E.2d 713 (1971) (plaintiff cannot maintain a class action where record indicates he was not directly harmed by defendant's actions); Furman Univ. v. Livingston, 244 S.C. 200, 136 S.E.2d 254, 256 (1964) (only a taxpayer directly affected by erroneously paying taxes has a right to seek a refund).

Given the Supreme Court's unconditional rejection of the juridical links doctrine, Plaintiffs cannot now rely on a conspiracy allegation to circumvent the standing requirements. Plaintiffs therefore lack standing at this time to bring any cause of action against Dealers with which they did not transact any business.



4. Impact of declaratory judgment action on standing

The mere assertion of a declaratory judgment action does not confer standing on Plaintiffs to sue Dealers with which they did not transact business.

The Declaratory Judgment Act provides:

[a]ny person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

S.C. Code Ann § 15-53-30 (2006). Despite the Act's "broad language, it has limits." Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004). An

adjudication that “would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of [the Act.]” Id.

To state a cause of action under the Declaratory Judgment Act, a party “must demonstrate a justiciable controversy.” Id. A justiciable controversy exists “when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party.” Graham v. State Farm Mutual Ins. Co., 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995). Additionally, in declaratory judgment actions “[t]he interest of the parties . . . to the subject matter of the controversy must be more than merely general. It must be a substantial, direct, and legally protected present interest in the relief sought.” Quinn v. City of Columbia 303 S.C. 405, 407-408, 401 S.E.2d 165, 167 (1991) (holding that subdivision residents lacked standing under the Declaratory Judgment Act to challenge the city’s annexation of the subdivision because the residents did not own real property in the subdivision and, therefore, had no “legally protected present interest”).

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Because there was no transaction or interaction between the named Plaintiffs and Dealers with which they did no business, Plaintiffs’ legal interest with respect to such dealerships is neither concrete nor legally protected and any declaratory judgment would be merely advisory in nature. Plaintiffs’ declaratory judgment cause of action is, therefore, an impermissible basis to establish standing against a Dealer with which they did not transact any business.

5. Impact of public interest exception

To establish public interest standing, the reported cases indicate that a government entity or public actor must be a defendant. See e.g. Davis v. Richland County Council, 372 S.C. 497, 642 S.E.2d 740 (2007) (holding county recreation commission members had public interest standing in suit against county regarding the constitutionality of an act changing the authority to

appoint commission members, and citing several cases involving government entities as the defendant). In this case, there is no dispute with governmental entities, public officials, or public bodies. Instead, the lawsuit is an action by private individual plaintiffs against private corporate defendants. Given the well-established general principles on standing outlined above, I find that the public interest exception in this case should not be applied to allow a named Plaintiff to sue Defendants with which that Plaintiff did not transact any business.

C. APPLICABILITY OF RULE 23

Defendants assert that the First Amended Complaint should be dismissed because Plaintiffs have failed to plead the requirements of Rule 23, SCRCF, or, in the alternative, Plaintiffs must be required to plead and prove the requirements of Rule 23 during the liability or litigation phase of this case.

 In my Order filed August 1, 2007, denying Defendants' motions to dismiss, I ruled that South Carolina Code Ann. § 56-15-110(2) (2006) creates a substantial or substantive right. I further found that Act No. 100 of 1985, 1985 S.C. Acts 277, which enacted the South Carolina Rules of Civil Procedure, did not apply to or affect substantive rights. The 1985 Act did not repeal Section 56-15-110(2). Therefore, Plaintiffs are not required to plead and prove the requirements pertaining to class actions contained in Rule 23, SCRCF.

I have considered Defendants' arguments to reconsider my ruling regarding Rule 23, SCRCF. I reaffirm my ruling as set forth in my Order filed August 1, 2007 and deny Defendants' motions to dismiss and to reconsider my earlier ruling on this ground. Plaintiffs are not required to plead and prove the requirements pertaining to class actions contained in Rule 23 SCRCF during the liability or litigation phase of this case.

D. IMPROPER JOINDER AND VENUE

Defendants contend that the First Amended Complaint should be dismissed against all Defendant dealerships on the ground of improper joinder pursuant to Rules 12(b)(6) and 20(a), SCRCF. Defendants assert that Plaintiffs should be required to refile their Complaints individually in the county of proper venue, i.e., where a given Defendant has its principal place of business. In my Order filed August 1, 2007, denying Defendants' motions to dismiss, I did not explicitly rule on Defendants' motions relating to improper joinder and venue.

I have considered the parties' arguments on this issue, including the arguments made in the various memoranda and hearings listed above. These motions in this case now pertain only to seven Plaintiffs and seven Defendants, given my decision to grant Plaintiffs' motion to voluntarily dismiss all no-sale Defendants in the First Amended Complaint. Accordingly, I will refrain from ruling on these issues until after discovery is completed. Defendants may refile or renew their motions related to dismiss for improper venue and improper joinder at that time.

E. CIVIL CONSPIRACY CLAIM

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Defendants assert that Plaintiffs have failed to adequately plead their civil conspiracy claim and so this claim should be dismissed from the First Amended Complaint in its entirety. In my Order filed August 1, 2007, I rejected Defendants' arguments and ruled that Plaintiffs have pleaded a civil conspiracy claim sufficiently to survive a motion to dismiss under Rule 12(b)(6), SCRCF. I reaffirm that ruling, but clarify its extent with regard to Defendants with which the named Plaintiffs did not transact business.

As explained in Section III(B)(3) above, a named Plaintiff may not rely on the mere assertion of an adequately pleaded civil conspiracy claim to obtain standing against no-sale Defendants, i.e., Dealers with which a given Plaintiff did not transact any business. However,

each named Plaintiff has standing to bring and has adequately pleaded in the First Amended Complaint a civil conspiracy claim against the Defendant from which that Plaintiff purchased a vehicle.

If Plaintiffs obtain sufficient evidence during the discovery process to create a genuine issue of material fact on the existence of a civil conspiracy among certain Defendants, then a named Plaintiff at that point would gain standing to sue, on behalf of himself or others, those particular Defendants which allegedly conspired on the charging of a closing fee with the Defendant from which the named Plaintiff purchased a vehicle. The named Plaintiff would not gain standing to sue every other Defendant in the state with which he or she did not transact any business, but only those allegedly involved in a conspiracy with the Defendant from which the Plaintiff did purchase a vehicle. If Plaintiffs do not obtain sufficient evidence of a civil conspiracy, dismissal of this claim pursuant to a summary judgment motion may be appropriate. Defendants may file summary judgment motions related to dismissal of the civil conspiracy claim after discovery is completed and before trial begins. I express no opinion on the validity of any civil conspiracy claim or whether dismissal of the claim ultimately may be appropriate.

F. ARBITRATION AND OTHER GROUNDS FOR DISMISSAL

Numerous Defendants have filed various motions related to arbitration agreements, including motions to dismiss the Complaint for lack of jurisdiction or to compel arbitration based on arbitration clauses found in buyer's orders or invoices and other documents related to the sale or financing of a vehicle. At the hearing on November 30, 2007, I heard arguments from Plaintiff Christine Watts and Defendant Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW, related to the arbitration agreement allegedly signed by Ms. Watts when she purchased a vehicle. I allowed those parties more time to conduct additional discovery,

including depositions, pertaining solely to issues related to the arbitration agreement. No ruling has been issued on the arbitration motion in Ms. Watts' case.

No other arbitration motions from any parties have been heard by the Court. As I previously have stated or ruled at various hearings, no party has waived any substantive or procedural rights or arguments relating to arbitration agreements, including the right to move to compel arbitration. See Green Tree Fin. Corp. v. Bazzle, 539 U.S. 444 (2003). Defendants have been careful throughout this litigation to preserve all rights related to the enforcement of arbitration agreements, as acknowledged on several occasions by Plaintiffs and this Court.

Furthermore, certain Defendants have asserted numerous other arguments and grounds for dismissal in various motions to dismiss and other pleadings filed in response to the Complaint. These other issues have not yet been considered by the Court and are expressly reserved for later review and consideration.

G. DISCOVERY

Discovery has been stayed while the parties and the Court addressed the preliminary issues contained in this Order. Discovery may proceed in this case after the filing of this Order.

IT IS SO ORDERED.



Doyet A. Early, III
Judge of the Second Judicial Circuit

January 31, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

Case No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiffs,

v.

Dick Dyer & Associates, Inc. et al.,

Defendants.

THIS is before me on the motion of all Plaintiffs for Declaratory Judgment asking the Court to issue a declaratory judgment against all Defendants interpreting S.C. Code Ann. § 37-2-307 (the "Closing Fee Statute" or "Statute"), and declaring that various actions or practices constitute violations of the Closing Fee Statute, and section 56-15-30(a) of the Regulation of Manufacturers, Distributors and Dealers Act, S.C. Code § 56-15-10, *et seq.* ("Dealers Act"). A hearing was held on Plaintiffs' Motion before this Court on November 23, 2009.

Defendants objected to proceeding forward with the Plaintiffs' Motion for various reasons including improper joinder and improper venue. A ruling on these issues has previously been reserved until after the completion of discovery. There is no dispute that venue is proper as to Defendant Taylor Toyota, and therefore, with the agreement of the Plaintiffs, the Court proceeded with hearing the motion of Plaintiff Michael Ritz against Defendant Taylor Toyota ("Plaintiff's Motion"). Although Plaintiff's Motion requests that the Court issue a number of

declarations regarding the meaning of various sections of the Closing Fee Statute and whether that the foregoing constitutes a true and correct copy of the particular actions by Defendant violated the Closing Fee Statute and the Dealers' Act, at the

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

Deputy Clerk

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hearing, Plaintiff narrowed the scope of his request and asked the Court only to interpret two terms used in the Closing Fee Statute, namely the terms "closing fee" and "advertised price."

Defendants objected to Plaintiff's request, arguing that despite the title of his motion, Plaintiff was really asking for the Court to issue an advisory opinion. Specifically, Defendant argued that a determination of the definitions of "closing fee" and "advertised price" would not settle the legal rights of any party involved, and thus the ruling would only be advisory in nature. Counsel for Defendant Taylor Toyota also objected on the grounds that these more narrow issues had not yet been fully briefed and were not yet ripe for argument.

The South Carolina Declaratory Judgments Act states that "Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. § 15-53-20. I find that the Plaintiff's request that I define the terms "closing fee" and "advertised price" constitutes a request for a declaration for the purposes of the Declaratory Judgments Act and that these issues are ripe for determination by the Court and issue this opinion accordingly.

On June 7, 2003, Plaintiff Ritz purchased a 2003 Toyota Tacoma Truck from Defendant Taylor Toyota. Mr. Ritz's invoice provides in part:

DAE #2

MODEL NO. 7188	STOCK NO. 2393
1. VEHICLE PRICE	22818.33
2. PROCUREMENT/DELIVERY FEE	277.00
3. SECURE ETCH	N/A
4. TOTAL SELLING PRICE	23095.33
5. GROSS VEHICLE ALLOWANCE	N/A
6. TRADING DIFFERENCE	23095.33
7. STATE & LOCAL SALES TAXES	1616.67
8. LICENSE TAG & TITLE FEE	23.00
9. SUBTOTAL	24735.00
10. PAYOFF ON TRADE-IN	N/A
11. TOTAL	24735.00
12. PARTIAL PAYMENT	N/A
13. SUBTOTAL	24735.00
14. SERVICE CONTRACT	N/A
15. CASH ON DELIVERY	3750.00
16. BALANCE/AMT. FINANCED	20985.00

It is undisputed that the \$277.00 "PROCUREMENT/ DELIVERY FEE"¹ shown above is a closing fee as referenced in S.C. Code Ann. §37-2-307.² Mr. Ritz paid the \$277.00 PROCUREMENT/ DELIVERY FEE to Taylor Toyota.

On October 31, 2006, Plaintiff Ritz filed an Amended Complaint in this matter. In the Amended Complaint, Plaintiff Ritz alleges that the \$277 PROCUMENT/DELIVERY FEE charged by Defendant Taylor Toyota violated S.C. Code Ann. §37-2-307 and the Motor Vehicle Dealers Act, S.C. Code Ann. §56-15-10 et. seq. ("Dealers Act"). Plaintiff Ritz alleges that

¹ On the registration form filed with the State Department of Consumer Affairs (hereinafter "the Department of Consumer Affairs") and signed by Taylor Toyota; the form showed the Closing Fees to be charged "will not exceed \$400." See Exhibit 1 to the Rule 30(b)(6) deposition of Taylor Toyota, bates 4669. Taylor Toyota asserts the form covers the "PROCUREMENT/ DELIVERY FEE" of \$277.00

² In the Rule 30(b)(6) deposition of Taylor Toyota, the parties used the terms administrative fees and closing fees interchangeably to describe the \$277 PROCUREMENT/DELIVERY FEE charged to Mr. Ritz. See *eg.* p. 6, ll. 24-25 and p. 39, ll. 4-21.

DAE #3 3

Defendant Taylor Toyota failed to include the closing fee in the advertised price of his car and that Defendant Taylor Toyota impermissibly charged a closing fee for an improper purpose (for profit and not for reimbursement of closing costs). Plaintiff Ritz alleged a cause of action for violation of the Dealers Act and a cause of action requesting a Declaratory Judgment interpreting S.C. Code Ann. §37-2-307 and the Dealers Act.

Defendant Taylor Toyota denies that it violated S.C. Code Ann. §37-2-307 or the Dealers Act. Defendant Taylor Toyota maintains that Plaintiff Ritz's vehicle did not include an "advertised price" as defined in S.C. Code Ann. §37-2-307 and that the closing fee charged was for a permissible purpose.

On May 28, 2009, Plaintiff Ritz filed a Motion requesting the Court issue the Declaratory Judgment. As stated by Plaintiff's counsel at the hearing, Plaintiff Ritz simply seeks an interpretation of the words "closing fee" and "advertised price" as the words appear in S.C. Code Ann. §37-2-307.

The Closing Fee Statute was enacted in 2000, and made a part of the South Carolina Consumer Protection Code, S.C. Code § 37-1-101, *et seq.* ("SCCPC"). The Closing Fee Statute, in its entirety, states as follows:

Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be *included in the advertised price* of the motor vehicle, *disclosed on* the sales contract, and *displayed in a conspicuous location* in the motor vehicle dealership.

Id. § 37-2-307 (emphasis added).

The Closing Fee Statute authorizes motor vehicle dealers to register the amount of the fee with the Department of Consumer Affairs (hereinafter the "Department") and charge closing

DAE #4

fees to consumers. The Statute imposes three other requirements on dealers charging closing fees:

- (1) the fee must be *disclosed to* the consumer on the sales contract or invoice;
- (2) some notice of the fee must be *displayed in* a conspicuous place in the dealership; and
- (3) the fee must be *included in* the advertised price of the motor vehicle.

The Closing Fee Statute does not further define the terms "closing fee" or "advertised price."

The Department is charged with the administration of the Closing Fee Statute, and the Department also monitors and enforces certain advertising guidelines with respect to motor vehicle dealers and other creditors. As such, in interpreting the Closing Fee Statute, it is appropriate for the Court to review and give deference to any interpretations of the Statute by the Department. *See Faile v. S.C. Employment Sec. Comm'n*, 267 S.C. 536, 540, 230 S.E.2d 219, 221-22 (1976) ("The construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons."); *Lexington Law Firm v. Dep't of Consumer Affairs*, 2009 S.C. LEXIS 133 (S.C. May 12, 2009) ("The Court should defer to the [Department of Consumer Affairs'] findings where there is no compelling reason to reject it."). Because the Department is charged by the Legislature with regulating closing fees and dealers' compliance with the Closing Fee Statute, it is in the best position to interpret the Statute's meaning. In fact, the SCCPC provides that if an entity regulated under the SCCPC (including motor vehicle dealers) acts in "conformity with any written order, opinion, interpretation or statement" of the Department, then that entity shall be free from penalty. S.C. Code Ann. § 37-6-506(3).

The Department has issued an interpretation of the Closing Fee Statute in Administrative Interpretation 2.307.0101, dated June 7, 2001 (the "Administrative Interpretation" or "Interpretation"). This is the only written interpretation of the Closing Fee Statute by the Department. (Deposition of Danny Collins ("Collins Depo.") p. 25, ll. 19-24.) The Administrative Interpretation explains the procedure for complying with the Closing Fee Statute, and explains how dealers can comply with the registration and disclosure requirements. The Interpretation states, in pertinent part, as follows:

As clearly indicated from the terminology of Section 37-2-307, from the effective date of that section (June 30, 2000), any dealer choosing to assess a closing or documentation fee must: 1.) File a registration fee of ten dollars (\$10.00) with the Department each state fiscal year prior to the assessment of a closing fee; 2.) Disclose the closing fee on its sales contract; 3.) Display in a conspicuous place in the dealership a statement that indicates the closing fee may be charged; and 4.) If the closing fee is charged, and the vehicle is advertised, the closing fee must be included in the advertised price so that consumers cannot be unfairly surprised by having the closing fee added on after the acceptance of an advertisement's terms. In the absence of any of these requirements, the charging of a closing or other similar fee is an excess charge for Consumer Protection Code purposes.

In discussing the Statute's requirement that dealers pay a registration fee to the Department and display a notice in the dealership that the dealer charges a closing fee to consumers, the Interpretation states further:

While the [Statute] does not directly say so, the registration fee is referred to as a registration fee and not merely as a fee, with the apparent implication that the dealership seeking to charge closing fees should likewise file or register the disclosure it seeks to use. The attached disclosure may be used for this purpose. It is not required that the dealers use the attached form, but if they do, they will be deemed compliant if the form is properly filled out. Forms considered to be deceptive or to misstate the law will be rejected by the Department.

(Interpretation at p. 2.)

The Interpretation also states that "[t]he [Statute] does not specify the content of the disclosure other than to indicate that it must be displayed in a conspicuous place." (*Id.* at p. 3.)

DAE #6 6

R.000032

The "attached disclosure" referenced in the Interpretation is a form issued by the Department and titled "Notice—Closing Fees" ("Registration Form") that all dealers involved in this action used throughout the relevant time period to register their fees with the Department and display at their dealership. The Registration Form states, in pertinent part:

This Dealership charges closing fees as a means of reimbursing it for certain overhead costs such as document retrieval and document preparation. It is a charge that is permitted but not required by law. The full cash price charged at any dealership depends on many factors, including all products and services bought with the vehicle.

(*Id.* at p. 4.)

The Registration Form was changed by the Department in the spring of 2008, prior to the registration renewal period of July 1st of that year,³ and now states as follows:

This dealership charges closing fees on a motor vehicle sales contract. It is a charge that is permitted but not required by law (Section 37-2-307). The full cash price charged at any dealership depends on many factors, including all products and services bought with the vehicle.

(http://www.sconsumer.gov/licensing/mv_closing_fee.htm.)

Other than as previously discussed herein, the Interpretation does not further define the terms "closing fee" or "advertised price."

Danny Collins, the Deputy for Regulatory Enforcement of the Department, testified that the 2001 Interpretation is the Department's official position as to the Closing Fee Statute and as long as a dealer has complied with the Interpretation, a dealer would not be found by the Department to be in violation of the Closing Fee Statute. As a part of its regular enforcement activities, the Department regularly reviews and stamps approval of automobile dealers' closing

³ In his deposition, Mr. Collins testified that wording change in the Registration Form did not change the Department's interpretation of the closing statute in any manner. (Collins Depo. p. 21, ll. 15-21; p. 91, ll. 16-21.)

DAE #7 7

R.000033

fee registration forms. (Collins Depo. pp. 37-38, p. 94, ll. 3-5.) The Department also enforces advertising guidelines relating to advertising by automobile dealers. (*Id.* at p. 10, ll. 14-20.)

Section 37-1-102, which sets forth the purposes of the South Carolina Consumer Protection Code, declares that it shall be liberally construed and applied to promote its underlying purposes and policies. S.C. Code Ann. § 37-1-102(1). One of the primary purposes of the Consumer Protection Code is to "protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors." *Id.* § 37-1-102(2)(d).

Plaintiff has asked the Court to determine the meaning of two terms as used in S.C. Code Ann. §37-2-307: "closing fee" and "advertised price."

When interpreting a statute, the court's primary function is to ascertain the intention of the Legislature. *Plowman v. Bagnal*, 316 S.C. 283, 285, 450 S.E.2d 36, 37 (1994). A statutory provision should be given a reasonable construction consistent with the purpose and policy expressed in the statute. *Jackson v. Charleston County Sch. Dist.*, 316 S.C. 177, 181, 447 S.E.2d 859, 861 (1994). Where, as here, a court is confronted with an undefined term in a statute, the term must be interpreted in accordance with its usual and customary meaning. *Branch v. City of Myrtle Beach*, 340 S.C. 405, 410, 532 S.E.2d 289, 292 (2000). Words must also be construed without resorting to subtle or forced constructions which limit or expand the statute's operation. *SCANA v. S.C. Dept. of Revenue*, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009). Finally, terms must be construed in context. *S. Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass'n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991).

The first term at issue is "closing fee" as used in S.C. Code Ann. §37-2-307. This term appears twice in the statute, which provides:

DAE #8

Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

(Emphasis added).

Plaintiff Ritz contends that a "closing fee" is a pre-determined set fee for the reimbursement of closing costs such as document retrieval and document preparation.

Defendant Taylor Toyota contends that there is no "limit to the purposes for which closing fees can be charged."⁴ Taylor Toyota further argues that a "closing fee" does not have to be for reimbursement or related in any way to an automobile closing and may include dealer profit.

This statute authorizes a motor vehicle dealer to charge "closing fees." Use of the word "closing" must be given some meaning. *See Hartford Acc. and Indem. Co. v. Lindsay*, 273 S.C. 79, 85, 254 S.E.2d 301, 304 (1979)(full effect must be given to each portion of a statute, and a court should avoid interpretation that renders a portion meaningless).

I first look to the plain and ordinary meaning of the word "closing" in relation to the sale of a motor vehicle. Black's Law Dictionary defines "closing" as "the final meeting between the parties to a transaction, at which the transaction is consummated..." Black's Law Dictionary (8th ed. 2004). Closing occurs at the time the purchaser fills out the motor vehicle sales contract and other paperwork necessary to complete a purchase. Accordingly, I find that a "closing fee" as used in S.C. Code Ann. §37-2-307 starts with a fee associated with an automobile closing. I reject Taylor Toyota's assertion that a "closing fee" does not have to be related to an automobile closing. This interpretation would render the word "closing" meaningless.

⁴Defendant Taylor Toyota's Memorandum in Opposition to Motion for Declaratory Judgment, page 14, states "the Closing Fee Statute does not limit the purposes for which closing fees can be charged."

DAE # 9 9

R.000035

Defendant Taylor Toyota's contention that there is no "limit to the purposes for which closing fees can be charged"⁵ is unreasonable in light of the purpose of the statute. "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers." *Greenville Baseball v. Bearden*, 20 S.E.2d 813, 815 - 816 (1942). When S.C. Code Ann. §37-2-307 was enacted, it was included in the Consumer Protection Code. This indicates that S.C. Code Ann. §37-2-307 was enacted to protect consumers. Accordingly, I find that the statute should be construed to protect consumers.

Defendant Taylor Toyota's proposed interpretation that the fee is not limited and can be charged for any purpose does not protect consumers. Under Defendant Taylor Toyota's interpretation, dealers can charge a fee, call it a "closing fee" (document fee, processing fee or some other name associated with documentation for an automobile closing), and then use the fee solely to make a profit. This interpretation would authorize the dealers to charge a fee with a potentially misleading name. This interpretation does not protect consumers. I find this interpretation unreasonable in light of the statute's purpose of protecting consumers.

The more reasonable interpretation is that S.C. Code Ann. §37-2-307 authorizes the charging of "closing fees" which are for the reimbursement of set overhead costs arising from automobile closings such as document retrieval and document preparation. This interpretation protects consumers because it mandates that the charge is for the actual cost associated with a closing, which can be predetermined, and does not allow a dealer to name a fee a "closing fee" and then use the fee to make a hidden profit.

⁵ See Defendant Taylor Toyota's Memorandum in Opposition to Motion for Declaratory Judgment.

DAE # 10

Accordingly, I hereby find that a "closing fee" is a pre-determined set fee for the reimbursement of closing costs, such as document retrieval and document preparation.

The "closing fee" is not limited to document retrieval and document preparation; it may include other closing fees actually incurred from the consummation of the transaction. It cannot be arbitrarily set, unlimited or include dealer profit. The dealer may only charge the buyer closing fees that are actually incurred and are a necessity to the closing, thus reimbursing the dealer for actual closing fees incurred.

The second term at issue is "advertised price." The Fee Disclosure Statute provides, in its entirety, that:

[e]very motor vehicle dealer charging closing fees on a motor vehicle contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

S.C. Code Ann. § 37-2-307 (1976). The statute contains no definition of the term "advertised price." The court must therefore construe the statute to arrive at the appropriate definition.

Canons of statutory construction previously cited will be applied again.

The statute expressly requires every motor vehicle dealer charging closing fees to include the fee in the advertised price of the motor vehicle. S.C. Code Ann. § 37-2-307 (1976). This language indicates that: (1) the statute applies to motor vehicle dealers and (2) an advertisement of the price of a motor vehicle by a dealer must include the closing fee. It is therefore inferable that an advertised price is a price contained in an advertisement of a motor vehicle by a motor vehicle dealer.

The terms "advertise" and "advertising" have been variously defined. The American Heritage Dictionary defines advertising as "[t]he activity of attracting public attention to a

DAE#11

product or business, as by paid announcements in the print, broadcast or electronic media.”

American Heritage Dictionary of the English Language (4th ed. 2000). Webster’s Third New International Dictionary (2002) defines “advertising” as “the action of calling something (as a commodity for sale, a service offered or desired) to the attention of the public esp. by means of printed or broadcast paid announcements.” *Id.* at 31. The Compact Oxford English Dictionary states that “advertise” means “[t]o present or describe (a product, service, or event) in a public medium so as to promote sales.” Compact Oxford English Dictionary (2005). Plaintiff Michael Ritz urges that the Court adopt the definition found in Black’s Law Dictionary:

[t]o advise, announce, appraise, command, give notice of, inform, make known, publish. To call a matter to the attention of the public by any means whatsoever. Any oral, written, or graphic statement made by the seller in any manner in connection with the solicitation of business and includes, without limitation... statements and representations made in a newspaper or on the radio or television or contained in any handbill, sign, catalog, or letter, or presented on or contained in any tag or label attached to or accompanying any merchandise.

Black’s Law Dictionary (6th ed. 1990).

Taken together, these definitions indicate that the plain and ordinary meaning of the term “advertising” and/or “advertisement” is: (1) a notice given by the seller of a product or service; (2) to the general public for the purpose of attracting customers; (3) by means of printed announcements in handbills, signs, catalogs, or letters or announcements paid by or on behalf of the seller in newspapers, radio, television, or electronic media. This definition is also supported by the construction given the statute by the Department of Consumer Affairs. Danny Collins, the Department’s Deputy for Regulatory Enforcement, testified that an advertisement is a display “to the public to try to attract attention.” (Collins Dep. at 6:23 to 7:1 and 123:3-7).

Applying the above definition, the Court specifically excludes “Monroney” labels because they are statements made by the manufacturer and not the dealer.

DAE #12

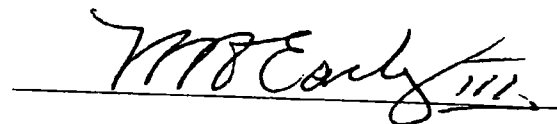
The Court also concludes that it is improper to consider a negotiated price to be an advertised price. Statements about price made in the course of negotiations do not conform to the Court's findings of the meaning of the words "advertised price." They are made to an individual, rather than to the public.

Based on the foregoing and after full consideration of the issues herein, I hereby declare that:

1) A "closing fee" is a pre-determined set fee for the reimbursement of closing costs, such as document retrieval and document preparation, but only those actually incurred by the dealer and necessary to the closing transaction.

2) An "advertised price" is a notice given by the seller of a product or service to the general public for the purpose of attracting customers by means of printed announcements in handbills, signs, catalogs, or letters or announcements paid by or on behalf of the seller in newspapers, radio, television, or electronic media.

AND IT IS SO ORDERED.



The Honorable Doyet A. Early, III
Chief Administrative Judge
Second Judicial Circuit

January 11, 2010.

Aiken, South Carolina

The South Carolina Court of Appeals

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

Respondents,

v.

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

Defendants,

of whom

Dick Dyer & Associates, Inc.; Galeana
Chrysler Plymouth, Inc. a/k/a Galeana
Chrysler Jeep, Inc.; J.L.H. Investments,
LP a/k/a Hendricks Honda; Overland,
Inc. d/b/a Land Rover of Columbia;
Taylor Toyota a/k/a Taylor
Investments, and Toyota of Greenville,
Inc.,

Appellants.

The Honorable Doyet A. Early, III
Aiken County
Trial Court Case No. 2006-CP-02-01230

ORDER

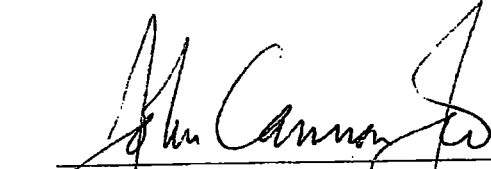
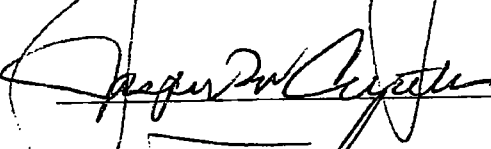
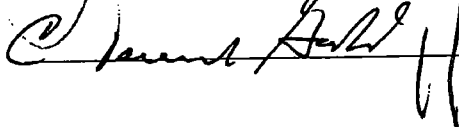
R.000040

Appellants and Respondents are attempting to appeal from an order of the trial court filed January 11, 2010, interpreting section 37-2-307 of the South Carolina Code (Supp. 2009) (the "Closing Fee Statute"). Respondents filed a motion to dismiss all Appellants from the appeal, except for Taylor Toyota, arguing Taylor Toyota is the only Appellant affected by the order. After reviewing the motion and return, we requested memoranda from the parties regarding whether the order is appealable by any party.

After careful consideration of the parties' filings, we hereby dismiss both Appellants' and Respondents' appeal of the order filed January 11, 2010. Initially, we note the trial court's order is not a final order because it only interprets the applicable law; it does not determine any questions of fact or apply the law to the facts. See Adickes v. Allison & Bratton, 21 S.C. 245, 259 (1884) (holding if there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory); Good v. Hartford Accident & Indem. Co., 201 S.C. 32, 41, 21 S.E.2d 209, 212 (1942) (holding if a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment); see also Jean Hoefer Toal, et al. Appellate Practice in South Carolina 88 (2d. Ed. 2002) ("It is only in exceptional cases that the appellate court views with approval an appeal from an interlocutory order; it is usually far better for the party to await the final decree or judgment."). Moreover, we find the order does not involve the merits or affect a substantial right. See S.C. Code Ann. § 14-3-330 (1), (2) (Supp. 2009) (allowing the appellate court to review any intermediate order that involves the merits of the action, affects a substantial right, or discontinues the action). We emphasize that nothing herein precludes the parties from raising these issues in any appeal from a final judgment.

Appellants are also attempting to appeal an order of the trial court dismissing Plaintiff Michael Watts and substituting Plaintiff David Carroll in Watts' action against Toyota of Greenville. We dismiss this appeal as well because the order is not immediately appealable. See Duncan, 331 S.C. at 486, 449 S.E.2d at 580 (holding an order granting a motion to intervene is not immediately appealable); Lake City Dev. Corp. v. Gilbert Constr. Co., 283 S.C. 10, 11, 320 S.E.2d 494, 494 (Ct. App. 1984) (holding an order allowing a party to join as a third-party defendant is not immediately appealable); see also 4 Am. Jur. 2d Appellate Review § 149 (2010) ("An order allowing or denying the substitution of parties ordinarily is not directly appealable."); see also Kassuelke v. Alliant Techsystems, Inc., 223 F.3d 929, 931 (8th Cir. 2000) (providing "the grant of a substitution motion is not immediately appealable prior to final judgment").

AND IT IS SO ORDERED.

 C.J.
 A.J.
 A.J.

Columbia, South Carolina

July 2, 2010

cc: H. Clayton Walker, Jr., Esquire
Robert L. Reibold, Esquire
A. Camden Lewis, Esquire
Gedney M. Howe, III, Esquire
James Y. Becker, Esquire
Mary Caskey, Esquire
Michael Eugene Spears, Esquire
Richard A. Harpootlian, Esquire

FILED
July 7, 2010 *EAC*

R.000042

The Supreme Court of South Carolina

Heather Herron, et al.

Plaintiffs,

v.

CarMax Auto Superstores, Inc., et al.,

Defendants

Aiken County
2006-CP-02-01230

ORDER

The Honorable Doyet A. Early, III is vested with exclusive jurisdiction to hear and dispose of the above case. Judge Early shall decide all matters pertaining to this case, including motions to appoint or relieve counsel, and pursuant to this assignment shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard to whether there is a term of court scheduled.

IT IS SO ORDERED,



Jean Hoefler Toal
Chief Justice

July 11, 2012
Columbia, South Carolina

R.000043

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Case No. 2006-CP-02-1230

Heather Herron, *et al.*,

Plaintiffs,

vs.

Dick Dyer & Associates, Inc., *et al.*,

Defendants.

8-31-12
[Signature]
D.C.C.P. & U.S.
[Signature] 12-30
Deputy Clerk

**ORDER SEVERING CASES FOR SEPARATE TRIALS
AND DISMISSING CLAIMS FOR CIVIL CONSPIRACY**

This matter came before me for a status conference on June 12, 2012. At that time, all Defendants had various motions pending to sever and transfer venue of each separate Plaintiff's case to the county where each Defendant's principal place of business was located. All Plaintiffs have consented to severing their separate cases against the Defendants and transferring venue of their cases to those counties in which each Defendant has its principal place of business.

At the present time, Defendants, Dick Dyer & Associates, Inc., and Galeana Chrysler-Jeep, Inc., have withdrawn their motions to transfer venue and consent to venue in Aiken County. Plaintiffs Michael Blease and Natalie Armstrong intend to file motions to transfer venue of their cases against the respective Defendants to Richland County, where these Defendants have their principal place of business.

Defendants Toyota of Greenville and Century BMW have pending motions to compel arbitration. Nothing in this order shall waive or otherwise decide those motions.

[Signature]

Columbia: 1697605 v.1

R.000044

THEREFORE, for good cause shown and with the consent of all parties, I hereby Order
as follows:

1. Plaintiff Heather Herron's claims against Defendant Overland, Inc. d/b/a Land Rover Columbia shall be severed and transferred to Lexington County;
2. Plaintiff Christine Watts' claims against Defendant Century BMW, whose true name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW, shall be severed and transferred to Greenville County;
3. Plaintiff David Carroll's claims against Defendant Toyota of Greenville, Inc. shall be severed and transferred to Greenville County;
4. Plaintiff Julie Freeman's claims against Defendant J.L.H. Investments, L.P. d/b/a Hendrick Honda of Easley shall be severed and transferred to Pickens County;
5. Plaintiff Michael Bleasc's claims against Defendant Dick Dyer & Associates, Inc., shall be severed;
6. Plaintiff Natalie Armstrong's claims against Defendant Galeana Chrysler Jeep, Inc. shall be severed.
7. All Plaintiffs' claims for civil conspiracy are dismissed, without prejudice.

AND IT IS SO ORDERED.



Doyet A. Early, III
Circuit Court Judge

Bamberg, South Carolina

 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

Aiken County Case No. 2006-CP-02-1230
Pickens County Case No. 2012-CP-39-01554

Heather Herron, Natalie Armstrong,
Michael Ritz, Julie Freeman, Christine
Watts, Michael Blease and Michael Watts,
individually and for the benefit of all car
buyers who paid "administrative fees" as
described below to Dealers,

Plaintiffs,

v.

Dick Dyer & Associates, Inc.; Land Rover
of Columbia; Galeana Chrysler Jeep, Inc.;
Taylor Investments, Inc. d/b/a Taylor
Toyota, Inc.; J.L.H. Investments, d/b/a
Hendrick Honda of Easley; Sonic
Automotive, d/b/a Century BMW; and
Toyota of Greenville, Inc.

Defendants.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 DEC 28 A 10:05

**ORDER REGARDING PLAINTIFF JULIE FREEMAN'S
MOTION FOR A DECLARATORY JUDGMENT AS TO
DEFENDANT J.L.H. INVESTMENTS, LP, d/b/a HENDRICK HONDA OF EASLEY**

On or about May 28, 2009, all Plaintiffs filed separate motions for a declaratory judgment as to each respective Defendant in the above-captioned action ("Declaratory Judgment Motion(s)"). On November 18, 2009, Defendant J.L.H. Investments, LP, d/b/a Hendrick Honda of Easley ("Hendrick Honda of Easley") filed a memorandum in opposition to the Declaratory Judgment Motion of Plaintiff Julie Freeman.

On November 23, 2009, a hearing was held on the Declaratory Judgment Motions, at which time all Defendants except Taylor Toyota, Inc., objected to the motions based on improper joinder and improper venue, among other grounds. Given those objections, the Court proceeded

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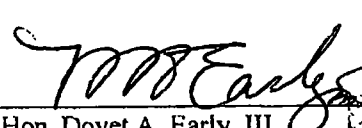
to consider only the Declaratory Judgment Motion of Plaintiff Michael Ritz against Defendant Taylor Toyota, Inc., for which venue in Aiken County was admittedly proper. Pursuant to Plaintiff Ritz's request, the Court limited its ruling to an interpretation of two terms used in S.C. Code Ann. § 37-2-307 (the "Closing Fee Statute"), namely the terms "closing fee" and "advertised price."

Plaintiffs and various Defendants, including Hendrick Honda of Easley, submitted proposed orders on the Declaratory Judgment Motion on December 18, 2009. On January 11, 2010, the Court entered an order, which applied only as to the case involving Plaintiff Michael Ritz and Defendant Taylor Toyota, Inc.

After full consideration of the motions, memoranda, and proposed orders submitted by the Plaintiffs and Hendrick Honda of Easley, the Court finds that, to the extent its January 11, 2010 order construes the terms "closing fee" and "advertised price" as they are used in the Closing Fee Statute, those rulings also apply to the claims of Plaintiff Julie Freeman against Hendrick Honda of Easley.

IT IS SO ORDERED.

December 18, 2012
Aiken, South Carolina


The Hon. Doyet A. Early, III

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS
Case No. 2012-CP-39-01554

2013 MAR 25 A 10:21
Julie Freeman Hair, individually and for
the benefit of all car buyers whom paid
"administrative fees" as described below
to Defendant,

Plaintiffs,

v.

J.L.H. Investments, d/b/a Hendrick Honda
of Easley

Defendant.

**ORDER REGARDING PLAINTIFF'S MOTION TO COMPEL DISCOVERY
AND HENDRICK HONDA OF EASLEY'S SECOND AMENDED MOTION
TO ESTABLISH PROCEDURAL REQUIREMENTS,
DECLARE THE SCOPE OF THE PLAINTIFF GROUP, AND
REQUIRE PLAINTIFF TO GIVE NOTICE TO THE PLAINTIFF GROUP**

On February 4, 2013, Defendant J.L.H. Investments, LP, d/b/a Hendrick Honda of Easley ("Hendrick Honda of Easley") served a Second Amended Motion to Establish Procedural Requirements, Declare the Scope of the Plaintiff Group, and Require Plaintiff to Give Notice to the Plaintiff Group (the Amended Motion was filed January 31, 2013), which renewed and amended Hendrick Honda of Easley's earlier motion to Declare the Scope of the Plaintiff Group and to Establish Procedural Requirements filed on December 8, 2010 (collectively, the "Motion"). Plaintiff Julie Freeman ("Plaintiff") requested that her outstanding Motion to Compel discovery dated February 4, 2011 also be heard. Both motions were heard by the Court in a telephone hearing on February 12, 2013 and an in-person hearing on February 21, 2013.

In its Motion, Hendrick Honda of Easley sought an order (1) requiring Plaintiff to plead and prove the procedural requirements under Rule 23, SCRPC, for prosecuting any of her claims

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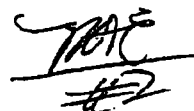
R.000048

in a representative capacity; (2) declaring that the group or class of persons represented by Plaintiff is limited to those persons who paid closing fees to Hendrick Honda of Easley during the four years prior to the commencement of the action; and (3) to require Plaintiff to give notice and an opportunity to opt out of the Plaintiff group prior to any trial or other decision on the merits of Plaintiff's claims.

Plaintiff's Motion to Compel discovery dated February 4, 2011 sought information from Defendant for time periods after 2008. Information for time periods prior to November 2008 was previously produced pursuant to an agreement of counsel, as discussed in a joint letter to the Court dated December 12, 2008.

At the hearing of these motions, Plaintiff's counsel agreed to provide and to pay the costs associated with notice to the group members who purchased a vehicle and paid a closing fee to Hendrick Honda of Easley in the four years prior to the date the complaint was filed on August 29, 2006. These purchasers are the only persons covered by Plaintiff's cause of action for damages under the Dealers Act. Counsel for the parties have agreed to work together to draft a notice to these group members and will submit the proposed notice for this Court's approval.

The Court declines to revisit its rulings relating to Rule 23, SCRPC, and whether this case is required to proceed as a class action pursuant to that rule. However, based on the above representations of counsel, the Court declares that the group represented by Plaintiff with respect to her claims for damages under the Dealer's Act is limited to pre-complaint purchasers, i.e., persons who paid closing fees to Hendrick Honda of Easley during the four years prior to the commencement of the action on August 29, 2006. The Court further orders that Plaintiff will give notice and an opportunity to opt out to the pre-complaint purchasers prior to any trial or decision on the merits.



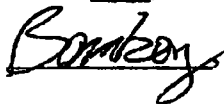
With respect to Plaintiff's equitable claims for an injunction and disgorgement on behalf of all post-complaint purchasers, the Court makes no rulings at this time as to the claims of post-complaint purchasers and reserves ruling on all issues raised by the parties as to post-complaint purchasers, including the discovery that is the subject of Plaintiff's Motion to Compel dated February 4, 2011. The Parties have agreed that any trial of those claims would be a non-jury trial and will be held, if at all, after a jury trial on the claims of the pre-complaint purchasers.

IT IS SO ORDERED.



The Hon. Doyet A. Early, III

March 30, 2013

 South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

Case No. 2012-CP-39-01554

Julie Freeman Hair, individually and for
the benefit of all car buyers whom paid
"administrative fees" as described below to
Defendant,

Plaintiffs,

v.

J.L.H. Investments, LP, a/k/a Hendrick
Honda,

Defendants.

ORDER REGARDING NOTICE TO THE PLAINTIFF GROUP

The Court has previously entered its Order, dated March 20, 2013 and filed March 25, 2013, regarding notice of the pendency of this action to the Plaintiff group members, who are those persons who purchased a motor vehicle from and paid a closing fee to Hendrick Honda of Easley in the four years prior to the date the original complaint was filed on August 29, 2006.

Counsel for the parties have conferred and proposed a Notice to be provided by Plaintiff to the group members. The content of the Notice, which is attached hereto as Exhibit A, is approved. Counsel for the parties have also jointly proposed that Tilghman & Co., P.C., P.O. Box 11250, Birmingham, Alabama, 35202 ("Tilghman"), shall act as the administrator for sending the Notice to the Plaintiff group members. After review of Tilghman's resume and upon the joint recommendation of counsel for the parties, Tilghman is approved as the Notice administrator.

Within 2 days of receipt of this Order, Defendant shall produce to Tilghman and the Plaintiffs' counsel an "electronic file" on a CD Rom (or other similar storage device for

electronically stored information) containing the "customer contact information" for all customers or buyers who purchased a vehicle from Defendant between August 29, 2002, and August 29, 2006, and in which a closing fee was accounted for by the Defendant for the customer's transaction.

"Customer contact information" includes the following: 1) the date of the transaction; 2) the amount of the fee accounted for in the transaction; 3) the name of the customer (buyer and any co-buyer); and 4) the customer's mailing address including street address or post office box number, city, state, and zip code. The customer contact information shall be produced as it is listed or maintained in the Defendant's business records. "Electronic file," shall mean an electronic load file, such as an Excel spreadsheet, in field delimited format, which may be used to generate letters or mailing labels for mailing the approved Notice to the class.

The aggregate customer contact information produced by Defendant, whether existing in paper or electronic form, shall be considered "Confidential Material – Not To Be Viewed By Competitors" pursuant to the Consent Protective Order Controlling Distribution of Confidential Material dated January 30, 2009 in *Heather Herron, et al. v. Dick Dyer & Associates, Inc., et al.*, Case No. 2006-CP-02-1230. Tilghman and Plaintiff's counsel shall take appropriate precautions pursuant to the Consent Protective Order to maintain the confidentiality of the customer contact information.

Plaintiff, her counsel, and Tilghman may use the customer contact information solely for the purpose of mailing the attached and approved Notice to the Plaintiff group members. Prior to mailing the Notice, Tilghman shall update the customers' mailing addresses by using the U.S. Postal Service's National Change of Address database NCOALink® and CASS certification process, and shall use any such updated mailing addresses for mailing the Notice. The Notice

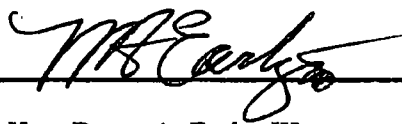
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vered by first class U.S. Mail to provide for forwarding of the Notice and notice of and return of any Notices which are undeliverable as addressed. Tilghman will then commercially reasonable method, such as a LexisNexis search or address trace, to updated mailing address, if any, for any customer whose Notice has been returned e as addressed and, will re-mail such Notices to the updated address, if any, on a one

schedule for mailing the Notice to Plaintiff group members and receiving opt out
It be as follows:

1. The Notice will be printed on 8.5" x 11" white paper, and tri-folded to mail as a with no envelope. Tilghman will submit an exemplar of the final form and format of counsel for the parties for approval at least 15 days prior to mailing.
2. The Notice must be mailed via the U.S. Postal Service on or before June 17, 2013.
3. The Plaintiff group members shall have until August 1, 2013 to postmark and out request to Tilghman.
4. Tilghman shall prepare a list of all opt-outs and forward the list with copies of the ests to counsel for the parties by August 15, 2013.
5. Tilghman shall prepare a list of all Plaintiff group members whose Notices were ed and returned as undeliverable as addressed (after one re-mailing attempt, if any), ovide a copy of such list to counsel for the parties by August 15, 2013.
6. Plaintiff or her counsel shall be responsible for all costs of printing, mailing, and dministering the Notice and opt-out requests.

AND IT IS SO ORDERED.



The Hon. Doyet A. Early, III

May 14, 2013

AIKEN, South Carolina

EXHIBIT A

NOTICE OF PENDENCY OF LEGAL ACTION

**Julie Freeman, et al. v. J.L.H. Investments, LP, d/b/a/ Hendrick Honda of Easley,
Pickens County, South Carolina, Court of Common Pleas
Case No. 2012-CP-39-01554**

*THIS IS A COURT-AUTHORIZED NOTICE.
THIS IS NOT A SOLICITATION FROM A LAWYER.*

**Please read this notice carefully and in its entirety.
Your legal rights will be affected by proceedings in this lawsuit.**

This notice is to inform you of a lawsuit pending in Pickens County, South Carolina. It is intended to advise you of your rights with respect to the lawsuit. This notice is not an expression of opinion by the Court concerning the merits of the lawsuit.

What is the lawsuit about?

Plaintiff, Julie Freeman, alleges that the Defendant, Hendrick Honda of Easley, has charged an improper closing fee in connection with the sale of automobiles, during the time period from August 29, 2002 to August 29, 2006. Depending on when the automobile was purchased, the closing fee was either \$249 or \$299. Plaintiff asserts a legal claim for money damages pursuant to the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act. Defendant denies the allegations, and asserts defenses, including compliance with the South Carolina Closing Fee Statute, the Consumer Protection Code, and the guidance provided by the South Carolina Department of Consumer Affairs. No final ruling has been made on these claims and defenses. The Court has scheduled a trial for September 16, 2013. At trial, either party could win on the merits.

Why have you received this notice?

You have received this notice because Defendant's records show that you purchased an automobile from it during the time period from August 29, 2002 to August 29, 2006.

What are your rights in connection with this lawsuit?

The representative Plaintiff is Julie Freeman. She has brought her claims on behalf of all persons who purchased a vehicle and paid a closing fee to the Defendant in the four years prior to August 29, 2006. Plaintiff's attorney is Brady Thomas, of Richardson, Patrick, Westbrook & Brickman, LLC, 1730 Jackson Street, Barnwell, SC 29812. Mr. Thomas may be reached and more information obtained by calling 1-888-577-6537 (toll-free). Plaintiff Julie Freeman and these attorneys will represent you in this lawsuit, unless you exclude yourself or choose to hire your own attorney. If you want to be represented by your own attorney, you may hire one at your own expense and enter an appearance in this lawsuit through your own attorney.

Can you exclude yourself from this lawsuit?

If you wish to remain in this lawsuit, you do not need to take any action. If you remain in this lawsuit you will be bound by any decision, favorable or unfavorable, in this case.

EXHIBIT A

If you do not wish to remain in this lawsuit, then you may exclude yourself. If you exclude yourself, you will not participate in any settlement or favorable judgment, but you also will not be bound by any unfavorable judgment. If you do not exclude yourself, you give up the right to sue Defendant for the claims raised in this lawsuit.

Your request to be excluded from this lawsuit must be in writing and must provide your name and address and a statement that you wish to be excluded from *Freeman v. Hendrick Honda of Easley*. This statement must be sent to Freeman Notice Administrator, P.O. Box 12864, Birmingham, AL 35202-2864, by first class mail, postmarked not later than August 1, 2013. If you request exclusion on behalf of anyone other than yourself, you must describe your legal authority to make this request.

Can you get more information?

This notice does not fully describe all of the claims, defenses, or prior proceedings in this lawsuit. The pleadings and other documents may be examined at the office of Plaintiff's attorney. Any questions you have concerning the matters contained in this notice should be directed to Plaintiff's attorney.

DO NOT CALL THE COURT OR THE DEFENDANT.

BY ORDER OF THE COURT

**The Hon. Doyet A. Early, III
Circuit Judge, State of South Carolina**

May 30, 2013

TILGHMAN & CO., P.C.

A SERVICE OVERVIEW

TILGHMAN & CO. P.C. is an experienced, professional services firm specializing in administration of class action lawsuit settlements and awards. As an objective intermediary among plaintiffs, defendants, attorneys and class members, TILGHMAN & CO. provides a broad array of administrative services -- from the design, preparation and dissemination of notices to disbursement of benefits. All procedures are carefully documented, and attorneys on both sides are updated regularly.

The following statistics demonstrate the magnitude of the services TILGHMAN & CO. has provided over the last 18 years:

- Services for Over 350 Cases
- Mailings of over 36 Million Notices
- Disbursement of Over 9.8 Million Checks
- Management of Over \$400 Million in Settlement Funds

L. Stephens Tilghman

Tilghman & Co., P.C.
PO Box 11250
Birmingham, AL 35202

Professional Experience

Steve Tilghman serves as a Settlement and/or Claims Administrator by providing a range of administrative services in class action lawsuits. Frequently he creates mathematical models for allocation of class action settlement benefits. He has served as a Special Master in Federal District Court cases.

Before starting Tilghman & Co., P.C., Steve was an audit partner with KPMG. While with KPMG he completed a rotational assignment in the Professional Development Department in the Firm's Executive Office. In addition he served as an interim CFO for MedJet International and other small companies.

Presentations

- EEI Conferences – The Class Action Litigation Summit, June 2002; Panelist, *Settlement of Class Actions – A Panel Discussions on Proven Strategies and New Techniques.*
- International Association of Defense Counsel, July 2000; Presenter, *Bumps in the Road on the Way to the Fairness Hearing.*
- United States Senate, Committee on Labor and Human Resources, January 1991; Presenter.

Education

- University of Alabama, BS 1972
- Millsaps College

Associations

- AICPA
- Alabama Society of Certified Public Accountants

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	Case No.: 2012-CP-39-01554
	)	
Julie Freeman	)	
	)	
	)	
Plaintiff,	)	ORDER DENYING DEFENDANT'S
	)	REVISED MOTION FOR
vs.	)	JUDGMENT ON THE PLEADINGS
	)	
J.L.H. Investments, LP a/k/a Hendrick Honda	)	
	)	
Defendant.	)	

This matter is before the Court by way of a motion for judgment on the pleadings filed by Defendant J.L.H. Investments, LP a/k/a Hendrick Honda. This motion was heard by the Court in Aiken, South Carolina on August 14, 2013. After considering the parties' briefing and arguments of counsel, I have determined that the motion should be denied.

STANDARD FOR JUDGMENT ON THE PLEADINGS

"When considering such motion, the court must regard all properly pleaded factual allegations as admitted. Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991). On review of the motion, the court may not consider matters outside the pleadings. Firemen's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 394 S.E.2d 855 (Ct.App.1990).

A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment.... When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties.

Russell, 305 S.C. at 89, 406 S.E.2d at 339 (citations omitted). Furthermore, "a judgment on the pleadings is considered to be a drastic procedure by our courts." *Id.*"



Falk v. Sadler, 341 S.C. 281, 286-87, 533 S.E.2d 350, 353 (Ct. App. 2000).

ALLEGATIONS AT ISSUE

Plaintiff Julie Freeman Hair alleges that Defendant Hendrick Honda charged illegal "closing fees" to its customers. See Third Amended Complaint, para. 3. Closing fees are sometimes referred to by a variety of names. In this case, Defendant Hendrick Honda charged Plaintiff Julie Freeman a \$299.00 "Procurement Fee." Third Amended Complaint, para. 3.

Plaintiff alleges that Hendrick Honda violated the law by charging a closing fee to its customers, including Plaintiff Julie Freeman, that was not done to reimburse Hendrick Honda for closing costs. Third Amended Complaint, para. 93. Plaintiff also alleges that Hendrick Honda failed to include the closing fee in the advertised price of Julie Freeman's car. Third Amended Complaint, paras. 59-62.

Plaintiff has alleged that the above conduct is a violation of S.C. Code Ann. § 37-2-307¹ (the "Closing Fee Statute"). Plaintiff has further alleged that the above conduct amounts to "unfair" acts in violation of S.C. Code Ann. § 56-15-30²; and an "arbitrary," "unconscionable" action conducted "in bad faith," all in violation of S.C. Code Ann. § 56-15-40 (a).³

¹ S.C. Code Ann. § 37-2-307 provides: "Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership."

² S.C. Code Ann. § 56-15-30(a) provides: "(a) Unfair methods of competition and unfair or deceptive acts or practices as defined in § 56-15-40 are hereby declared to be unlawful."

³ S.C. Code Ann. § 56-15-40 provides: "(1) It shall be deemed a violation of paragraph (a) of § 56-15-30 for any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, distributor representative or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public."

Plaintiff has alleged a cause of action pursuant to S.C. Code Ann. § 56-15-110 of the Dealers Act which provides:

In addition to temporary or permanent injunctive relief...any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefor in the court of common pleas and shall recover double the actual damages by him sustained and the cost of suit, including a reasonable attorney's fee.

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

In any action for money damages, if the jury finds that the defendant acted maliciously, the jury may award punitive damages not to exceed three times the actual damages.

See Third Amended Complaint, p. 12. Plaintiff has also prayed for disgorgement of all illegally collected fees. See Third Amended Complaint, para. 111.

DISCUSSION

On August 9, 2013, Defendant filed a Second Revised Motion for Judgment on the Pleadings arguing that Plaintiff cannot pursue a cause of action under the Dealers Act arising from the Defendant charging illegal closing fees that are also in violation of the Closing Fee Statute because Defendant claims that S.C. Code Ann. §37-5-202 creates an exclusive remedy for the charging of illegal closing fees. For the following reasons, this motion is denied.

1. S.C. Code Ann. § 37-5-202 Does Not Create an Exclusive Remedy For Car Buyers To Challenge Closing Fees.

Defendant argues that because the Closing Fee Statute is located in the Consumer Protection Code that S.C. Code Ann. §37-5-202 (also in the Consumer Protection Code) is the exclusive remedy for all claims alleging that a car dealer charged illegal closing fees. The South Carolina Supreme Court in Tilley v. Pacesetter Corp. 333 S.C. 33, 40-41, 508 S.E.2d 16, 19-20

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(1998) held that that S.C. Code Ann. §37-5-202 does not create an exclusive remedy for a violation of the Consumer Protection Code. The Tilley opinion provides in part:

Pacesetter contends that, in providing a specific remedy in 37-5-202 for violations of section 37-2-413, the legislature intended 5-202 as the exclusive remedy. We disagree. Had the Legislature so intended, it could have specifically provided that 37-5-202 was the exclusive remedy. Accord Hanier v. American Medical International, 328 S.C. 128, 492 S.E.2d 103 (1997) (if legislature had intended certain result in a statute, it would have said so).

I agree with the Supreme Court in Tilley. I find that S.C. Code Ann. §37-5-202 does not create an exclusive remedy for a violation of another section of the Consumer Protection Code. As such, this statute cannot be an exclusive remedy for consumers when charged an illegal closing fee. Moreover, S.C. Code Ann. §37-5-202, while specifically referring to other statutes, makes no reference to the Closing Fee Statute, § 37-2-307, and the Closing Fee Statute makes no reference to S.C. Code Ann. §37-5-202. Similarly, S.C. Code Ann. §37-5-202 makes no reference to Closing Fees and expresses no intention to be the exclusive remedy for car buyers who are charged illegal closing fees. This also indicates that S.C. Code Ann. §37-5-202 was not intended as an exclusive remedy for car buyers when challenging closing fees. As the Court in Tilley noted, had the legislature wanted to make S.C. Code Ann. §37-5-202 an exclusive remedy "it would have said so."

2. The Rules of Statutory Construction Support A Finding that A Car Buyer Can Pursue a Claim Under the Dealers Act When Charged a Closing Fee that Also Violates the Closing Fee Statute.

"Statutes in apparent conflict should, if reasonably possible, be construed to allow both to stand and to give effect to each." On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 412-13, 526 S.E.2d 716, 719 (2000) (emphasis added).

Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. Id. "It is presumed that the Legislature is familiar with prior



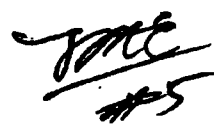
legislation, and that if it intends to repeal existing laws it would ... expressly do so; hence, if by any fair or liberal construction two acts may be made to harmonize, no court is justified in deciding that the later repealed the first." Justice v. Pantry, 330 S.C. 37, 43-44, 496 S.E.2d 871, 874 (Ct.App.1998) (quoting State v. Hood, 181 S.C. 488, 491, 188 S.E. 134, 136 (1936)).

Hodges v. Rainey, 341 S.C. 79, 88-89, 533 S.E.2d 578, 583 (2000).

In this case, the Closing Fee Statute, § 37-2-307, and the Dealers Act both regulate conduct between car dealers and consumers and importantly it is **reasonably possible** to render both the Closing Fee Statute and the Dealers Act operative. Clearly, if Julie Freeman can pursue a cause action against a car dealer under the Dealers Act when a dealer charges an illegal closing fee in violation of §37-2-307 both statutes are operative. Thus, pursuant to the foregoing authorities, this construction trumps Defendant's proposed interpretation which would act to exclude illegal closing fees from the Dealers Act's prohibition against unfair acts and thus render the Dealers Act's protections inoperative.

Moreover, there is no "apparent conflict" between the Closing Fee Statute and the Dealers Act. The Closing Fee statute simply creates a narrow exception that allows Closing Fees to be charged if a dealer follows certain limitations. The Dealers Act prohibits "unfair," "arbitrary," "unconscionable" and actions "in bad faith." These two statutes are not in conflict and more importantly as mentioned above it is **"reasonably possible"** to construe these statutes "to allow both to stand and to give effect to each." See I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 412-13, 526 S.E.2d 716, 719 (2000). As such, this is the more reasonable interpretation.

Furthermore, Defendant's interpretation is contrary to the liberal construction in favor of consumer protection that is to be used when evaluating claims under the Dealers Act. See Kucharski v. Rick Hendrick Chevrolet, LP, 2002 WL 313860990 (SC Ct. App. 2002) ("This

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action is based not on a common law tort or on contract but is a creature of statute. The legislature obviously enacted the Dealers Act because consumers' remedies at common law were deemed inadequate. Remedial statutes are to be construed liberally in order to effectuate their purpose.") and Herron v. Century BMW, 387 S.C. 525, 535, 693 S.E.2d 394, 399 (2010) cert. granted, judgment vacated sub nom. Sonic Auto., Inc. v. Watts, 131 S. Ct. 2872, 179 L. Ed. 2d 1184 (U.S.S.C. 2011) and opinion reinstated, 395 S.C. 461, 719 S.E.2d 640 (2011). ("The purpose of the Dealers Act is consumer protection."). Defendant's argument that the Dealers Act provides no protection to consumers from illegal closing fees is contrary to the liberal rule of construction to be used when evaluating claims under the Dealers Act and thus this is another reason why this interpretation is rejected.

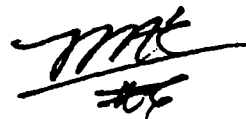
3. The Consumer Protection Code is Designed to Supplement Consumer's Rights At Law and Not to Take Consumer Rights Away.

Defendant wrongly argues the Consumer Protection Code was intended "to be the exclusive statute governing the subjects addressed in the Code" and thus the enactment of the Closing Fee Statute eliminates a consumer's ability to challenge an illegal closing fee as an unfair act in violation of the Dealers Act. This argument is contrary to S.C. Code Ann. § 37-1-103, a statute included in the Consumer Protection Code, which provides:

§37-1-103. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this title, the Uniform Commercial Code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

S.C. Code Ann. § 37-1-103. As shown above, the Consumer Protection Code includes a subsection clarifying that the act is intended to supplement other principles of law. In this case, the other principle of law at issue is the Dealers Act and there is nothing in the Consumer

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Protection Code that indicates an intention to repeal the protections provided to consumers in the Dealers Act. Thus, Defendant's argument that the Consumer Protection Code takes away protections given to consumers in the Dealers Act should be rejected. The Consumer Protection Code supplements those remedies; it does not take away remedies otherwise available at law to consumers.

Furthermore, Defendant's proffered interpretation that the enactment of the Closing Fee Statute creates an exclusive remedy for consumers for challenging closing fees and takes away the pre-existing remedy existing in the Dealers Act to challenge unfair acts by car dealers is contrary to the purposes of both the Dealers Act and the Consumer Protection Code and thus is rejected. See Tilley v. Pacesetter Corp., 355 S.C. 361, 378, 585 S.E.2d 292, 300 (2003) ("The Consumer Protection Code and the Dealers Act share a common purpose: protection of the consumer.").

4. The Closing Fee Statute Did Not Create a New Right or Liability Where None Existed Before and Thus Defendant's Argument that the Enactment of The Closing Fee Statute Means that S. C. Code Ann. §37-5-202 Is an Exclusive Remedy For Challenging Closing Fees Should be Rejected.

The South Carolina Supreme Court in Petition of State ex rel. Hutchinson, 182 S.C. 369, 189 S.E. 475, 477 (1937), cited by Defendant, stated:

It has generally been held that a statutory remedy to enforce a new right or liability created by the same statute is exclusive unless the statute clearly shows a contrary intention. Such an exclusion, however, depends upon the creation of a new right. In 1 C.J.S., Actions, § 6, p. 976, it is said: "Where a statute prescribing a remedy does not create a new right or liability, but merely provides a new remedy for an independent right or liability already existing, the general rule is that the remedy thus given is not regarded as exclusive but as merely cumulative of other existing remedies, and does not take away a pre-existing remedy, or, as more specifically stated, if a statute gives a new remedy in the affirmative, and contains no negative, express or implied, of the old remedy, the new remedy is merely cumulative; and, in such a case, the party having the right may resort to either the pre-existing or the new remedy, except that he cannot resort to inconsistent remedies. * * *" Also see 1 Am.Jur., Actions, § 12.

(emphasis added).



In this case, the enactment of the Closing Fee Statute, enacted in 2000, did not create a new remedy where none existed before. Importantly, the South Carolina Supreme Court in Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc., 322 S.C. 399, 404, 472 S.E.2d 242, 245 (1996) specifically noted that closing fees could be the subject of claims "such as claims for fraud, misrepresentation or unfair trade practices." See Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc., 322 S.C. 399, 404, , n. 8, 472 S.E.2d 242, 245, n. 8 (1996) ("By our holding, we do not imply that inclusion of such fees may not be attacked on other grounds, such as claims for fraud, misrepresentation or unfair trade practices."). Additionally, the Supreme Court in Ferguson specifically analyzed a claim that a closing fee violated the Dealers Act. See also Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 561, 564 S.E.2d 94, 96 (2002) (Ferguson was filed in 1997). As the Fanning and Ferguson courts make clear, closing fees could be challenged as an unfair trade practice and violations of the Dealers Act before the Closing Fee statute was passed. Thus, under Hutchinson because the Closing Fee Statute does not contain a "negative, express or implied, of the old remedy," the remedies provided in the Consumer Protection Code should be considered cumulative and Plaintiff "may resort to either the pre-existing or the new remedy."

Furthermore, the following sentence from Hutchinson is another reason why that rule does not apply here: "It has generally been held that a statutory remedy to enforce a new right or liability created by the same statute is exclusive unless the statute clearly shows a contrary intention." Again, as discussed above, the Consumer Protection in S.C. Code Ann. § 37-1-103 expresses an intention that its enactments are designed to supplement consumer rights and not to take them away. Accordingly, Defendants arguments that S.C. Code Ann. §37-5-202 is an exclusive remedy for challenging illegal closing fees is rejected.

CONCLUSION

For the foregoing reasons, Defendant's motion for judgment on the pleadings is denied.

AND IT IS SO ORDERED.

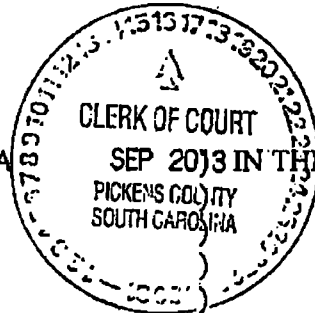
Bonkus, South Carolina

This 5 day of Sept, 2013

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

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Julie Freeman Hair



Case No.: 2012-CP-39-01554

Plaintiff,

vs.

J.L.H. Investments, LP a/k/a Hendrick Honda

Defendant.

**ORDER ON DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT, DEFENDANT'S
MOTION IN LIMINE, AND
PLAINTIFF'S MOTION TO DEEM
CERTAIN PARAGRAPHS IN
PLAINTIFF'S THIRD AMENDED
COMPLAINT ADMITTED**

This matter is before the Court by way of a motion for summary judgment and motions in limine filed by Defendant J.L.H. Investments, LP a/k/a Hendrick Honda and a Motion to Deem Certain Paragraphs in Plaintiff's Third Amended Complaint Admitted. This motion was heard by the Court in Columbia, South Carolina on September 4, 2013. After considering the parties' briefing and arguments of counsel, I hereby rule as follows:

(1) The Voluntary Payment Doctrine.

Defendant's motion seeking summary judgment based on the voluntary payment doctrine is denied. "Summary judgment is a drastic remedy and should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues." Singleton v. Sherer, 377 S.C. 185, 198, 659 S.E.2d 196, 203 (Ct. App. 2008). Summary judgment is appropriate if "there is no genuine issue as to any material fact." Rule 56(c), SCRC. In determining whether a triable issue of material fact exists, the Court must construe all facts and inferences in the light most favorable to the non-movant. Wogan v. Kunze, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only

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required to submit a mere scintilla of evidence." Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

Freeman Hair has asserted a statutory cause of action against Hendrick Honda alleging that Hendrick Honda committed unfair and arbitrary acts under the Dealers Act. The Voluntary Payment defense does not apply to this type of statutory cause of action. The South Carolina Supreme Court in Hardaway stated:

Except where otherwise provided by statute, a party cannot by direct action, or by way of set-off or counterclaim, recover money voluntarily paid with a full knowledge of all the facts, and without any fraud, duress, or extortion, although no obligation to make such payment existed.

Hardaway v. S. Ry. Co., 90 S.C. 475, 73 S.E. 1020, 1025 (1912) (emphasis added). The language above expressly excepts statutory causes of action from the voluntary payment defense. Here, Plaintiff Freeman has asserted a statutory cause of action against Defendant alleging that Defendant committed unfair and arbitrary acts under the Dealers Act. Accordingly, the voluntary payment defense does not apply to this statutory cause of action.

Regardless, even if the voluntary payment defense were a proper defense to the Dealers Act cause of action, summary judgment would still not be appropriate on this ground because there is a question of fact as to whether Mrs. Freeman Hair paid the fee with "full knowledge of all the facts." See Town of Bennettsville v. Bledsoe, 226 S.C. 214, 218, 84 S.E.2d 554, 556 (1954) ("It is an elementary principle that no action will lie to recover money voluntarily paid with full knowledge of all the facts."). Mrs. Freeman Hair has presented an affidavit demonstrating questions of material fact exist including assertions that she did not know the fee was illegal when she paid it, she did not know that Hendrick Honda was violating the Closing Fee Statute, she did not know what Hendrick Honda's closing costs were when she paid the fee, she did not know how Hendrick Honda had calculated the fee, and she did not know what costs

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that Hendrick Honda was seeking to recoup through the Closing Fee. This evidence is sufficient to demonstrate a "mere scintilla of evidence" making a grant of summary judgment inappropriate on this ground. *See Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

(2) Plaintiff is Abandoning Her Claims Based on Advertising and Her Prayer for Punitive Damages.

Plaintiff in their memorandum in opposition and Plaintiff's counsel at the hearing affirmatively stipulated that they are abandoning all claims based on advertising including window stickers and the prayer for punitive damages. Plaintiff has agreed not to present evidence on these issues or to ask for a jury charge on these grounds. The Court hereby accepts this stipulation and rules that Plaintiff is not permitted to present evidence or argument on these issues and no such charge will be given to the jury.

(3) Prejudgment Interest.

The Parties agreed at the hearing that the issue of whether prejudgment interest will be awarded in this case should be determined after the jury's verdict. As such, Defendant's motion asking for a ruling on this issue is denied without prejudice and this issue may be revisited, if necessary, at the time of post-trial motions.

(4) Defendant's Motion in Limine Concerning Referring to Closing Fees As Illegal Fees.

At the hearing, Defense counsel clarified that after reading Plaintiff's Memorandum in Opposition to this Motion that this issue is not in dispute. Plaintiff is asserting that a closing fee charged in violation of the closing fee statute is illegal. Accordingly, this motion is denied without prejudice. Defense counsel may raise this issue if necessary at trial.

(5) The Jury Trial Portion of this Case Involves Illegal Closing Fees Charged from 2002 to 2006.

As the Parties have previously agreed and the Court has previously ruled, the jury trial portion of this case centers on closing fees charged by Hendrick Honda from August 29, 2002 to August 29, 2006. Hendrick Honda in its motion requests that the Court "limit Plaintiff's evidence and arguments accordingly." Plaintiff's counsel at the hearing again re-affirmed this agreement and the intention to present evidence from the relevant time period. Accordingly, this motion is granted but may be revisited based on the presentation of specific evidence at the trial of this case.

(6) Plaintiff's Motion to Deem Certain Paragraphs in Plaintiff's Third Amended Complaint Admitted.

This motion is denied. However, the Court hereby grants the Defendant leave of Court, if Defense counsel so desires, to readdress paragraphs 4, 17, 19, 23, 25, 32, 34 and 35. Plaintiff's ability to address the propriety of any denials of these paragraphs by way of post-trial motions is preserved.¹

AND IT IS SO ORDERED.

Ben, South Carolina

This 10 day of Sept, 2013

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

¹Defendant also filed a motion concerning deposition testimony of Ben Satcher. The Court has taken that issue under advisement and will review the passages at issue. The Court will inform the Parties of its ruling on the propriety of that testimony at a later time.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

Case No. 2012-CP-39-01554

Julie Freeman,

Plaintiffs,

v.

J.L.H. Investments, LP, a/k/a Hendrick
Honda of Easley,

Defendants.

CONSENT ORDER REGARDING ATTORNEYS' FEES AND COSTS

This matter comes before the Court on the motion of Plaintiff Julie Freeman ("Plaintiff") to Recover Attorneys' Fees and Costs. A hearing was held on December 4, 2013. Plaintiff appeared through her attorney, Brady R. Thomas, Esq., and Hendrick Honda of Easley ("Defendant") appeared through its attorney, James Y. Becker, Esq. At the hearing, the parties disputed the proper method to award a reasonable attorney's fee, the appropriate reasonable hourly rate used in an attorney's fee award, and the reasonable number of hours necessarily devoted to Plaintiff's case.

Following the hearing, however, Plaintiff and Defendant reached an agreement to resolve Plaintiff's Motion by agreeing as follows: Plaintiff shall be awarded attorney's fees and costs in the amount of \$762,250.00, for all work completed and costs incurred through the date of this Order.

In agreeing to this award, the Parties recognize that Plaintiff may apply for other fees and costs should Plaintiff succeed on an appeal and that Defendant reserves all arguments set forth in its post-trial motions and memoranda, including but not limited to its Memorandum in



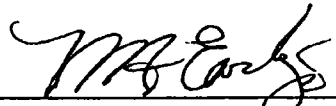
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Opposition to Plaintiff's Motion, filed on November 27, 2013, for challenging any subsequent fee petition by Plaintiff.

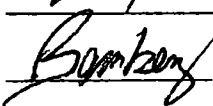
The Parties also recognize that should Defendant succeed on an appeal that this award would be vacated.

Based on the foregoing, The Court finds that an award of \$762,250, represents a reasonable attorney's fee and award of costs through the date of this Order. Due to the agreement between the Parties, The Court does not make any findings with respect to any other issues raised in Plaintiff's Motion or Defendant's response.

AND IT IS SO ORDERED.



The Hon. Doyet A. Early, III

1-7, 2014
, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

CLERK OF THE COURT OF COMMON PLEAS
PICKENS COUNTY
SOUTH CAROLINA
Case No.: 2012-CP-39-01554

Julie Freeman Hair, individually and for the
benefit of all car buyers whom paid
"Administrative Fees" to Defendant.

Plaintiff,

vs.

J.L.H. Investments, LP a/k/a Hendrick Honda

Defendant.

7 A 9:00
**ORDER GRANTING PLAINTIFF'S
MOTION TO DOUBLE THE
DAMAGES AWARD IN THIS CASE**

This matter is before the Court by way of Plaintiff Julie Freeman Hair's Motion requesting that the Court double the damages award in this case. This motion was heard by the Court in Bamberg, South Carolina on December 4, 2013. After considering the parties' briefing and arguments of counsel, I hereby find that Plaintiff is entitled to double damages.

This motion is governed by S.C. Code Ann. §56-15-110, included in the South Carolina Automobile Dealers Act, which provides in part:

(1) In addition to temporary or permanent injunctive relief as provided in § 56-15-40(3)(c), any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefor in the court of common pleas and shall recover double the actual damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

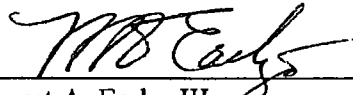
(2) When such action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for the benefit of the whole, including actions for injunctive relief.

S.C. Code Ann. § 56-15-110(1) and (2) (emphasis added).¹

¹I reject Defendant's argument that Plaintiff's prosecution of this case on behalf of a group under S.C. Code Ann. §56-15-110(2) prevents her from recovering double damages under S.C. Code Ann. §56-15-110(1). This argument is contrary to the plain language used in subsection 2 ("When such action") which clearly refers back to subsection 1. Moreover, this

Plaintiff in this case alleged and the jury found that the Defendant violated the Dealers Act. The jury found that the damages sustained were \$1,445,786.00. Pursuant to the above statute, this amount is hereby doubled so that Plaintiff is entitled to recover \$2,891,572.00 in damages.

AND IT IS SO ORDERED.


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

Bamberg, South Carolina
This 13th day of March, 2014

Certified Copy

Clerk of Court
Pickens County, SC
Dated 4/12/2014

interpretation is contrary to the liberal construction to be used when interpreting remedial statutes such as the Dealers Act. *See Kucharski v. Rick Hendrick Chevrolet, LP*, 2002 WL 313860990 (SC Ct. App. 2002) (“This action is based not on a common law tort or on contract but is a creature of statute. The legislature obviously enacted the Dealers Act because consumers’ remedies at common law were deemed inadequate. Remedial statutes are to be construed liberally in order to effectuate their purpose.”) and *Herron v. Century BMW*, 387 S.C. 525, 535, 693 S.E.2d 394, 399 (2010) cert. granted, judgment vacated sub nom. *Sonic Auto., Inc. v. Watts*, 131 S. Ct. 2872, 179 L. Ed. 2d 1184 (U.S.S.C. 2011) and *opinion reinstated*, 395 S.C. 461, 719 S.E.2d 640 (2011). (“The purpose of the Dealers Act is consumer protection.”).

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

Case No. 2012-CP-39-01554

Julie Freeman,

Plaintiffs,

v.

J.L.H. Investments, LP, a/k/a Hendrick
Honda of Easley,

Defendants.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
MAR 17 A 9:00

**ORDER DENYING PLAINTIFF'S MOTION
FOR PREJUDGMENT INTEREST**

This matter comes before the Court on the motion of Julie Freeman ("Plaintiff") for prejudgment interest. A hearing was held on December 4, 2013. Plaintiff appeared through her attorney, Brady R. Thomas, Esq., and Hendrick Honda of Easley ("Defendant") appeared through its attorney, James Y. Becker, Esq. For the reasons set forth below, Plaintiff's motion is denied.

S.C. Code Ann. § 34-31-20(A) provides for prejudgment interest only in cases "wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum." (emphasis added). As interpreted by South Carolina courts, prejudgment interest may only be recovered when a payment is (1) demandable; and (2) liquidated. *Future Group v. Nationsbank*, 324 S.C. 89, 101, 478 S.E.2d 45, 51 (1996). Neither of these requirements is met here.

First, Plaintiff's claim for damages was not demandable before the entry of the jury verdict, so she is not entitled to prejudgment interest. *See id.* at 101, 478 S.E.2d at 51 (holding that to recover prejudgment interest, a claim must be demandable either by agreement of the

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parties or by the operation of law at some time "before entry of judgment") (emphasis added); *BB&T of S.C. v. Kidwell*, 350 S.C. 382, 391, 565 S.E.2d 316, 320 (Ct. App. 2002) (finding that prejudgment interest was appropriate where an amount was due and payable as of a certain date); *T.W. Morton Builders v. Von Buedingen*, 316 S.C. 388, 399, 450 S.E.2d 87, 93 (Ct. App. 1994) (finding that plaintiff, to be entitled to prejudgment interest, "had the burden of establishing a stated account and the parties' agreement, express or implied, that the account is a true statement due at a specific point").

Here, there is no agreement between the parties establishing a demandable amount, and Plaintiff had no right by operation of law to demand damage prior to the entry of judgment. The Dealers Act does not entitle a plaintiff to monetary recover *unless and until* a judge or jury determines liability. See S.C. Code Ann. § 56-15-110 (1) ("any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefore in the court of common pleas and shall recover double the actual damages by him sustained") (emphasis added); see also *Tilley v. Pacesetter*, 355 S.C. 361, 375-76, 585 S.E.2d 292, 299 (2003) (holding, pursuant to a statute providing for penalties if a creditor violates the statute, that the consumer "had no right to demand [the creditor] pay penalties until [the creditor's] liability was established").

Plaintiff's argument that the damages she sued to recover were demandable relies heavily on cases involving claims for conversion. (See Pl. Mot. at 1-2 (citing *Robbins v. First Fed. Sav. Bank*, 294 S.C. 219, 224-225, 363 S.E.2d 418, 421-22 (Ct. App. 1987).) But an award of prejudgment interest in a conversion case has nothing to do with the prejudgment interest statute, § 34-31-20(A), and instead, the measure of recovery for the damages under a conversion claim *includes* prejudgment interest. See *Tilley*, 355 S.C. at 375-76, 585 S.E.2d at 299 ("As a

general rule, the measure of damages for the conversion of personal property is the value of the property with interest thereon, and the jury may give the highest value up to the time of trial.”); *McShane v. Howard Bank*, 73 Md. 135, 20 A. 775 (1890) (“Where money has been converted, the measure of damages is its amount with legal interest from the date of conversion.”). Here, Plaintiff has not asserted a claim for conversion, and the cases awarding prejudgment interest as a component of damages on a conversion claim do not apply.

Plaintiff’s claim for damages also fails to satisfy the second prerequisite for an award of prejudgment interest under § 34-31-20(A): The damages were not ascertainable. Plaintiff’s claim is simply a statutory claim for unliquidated damages, which differs significantly from a claim for liquidated damages. Liquidated damages involve a “sum certain or [are] capable of being reduced to certainty based on a mathematical calculation previously agreed upon by the parties.” *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 258 (2006). In contrast, as Plaintiff herself has acknowledged, unliquidated damages are damages “depending on no fixed standard, referred to the wise discretion of a jury, and can never be made certain except by accord or verdict.” (See Pl. Mot. at 2 (citing *Beckmann Concrete Contractors, Inc. v. United Fire and Casualty Co.*, 360 S.C. 127, 131, 600 S.E.2d 76, 78 (Ct. App. 2004).)

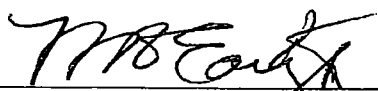
Here, the Court left the amount of damages to the discretion of the jury, and much like the court in *Tilley*, the amount of damages was not a sum certain. In her reply, Plaintiff argues that “[t]he Court in *Tilley* had discretion to award a penalty in an amount determined by the Court,” and “[t]he penalty amount in *Tilley* was not a sum certain because the amount of the penalty could vary.” (Pl. Reply at 3.) This argument is not persuasive because the situation in *Tilley* is indistinguishable from this case. Like the Court in *Tilley*, the jury here had the discretion to award damages in an amount of anything between \$0 and \$249 or \$299. The Court

specifically charged the jury that it could award damages within a "wide range . . . anywhere from zero to two hundred ninety-nine dollars." (Trial Trans., Charge at 15:11-24.)

The Court is likewise not persuaded by Plaintiff's contention that if the jury had awarded less than the full amount of the aggregate closing fees charged by Defendant, then the difference between the full amount of fees collected and the verdict would be a "right of discount or offset" claimed by Defendant. (Pltff. Mot. at 4.) Defendant has never argued that it was entitled to a discount or right of setoff, and the Court did not charge the jury regarding discount or setoff. Instead, the measure of damages on Plaintiff's claim was described by the Court as follows: "if the Defendant's closing fees exceeded the amount necessary to reimburse him for his actual closing costs, then actual damages [are] a *portion* of that fee which exceeded actual closing costs." (See Trial Trans., Charge at 15:11-24; Trial Trans., Mot. Hrg., 62:14-15 (the jury "[could] find all of it was not part of the closing, [or] some of it") (emphasis added).) The discretion left to the jury in determining its award shows that the damages were not a sum certain and were not demandable prior to trial. Therefore, there is no basis for an award of prejudgment interest.

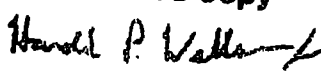
Based on the foregoing, Plaintiff's Motion for Prejudgment Interest is DENIED.

AND IT IS SO ORDERED.


The Hon. Doyet A. Early, III

March 13, 2014

Bamberg, South Carolina
DM: 2162547 V.4

Certified Copy

Clerk of Court
Pickens County, SC
Dated 4/17/2014 

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS) 17 A 9:01 Case No.: 2012-CP-39-01554
Julie Freeman Hair, individually and for the)
benefit of all car buyers whom paid)
"Administrative Fees" to Defendant.)
Plaintiff,)
vs.)
J.L.H. Investments, LP a/k/a Hendrick Honda)
Defendant.)

**ORDER DENYING DEFENDANT'S
MOTION FOR JUDGMENT
NOTWITHSTANDING THE
VERDICT, OR, IN THE
ALTERNATIVE, A NEW TRIAL
NISI REMITTUR**

This matter is before the Court by way of Defendant's Motion for Judgment Notwithstanding the Verdict, or, In the Alternative, a New Trial Nisi Remittur. This motion was heard by the Court in Bamberg, South Carolina on December 4, 2013. After considering the parties' briefing and arguments of counsel, I hereby rule as follows:

1. Defendant's Motion for JNOV

a. Standard

A motion for a JNOV is merely a renewal of the directed verdict motion. When reviewing the trial court's ruling on a motion for a directed verdict or a JNOV, this Court must apply the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party. The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. Moreover, "[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." An appellate court will reverse the trial court's ruling only if no evidence supports the ruling below. In deciding such motions, neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.

RFT Management Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 331-32, 732 S.E.2d

166, 170-71 (S.C. 2012) (internal citations omitted) (emphasis added).

b. The Evidence, When Construed in the Light Most Favorable to Plaintiff, Supports a Finding that Hendrick Honda Violated the Dealers Act.

This case was tried over the course of four days in Pickens County, South Carolina from September 16, 2013 to September 19, 2013. A jury of twelve unanimously found in favor of the Plaintiff and issued a verdict in the amount of \$1,445,786.00. The jury found that the Defendant J.L.H. Investments, LP a/k/a Hendrick Honda of Easley ("Hendrick") violated the Motor Vehicle Dealers Act,¹ a consumer protection statute, which imposes liability for actions by car dealers that are unfair,² arbitrary/unreasonable,³ or actions which are in bad faith.⁴ As discussed below, the evidence submitted at trial was sufficient to support the jury's finding that Hendrick violated the Dealers Act.

The evidence presented at trial showed that from August 29, 2002 to August 29, 2006, Hendrick charged all of its customers closing fees. At trial, by way of stipulation, the Plaintiff introduced a chart (Plaintiff's Ex. 17) showing that Hendrick uniformly collected \$1,445,786 in

¹ S.C. Code Ann. §56-15-10 *et. seq.*

² S.C. Code Ann. § 56-15-30(a) provides: "(a) Unfair methods of competition and unfair or deceptive acts or practices as defined in § 56-15-40 are hereby declared to be unlawful." (emphasis added).

³"Although arbitrary conduct is not defined in the Dealers Act, our supreme court has defined it for purposes of the Act to include 'acts which are unreasonable, capricious or nonrational; not done according to reason or judgment; depending on will alone.'" deBondt v. Carlton Motorcars, Inc., 342 S.C. 254, 263, 536 S.E.2d 399, 404 (Ct. App. 2000). (emphasis added).

⁴ S.C. Code Ann. § 56-15-40 provides: "(1) It shall be deemed a violation of paragraph (a) of § 56-15-30 for any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, distributor representative or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public." (emphasis added).

closing fees from 5,314 car buyers during the relevant time period, many of these transactions were financed transactions. Plaintiff Julie Hair was charged a \$299 closing fee that Hendrick referred to as an "ADMINISTRATION FEE" on some of her documents and a "PROCUREMENT FEE" on other sales documents from Hendrick. The testimony from Hendrick Honda's 30(b)(6) representative published at trial shows that a closing fee was charged on every vehicle sale. See Hendrick Honda 30(b)(6) testimony published at trial, p. 200, ll. 22-25; and p. 231, ll. 22-24.

Hendrick employees testified that they were trained to instruct customers that the fees were being charged to reimburse Hendrick for closing costs such as document preparation and retrieval. Similarly, the evidence established that Hendrick posted signs in conspicuous places in the dealership stating that Hendrick was charging closing fees to reimburse itself for the costs of document preparation and document retrieval. See Plaintiff's Ex. 2, sign declaring that Hendrick was charging closing fees to reimburse itself for the costs of document preparation and document retrieval.

Testimony was also presented by Hendrick's Vice-President of Transaction Compliance, Randy Watkins, whose duties included monitoring statutes and ensuring that Hendrick complied with them. Watkins testimony, p. 10, l. 2 to p. 11, l. 12. Mr. Watkins testified that if Hendrick was going to post signs saying that they were reimbursing themselves for certain overhead costs that Hendrick should know what those costs were before they charged the fee. Watkins testimony, p. 22, ll. 2-7, and l. 9. Mr. Watkins also testified that in order to be "fair", a dealer needs to know what their document preparation and retrieval costs are before they seek to reimburse themselves for those costs. Watkins testimony, p. 67, ll. 21-25 and p. 68, l. 2. Mr.

Watkins also admitted that it would not be "fair" for a dealer to charge a closing fee that was not tied to their actual closing costs. Watkins testimony, p. 68, ll. 8-10 and l. 12.

Despite the foregoing admissions by Mr. Watkins, the evidence, when construed in the light most favorable to the Plaintiff, was sufficient for a jury to find that Hendrick did not charge its closing fees for the purpose of reimbursing itself for its closing costs including document preparation and retrieval. The evidence showed that Hendrick did not know what its closing costs were when Hendrick set the fee. Hendrick 30(b)(6), p. 241, ll. 17-27, p. 242, ll. 3-6. Similarly, Hendrick admitted at trial that it did not know how the original \$199 closing fee was determined and that its subsequent increases in the amount charged for the closing fee were not tied to increases in Hendrick's closing costs. As discussed above, Hendrick's Vice President of Transaction Compliance testified that these actions were unfair and thus the jury could have reasonably found that the actions were a violation of the Dealers Act because the Act prohibits unfair and unreasonable acts.

The evidence also, when construed in the light most favorable to the Plaintiff, was also sufficient for a jury to find that Hendrick's closing fees were not tied to its actual closing costs (Mr. Watkins also admitted that it would be unfair for this to occur and thus this is also a violation of the Dealers Act). The evidence showed that Hendrick's costs went down in years prior to the closing fee increases and thus the jury could find that the increase in the amount charged for closing fees was not tied to any increase in closing costs.

The evidence could also be reasonably construed by the jury to show that Hendrick did not use the closing fees as a means to reimburse itself for the costs of closing including document preparation and retrieval as stated on their signs and as their employees were trained to

instruct customers. The evidence when construed in the light most favorable to Plaintiff could be construed to show that Hendrick used the closing fees to increase the amounts paid to senior management. As shown on cross examination of Hendrick's General Manager, Don Pendleton, the financial statements of Hendrick showed that Hendrick's increase in the amount it charged for closing fees correlated with an increase in the amount of senior management pay.

The jury, when construing the evidence in the light most favorable to the Plaintiff, could also have reasonably found that it is unfair, unreasonable, and an action done in bad faith for Hendrick to post signs in their dealership saying that Hendrick is reimbursing the dealership for the costs of document preparation and retrieval and to train their salesmen to tell customers the same, when Hendrick was actually charging the fees to increase management pay or profit.

Similarly, the evidence could have been construed by the jury to show that it is unfair and unreasonable for Hendrick to name the fee on their buyers orders an "ADMINISTRATION FEE" when the fee is not tied to the costs of administering anything and not tied to the costs of document retrieval or document preparation. Hendrick's Vice President of Transaction Compliance testified that use of the name "administrative fee" required that fee be limited to document retrieval and document preparation. See Exhibit B, p. 67, ll. 12-19. Again, the evidence in this case was sufficient for a jury to find that fees collected by Hendrick were not limited to seeking reimbursement for the costs of document retrieval and document preparation or any closing costs.

The jury could have also reasonably found that it is unfair and unreasonable for Hendrick to name the fee on the contract a "PROCUREMENT FEE" when the fee is not tied to procuring anything. The jury could reasonably find based on the evidence presented that, despite the

nomenclature used by Hendrick, Hendrick's fees were really used to pad Hendrick's profit and to increase senior management pay. The evidence could reasonably be construed to show that the fee collected had nothing to do with closings, administering anything, or procuring anything.

Furthermore, the evidence was sufficient to support a finding by the jury that Hendrick could not claim protection under the Closing Fee Statute, S.C. Code Ann. § 37-2-307.⁵ The Closing Fee Statute allows car dealers to charge closing fees if certain restrictions are complied with including *inter alia* posting signs in conspicuous places in the dealership notifying the customers of the purpose of the fee and registering with the Department of Consumer Affairs. At trial, Plaintiff introduced Exhibit 9 wherein the Consumer Advocate, in June 2001, after the Closing Fee statute was enacted, issued an official interpretation that includes a sign that states the purpose for closing fees and provides in part: "THIS DEALERSHIP CHARGES CLOSING FEES AS A MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION." Similarly, Hendrick's registration forms, which they submitted to the Department of Consumer Affairs in order to be allowed to charge closing fees, state: "This dealership charges closing fees as a means of reimbursing it for certain overhead costs such as documents retrieval and document preparation." See, Defendant's Ex. 3. The evidence, when construed in the light most favorable to Plaintiff, could reasonably be construed to show that Hendrick acted unfairly, unreasonably, and in bad faith because they posted the signs, signed the registration form and then did not charge the fees

⁵ The South Carolina Consumer Protection Code ("SCCPC") serves "to clarify the law governing consumer credit and to protect consumer buyers against unfair practices by suppliers of consumer credit." Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc., 322 S.C. 399, 401, 472 S.E.2d 242, 244 (1996)(citing S.C.Code Ann. § 37-1-102 (1989)). Plaintiff's claims in this case arise from alleged violations of the Closing Fee Statute, found in Chapter 2 of the SCCPC, which governs disclosures in "Consumer Credit Sales."

for purposes of reimbursing themselves for closing costs such as document preparation and document retrieval.

Additionally, at trial, Hendrick's General Manager and its Vice President of Transaction Compliance both admitted that they always believed that they were limited under the Closing Fee Statute to charging closing fees that were for the purpose of reimbursing Hendrick for the costs of closing such as document preparation and document retrieval. The jury could reasonably have found that it is unfair, unreasonable, and an action in bad faith, for Hendrick to know of this limitation and then ignore the limitation and instead charge closing fees for other purposes.

As discussed above, the evidence when construed in Plaintiff's favor, was sufficient to show that Hendrick charged closing fees that were not for the purpose of reimbursing itself for closing costs such as document preparation and document retrieval. Instead, the jury could have reasonably found that Hendrick unfairly, arbitrarily, unreasonably, and in bad faith charged closing fees that were designed to pad management pay and/or increase profit.

The totality of aforementioned evidence and testimony, when construed in the light most favorable to the Plaintiff, was a sufficient basis for the jury to reasonably return the verdict at issue. Accordingly, Defendant's motion for JNOV is denied.

c. ***The Dealers Act is Designed to Protect Consumers And Applies to Contracts Between Consumers and Car Dealers.***

Defendant wrongly argues that "the Dealers Act is not applicable, and it governs only 'written or oral agreements between a manufacturer, wholesaler or distributor with a motor vehicle dealer.'" See Defendant's memo., p. 7. I reject this argument for several reasons. First, our courts have repeatedly applied the Dealers Act to consumer contracts. See e.g. deBondt v.

Carlton Motorcars, Inc., 342 S.C. 254, 264-65, 536 S.E.2d 399, 404-05 (S.C.App. 2000) (holding question of fact existed as to whether dealer violated the Dealers Act by failing to fulfill contractual obligations in the sale of an automobile to a consumer) ("From these allegations, a jury could infer that Carlton misled deBondt as to her status as a Charter Owner in order to persuade deBondt to contract to purchase an automobile which would not even arrive at the dealership for approximately one and a half years. A jury also could infer Carlton neglected to fulfill an obligation owed to deBondt under its contract not from an honest mistake but from some other motive."); *See also Jackson v. Speed*, 326 S.C. 289, 304, 486 S.E.2d 750, 757-58 (S.C.,1997) (holding the jury could reasonably find a dealer violated the dealers act "by failing to repair the vehicle as agreed to in the contract."); Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 29-30, 644 S.E.2d 663, 671 (S.C.,2007) (holding contract to compel arbitration unenforceable because it purported to take away statutory remedies available under the Dealers Act); Herron v. Century BMW, 387 S.C. 525, 536, 693 S.E.2d 394, 399 (S.C.,2010) (same).

Second, the Dealers Act contains provisions that specifically refer to contracts between consumers and car dealers and thus it is obvious that the legislature intended the Act to apply to contracts between consumers and dealers. See e.g. S.C. Code Ann. 56-15-40 (5)(a).⁶

⁶ This statute provides: "It shall be deemed a violation of paragraph (a) of § 56-15-30 for a motor vehicle dealer: (a) To require a purchaser of a new motor vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, equipment, parts or accessories not desired or requested by the purchaser; *provided, however*, that this prohibition shall not apply as to special features, appliances, equipment, parts or accessories which are already installed on the car when received by the dealer; *provided, further*, that the motor vehicle dealer prior to the consummation of the purchase reveals to the purchaser the substance of this paragraph."

Third, the statute cited by Defendant, S.C. Code Ann. § 56-15-80, only clarifies that the Dealers Act applies to contracts between manufacturers and dealers. The statute does not in any way state the Dealers Act does not apply to consumer contracts.

Last, Defendant's argument that the Dealers Act does not apply to contracts between consumers and car dealers is contrary to the purpose behind the Dealers Act ("consumer protection") and thus the argument is rejected. See Herron v. Century BMW, 387 S.C. 525, 535, 693 S.E.2d 394, 399 (2010) *cert. granted, judgment vacated sub nom. Sonic Auto., Inc. v. Watts*, 131 S. Ct. 2872, 179 L. Ed. 2d 1184 (U.S.S.C. 2011) and *opinion reinstated*, 395 S.C. 461, 719 S.E.2d 640 (2011) ("The purpose of the Dealers Act is consumer protection."). It would be nonsensical to say that the purpose behind the Dealers Act is consumer protection and then accept the Defendant's argument that the Dealers Act does not apply to contracts between consumers and car dealers. Based on the foregoing, I hereby find that Defendant's motion for JNOV on this ground is denied.

d. S.C. Code Ann. § 37-5-202 Does Not Create an Exclusive Remedy For Car Buyers To Challenge Closing Fees.

I previously addressed this issue in detail by Order filed September 12, 2013. The Defendant has failed to raise sufficient arguments to warrant reversal of my prior Order on this issue. Accordingly, I hereby adopt the prior rulings from my Order filed September 12, 2013 and deny Defendant's post-trial motions based on this issue.

e. The Closing Fee Statute Did Not Displace Protections Afforded to Consumers in the Dealers Act.

The Defendant's argument, relying on Hitachi Electronic Devices (USA), Inc. v. Platinum Technologies, Inc., 366 S.C. 163, 170-171, 621 S.E.2d 38, 41 (2005), that enactment of the Closing Fee Statute displaces the protections provided to consumers in the Dealers Act is

rejected. The Hitachi court stated that: “[d]isplacement occurs when one or more particular provisions of the UCC comprehensively address a particular subject.” In Hitachi, the Court analyzed a claim for breach of warranty and after noting that the UCC provided a “comprehensive system of remedies” for breach of warranty held that the plaintiff there could pursue no other remedy. *See Id.* at 170-171 (“This comprehensive system of remedies for breach of warranty displaces the common law. Consequently, the Buyer cannot pursue common-law remedies for the Seller’s alleged breach of warranty.”). Here, the Closing Fee Statute does not reference a remedy and expresses no intention to set forth a comprehensive system of remedies. Moreover, the Department of Consumer Affairs, who is charged with enforcing the Consumer Protection Code, in its official interpretation of the Closing Fee Statute stated that it did not find that the Closing Fee statute was intended to be a comprehensive remedy. The Official interpretation specifically notes that Closing Fees still may be challenged on other grounds and states:

The Supreme Court specifically indicated in its holding in *Fanning* that it did not imply such fees might not be actionable under other applicable law. 322 S.C. at 404, 472 S.E.2d at 245, N.8. Likewise, the General Assembly did not further clarify the issue other than to indicate the fees might be legally charged for Consumer Protection Code purposes if the requisite filing and disclosures are made. The Department is aware of nothing in the General Assembly’s enactment that legitimizes a closing fee or any fee or charge if it is assessed through fraud or misrepresentation.

I find that the Department of Consumer Affairs, whose interpretation should be given weight in interpreting a statute, is correct. *See Faile v. S.C. Employment Sec. Comm’n*, 267 S.C. 536, 540, 230 S.E.2d 219, 221-22 (1976) (“The construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons.”). Nothing in the General Assembly’s enactment indicates an intention to set up a comprehensive system of remedies governing closing fees. Accordingly, unlike the enactment

of the UCC breach of warranty remedies at issue in Hitachi, the Closing Fee statute does not displace other laws including the Dealers Act. I hereby find that Closing Fees may still be challenged under other laws despite the enactment of the Closing Fee Statute and I deny Defendant's post-trial motions based on Hitachi.

f. Plaintiff Was Not Required to Bring this Case Under Rule 23, SCRPC And Instead Properly Brought this Case Pursuant to the Requirements of S.C. Code Ann. §56-15-110(2)

Defendant's arguments based on Rule 23, SCRPC do not warrant the granting of a JNOV. Defendant wrongly argues that Plaintiff cannot bring this action on behalf of a group because Plaintiff failed to plead the elements of a class action under Rule 23, SCRPC. As this Court has previously found, Rule 23, SCRPC is inapplicable and S.C. Code Ann. §56-15-110(2) sets forth the requirements that Plaintiff must meet to prosecute this action on behalf of a group. See Orders filed August 1, 2007 and February 5, 2008. In its post-trial motions, the Defendant has not raised grounds sufficient to warrant the reversal of my prior Orders on this issue and thus I hereby incorporate my prior rulings and deny Defendant's post-trial motions on this issue.

Additionally, Defendant's arguments asserting a due process violation arising from my allowing Plaintiff to prosecute this case on behalf of a group pursuant to the express language in §56-15-110(2) are rejected. Hendrick's due process rights were protected. First, the lawsuit involves common claims on behalf of a large number of purchasers. All of the 5,000 plus customers were uniformly charged a closing fee that the jury found was not tied to the reimbursement of Hendrick's closing costs. Second, the testimony showed that Mrs. Hair's claim was typical of every other customer's claim because she was charged a closing fee just like every other customer. Third, the Parties provided notice to all of the affected customers and provided a sufficient time period to allow those customers to opt out of the lawsuit. Some

purchasers did opt out. The majority of the affected customers chose to be bound by the jury's verdict. The due process protections described in this paragraph are similar to those provided in Rule 23, SCRCF and thus I hereby find that they are also sufficient to protect Hendrick's due process rights under the Dealers' Act. Thus, Defendant's arguments as to a due process violation are rejected and I decline to grant Defendant's post-trial motions on this ground.

g. The Declaratory Judgment Interpreting the Closing Fee Statute Is Consistent with Defendant's Agents' Understanding of the Statute and Does Not Warrant A New Trial.

I also decline to vacate the Court's prior Orders interpreting the term "closing fee" as used in the Closing Fee Statute, S.C. Code Ann. § 37-2-307. See January 11, 2010 Declaratory Judgment Order as to Defendant Taylor Toyota, Inc. which was adopted in this case by Order dated December 14, 2012. In those Orders, I previously defined the term "Closing Fee" as a pre-determined set fee for the reimbursement of closing costs such as document retrieval and document preparation. The evidence presented at trial confirms this definition. This interpretation is in accord with Defendant Hendrick's signs, Hendrick's registration form, the Department of Consumer Affairs' official interpretation, the training given to Hendrick's sales staff in explaining the fee to customers, Hendrick's General Manager's understanding of the statute, and Hendrick's Vice President of Transaction Compliance's interpretation of the statute. Defendant's arguments in the post-trial motions that the Court should adopt a different meaning of the Closing Fee statute than that used by Hendrick in its business are rejected. Further, the Defendant has not raised sufficient arguments to warrant vacating the Court's prior rulings on this issue and thus the request for a JNOV on this ground are rejected.

Additionally, Defendant's arguments about retroactive application, and that the Closing Fee statute is unconstitutionally vague are also rejected. As discussed above, the declaratory judgment order simply confirmed the understanding of the statute employed by Hendrick from

the beginning. Hendrick's General Manager and Hendrick's Vice President of Transaction Compliance both testified that they always believed that under the Closing Fee statute Hendrick was limited to charging closing fees that were for reimbursement of their closing costs such as document retrieval and document preparation. Similarly, Hendrick posted signs in their dealership to this effect and trained their sales people to tell customers that Hendrick was so limited. The evidence at trial showed that Hendrick believed they were so limited and thus the statute is not unconstitutionally vague and there is no unfairness arising from a declaratory judgment that confirmed Hendrick's agent's understanding of the law. As such, Hendrick's arguments as to retroactive application and vagueness are rejected and I decline to Order a JNOV on these grounds.

2. The Jury Charge Correctly Stated the Law Applicable to the Evidence And Issues Presented at Trial.

a. Standard

"The law to be charged to the jury is determined by the evidence presented at trial...If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error. A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. In re Care and Treatment of Canupp, 380 S.C. 611, 616, 671 S.E.2d 614, 616 (S.C.App. 2008) (internal citations omitted). "Conversely, where a defendant requests a charge on a defense that is supported by the evidence presented at trial, the trial court is required to charge the jury on that defense..." State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (S.C.2007). "The substance of the law is what must be instructed to the jury, not any particular verbiage." Keaton ex rel. Foster v. Greenville Hosp. System, 334 S.C. 488, 496, 514 S.E.2d 570, 574 (S.C.,1999)(Even though the jury charge in the present case was not a word for word quotation of previous case law, we believe that the charge

adequately covered the law of South Carolina medical malpractice.”). “A confusing charge alone is insufficient to warrant reversal.” Keaton ex rel. Foster v. Greenville Hosp. System, 334 S.C. 488, 497-98, 514 S.E.2d 570, 575 (S.C.,1999). “[A] charge must be erroneous and prejudicial to warrant reversal...[A] jury charge, even if erroneous, on a matter not in issue, is not always considered prejudicial.” Ardis v. Sessions, 682 S.E.2d 249, 250-51 (S.C.2009) (internal citations omitted).

b. S.C. Code Ann. §37-5-202 (7)

S.C. Code Ann. §37-5-202 (7) is inapplicable and thus I declined to charge this statute to the jury. §37-5-202(7) provides:

A creditor may not be held liable in an action brought under this section for a violation of this title if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

This statute is not applicable to the claims at issue because Plaintiff did not bring a claim under § 37-5-202. Instead, the cause of action was for violation of the Dealers Act. Furthermore, Defendant was not a creditor in this case, did not lend money to Plaintiff, and thus this statute is inapplicable to Defendant. Finally, the evidence showed that Hendrick knew they were limited to charging closing fees for reimbursement of closing costs (see GM and Vice President Testimony and as well as employee training testimony and signs posted in the dealership) and there was no testimony that Hendrick adopted any procedures to reasonably avoid the error of charging closing fees that were not for reimbursement of closing costs. In summary, this statute does not apply and thus a new trial is not needed based on the absence of this charge.

c. S.C. Code Ann. §37-6-104(4).

S.C. Code Ann. § 37-6-104(4) is inapplicable and thus the absence of this charge does not warrant a new trial. §37-6-104(4) provides:

Except for refund of an excess charge no liability is imposed under this title for an act done or omitted in conformity with a rule of the Administrator notwithstanding that after the act or omission this rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

This statute does not apply. Again, Plaintiff's cause of action was for violating the Dealers Act and Plaintiff was not prosecuting a cause of action under the Consumer Protection Code. Second, this statute only applies to "rules of the Administrator" and actions done in conformity thereof. The Department of Consumer Affairs has not issued a rule stating that Hendrick could charge closing fees that were not for reimbursement of their closing costs. Accordingly, this statute has no application to this case and §37-6-104(4) does not apply to the cause of action or the facts at issue. Thus, a new trial is not warranted due to the absence of this charge.

d. S.C. Code Ann. § 37-6-506(3)

S.C. Code Ann. 37-6-506(3) is also inapplicable and therefore the absence of this charge does not necessitate the grant of a new trial. §37-6-506(3) provides:

(3) No provision of this title or of any statute to which this title refers which imposes any penalty on any creditor shall apply to any act done, or omitted to be done, in conformity with any rule or regulation so adopted, amended or repealed or in conformity with any written order, opinion, interpretation or statement of the Commission or of the Administrator, notwithstanding that such rule, regulation, order, opinion, interpretation or statement may, after such act or omission, be amended, or rescinded or be determined by judicial or other authority to be erroneous or invalid for any reason.

S.C. Code Ann. § 37-6-506 (emphasis added). First, Hendrick was not a creditor of Plaintiff and its liability did not arise from the lending of money. Thus, this statute is inapplicable because it

applies to creditors. Second, there was no evidence in the case that the act of charging closing fees that were not for reimbursement of a dealership's closing costs was in conformity with the 2001 Consumer Affairs interpretation. The 2001 interpretation does not authorize dealers to charge closing fees for profit, charge closing fees to pad senior management pay, or charge arbitrary closing fees that were not to reimburse a dealer for its closing costs. Instead, the 2001 interpretation provides a disclosure that states the purpose of the fees which is "a means of reimbursing it for certain overhead costs such as document retrieval and document preparation." This is the same limitation included in the Court's charge on the meaning of the Closing Fee statute and thus there was no need to charge this statute. The Court's existing charge made clear that no liability could be imposed if the fees were for the purpose of reimbursing closing costs. Accordingly, I find that there was no error in refusing to charge §37-6-506(3) and the absence of this charge does not warrant the grant of a new trial.

e. The Voluntary Payment Defense is Not A Defense to a Statutory Cause of Action.

The absence of a charge on the voluntary payment doctrine does not warrant a new trial. Plaintiff asserted a statutory cause of action against Hendrick alleging that Hendrick committed unfair and arbitrary acts under the Dealers Act. The Voluntary Payment defense does not apply to this type of statutory cause of action. The South Carolina Supreme Court in Hardaway stated:

Except where otherwise provided by statute, a party cannot by direct action, or by way of set-off or counterclaim, recover money voluntarily paid with a full knowledge of all the facts, and without any fraud, duress, or extortion, although no obligation to make such payment existed.

Hardaway v. S. Ry. Co., 90 S.C. 475, 73 S.E. 1020, 1025 (1912) (emphasis added). The language above expressly excepts statutory causes of action from the voluntary payment defense. Here, Plaintiff has asserted a statutory cause of action against Defendant alleging that Defendant committed unfair, unreasonable and bad faith acts under the Dealers Act. Accordingly, the

voluntary payment defense does not apply to this statutory cause of action. Any other ruling would nullify the protections of the Dealers Act and be contrary to the intent⁷ of the legislature to protect consumers from unfair, unreasonable and bad faith acts committed by car dealers. Accordingly, the voluntary payment defense is not a valid legal defense to the claims at issue in this case.

Note that courts in other jurisdictions have looked at this issue and also held that the voluntary payment defense cannot be used to override statutory causes of action designed to protect consumers because the defense would defeat the purpose of legislative enactments. For example, the Nevada Supreme Court in Huch v. Charter Commc'ns, Inc., 290 S.W.3d 721, 727 (Mo. 2009) (emphasis added) stated:

Here, plaintiffs allege that Charter provided unsolicited merchandise to consumers in the form of the channel guide and then billed and collected, or attempted to collect, payment for the unordered merchandise. This conduct, if proven, is an unfair practice that is prohibited by the act. 15 CSR 60-8.060(1); section 407.020.1. **To allow Charter to avoid liability for this unfair practice through the voluntary payment doctrine would nullify the protections of the act and be contrary to the intent of the legislature.** In light of the legislative purpose of the merchandising practices act, the voluntary payment doctrine is not available as a defense to a violation of the act.

Similar reasoning was applied by a Nevada federal court in Sobel v. Hertz Corp., 698 F. Supp. 2d 1218, 1223-24 (D. Nev. 2010) which stated:

The Legislature enacted both Nevada Revised Statutes section 482.31575 and the Deceptive Trade Practices Act primarily for the protection of consumers. (See Pls.' Req. for Judicial Notice (# 18), May 9, 1989, Minutes of the Nevada State Legislature, Ex. A at 11.) As the court stated in *Huch II*, the Legislature, having enacted "paternalistic legislation designed to protect those that could not otherwise protect themselves, ... would

⁷The Dealers Act is designed to protect consumers from unfair and arbitrary acts supplementing consumers' rights as they exist under the common law. see Herron v. Century BMW, 387 S.C. 525, 535, 693 S.E.2d 394, 399 (2010) cert. granted, judgment vacated sub nom. Sonic Auto., Inc. v. Watts, 131 S. Ct. 2872, 179 L. Ed. 2d 1184 (U.S.S.C. 2011) and opinion reinstated, 395 S.C. 461, 719 S.E.2d 640 (2011) ("The purpose of the Dealers Act is consumer protection.").

not want [those] protections ... to be waived by those deemed in need of protection.” 290 S.W.3d at 727. “To allow [the defendant] to avoid liability for [an] unfair practice through the voluntary payment doctrine would nullify the protections of the act and be contrary to the intent of the legislature.” *Id.* Accordingly, the court finds as a matter of law that Hertz cannot rely on the voluntary payment doctrine as a defense to Plaintiffs’ claims.

Sobel v. Hertz Corp., 698 F. Supp. 2d 1218, 1223-24 (D. Nev. 2010) (emphasis added).⁸

I find the reasoning used by these other courts in analyzing similar statutes designed to protect consumers from unfair acts persuasive. For example, in this case the jury found that Hendrick violated two statutes (the Dealers Act and the Closing Fee Statute included in the Consumer Protection Code) that are both to be liberally construed in favor of protecting consumers. *See Davis v. Nations Credit Financial Services Corp.*, 326 S.C. 83, 86, 484 S.E.2d 471, 472 (1997)(“[T]he South Carolina Consumer Protection Code, declares that it shall be liberally construed and applied to promote its underlying purposes and policies. S.C. Code Ann. § 37-1-102(1) (1989). One of the primary purposes of the Consumer Protection Code is to ‘protect consumer buyers.’”); *see Herron v. Century BMW*, 387 S.C. 525, 535, 693 S.E.2d 394, 399 (2010) cert. granted, judgment vacated sub nom. Sonic Auto., Inc. v. Watts, 131 S. Ct. 2872, 179 L. Ed. 2d 1184 (U.S.S.C. 2011) and opinion reinstated, 395 S.C. 461, 719 S.E.2d 640 (2011) (“The purpose of the Dealers Act is consumer protection.”). The voluntary payment defense if

⁸ *See also Indoor Billboard/Wash. Inc. v. Integra Telecom of Wash., Inc.*, 162 Wash.2d 59, 170 P.3d 10, 24 (2007) (“[T]he voluntary payment doctrine is inappropriate as an affirmative defense in the [Consumer Protection Act] context, as a matter of law, because we construe the [Act] liberally in favor of plaintiffs.”); *Eisel v. Midwest BankCentre*, 230 S.W.3d 335, 339–40 (Mo.2007) (because voluntary payment doctrine is based on waiver and consent, defendant could not assert defense to claim that it engaged in the unauthorized practice of law in violation of statute enacted for the protection of public); *Ramirez v. Smart Corp.*, 371 Ill.App.3d 797, 309 Ill.Dec. 168, 863 N.E.2d 800, 810 (2007) (“[T]his state has an interest in transactions that violate ‘statutorily-defined public policy.’ The effect of such transgressive acts, generally speaking, is that the voluntary payment rule will not be applicable.”); *Pratt v. Smart Corp.*, 968 S.W.2d 868, 872 (Tenn.Ct.App.1997) (“[T]he State has an interest in transactions that involve violations of statutorily defined public policy, and, generally speaking, in such situations, the voluntary payment rule will not be applicable.”).

applied would nullify these statutory protections, is contrary to the intent of the legislature, would render these statutes meaningless, would result in an illegal windfall to Hendrick, and thus this defense is inapplicable.

Regardless, even if the voluntary payment defense were a proper defense to the Dealers Act cause of action, there was no evidence supporting the charge because there was no evidence that Mrs. Hair paid the fee with "full knowledge of all the facts." See Town of Bennettsville v. Bledsoe, 226 S.C. 214, 218, 84 S.E.2d 554, 556 (1954) ("It is an elementary principle that no action will lie to recover money voluntarily paid with full knowledge of all the facts."). There was no evidence supporting a finding that Mrs. Hair knew the fee was illegal when she paid it, that she knew Hendrick Honda was violating the Closing Fee Statute, that she knew what Hendrick Honda's closing costs were when she paid the fee, that she knew how Hendrick Honda had calculated the fee, or that she knew what costs Hendrick Honda was seeking to recoup through the Closing Fee. Thus, the evidence at trial did not support a charge based on the defense of the voluntary payment doctrine because there was no evidence supporting a finding that Mrs. Hair paid the fee with "full knowledge of all facts." Accordingly, the refusal to charge the voluntary payment doctrine in this case does not warrant the grant of a new trial.

f. Estoppel by Silence/Waiver

Defendant's argument that mere disclosure of the fact that they are charging closing fees warranted waiver and/or estoppel by silence jury charges is rejected. The evidence did not support charging either of these defenses to the jury. First, waiver, as conceded in Defendant's memorandum, requires "that the party against whom waiver is asserted, possessed, at the time, actual or constructive knowledge of his rights or of all material facts upon which they depended." See Defendant memo., p. 43. It is undisputed that there was no evidence presented

that Julie Hair had any knowledge about how Hendrick calculated their closing fee.

Furthermore, there was no evidence presented to support a finding that Julie Hair knew what Hendrick's closing costs were or that Hendrick was charging a closing fee that was not tied to reimbursing them for their actual closing costs. Also, the waiver defense fails because Defendant cannot show any evidence supporting a finding that Plaintiff paid the closing fee knowing that the fee was illegally charged. See Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 344, 415 S.E.2d 384, 387-388 (1992) ("A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Generally, the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended.").

The evidence presented at trial did not support this defense and thus the absence of a waiver charge does not warrant the grant of a new trial.

Similarly, there was no evidence supporting a charge on the doctrine of estoppel, which would require evidence Mrs. Hair had "actual knowledge of the real facts" and that Hendrick "lacked knowledge or the means of acquiring with reasonable diligence knowledge of the true facts." See Defendants memo., p .44. Again, there was no evidence presented that Mrs. Hair had any knowledge about how Hendrick calculated the closing fee or what Hendrick's actual closing costs were. Thus, it would be impossible for a jury to find that Mrs. Hair had actual knowledge that Hendrick was charging closing fees unrelated to its actual closing costs. Also, there was no evidence that Hendrick lacked the knowledge or the means of acquiring with reasonable diligence knowledge of the true facts. Hendrick controlled the books and Hendrick's management knew that they were charging fees that were not to reimburse it for their actual closing costs, which admittedly had never been calculated. Hendrick's management also knew

because they controlled access to the books that Julie Hair had not been given access to this information. There was simply no evidence presented at trial to support charging estoppel to the jury. Additionally, Defendant cannot achieve a positive gain by asserting equitable estoppel and thus the defense does not apply to allow Defendant to keep the illegally collected closing fees. *See Ott v. Ott*, 188 S.E.2d 789, 792 (S.C. 1936) ("The final element of equitable estoppels is that the person claiming it must have been misled into such action that he will suffer injury if the estoppels is not declared....It was never intended *to work a positive gain to a party*."). Thus, I find there was no err in refusing to give this charge and a new trial is not warranted due to the failure to give this charge.

g. The Filed Rate Doctrine Is Inapplicable.

The Filed Rate Doctrine "stands for the proposition that because an administrative agency is vested with the authority to determine what rate is just and reasonable, courts should not adjudicate what a reasonable rate might be in a collateral lawsuit." Temporary Services, Inc. v. American Intern. Group, Inc., 388 S.C. 348, 351, 697 S.E.2d 527, 529 (S.C. 2010) ("The DOI was not vested with the authority to determine the rates applicable to the workers' compensation policies at issue, thus the Filed Rate Doctrine does not bar Plaintiffs' claims in this instance."); Edge v. State Farm Mut. Auto. Ins. Co., 366 S.C. 511, 517-18, 623 S.E.2d 387, 391 (S.C. 2005) ("The filed rate doctrine preserves the stability, uniformity, and finality inherent in rates filed with the regulatory agency and what has been determined to be a reasonable rate by that agency."). In this case, the Department of Consumer Affairs does not determine the rates that dealers may permissibly charge as closing fees. This is because the Department cannot look at dealers' records and works through a complaint process, not a monitoring process. Instead, the

Department relies on the representation by the dealers, including Hendrick, on the registration form that

This dealership charges closing fees as a means of reimbursing it for certain overhead costs such as document retrieval and document preparation.

By accepting this representation from the Defendant, the Department is no way approving a fee that is not being used as a means to reimburse the dealership for closing costs. The Filed Rate doctrine simply has no application to the facts at issue. Thus, the absence of this charge does not warrant the grant of a new trial.

h. The Court's Charge that An Act that Violates A Statute is Unfair is A Correct Statement of Law.

Defendant's arguments that the Court erred in its charge concerning unfair acts because the Court charged the jury that an act that violates a statute is unfair are also rejected. This is a correct statement of law. "An act is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive." Gentry v. Yonce, 337 S.C. 1, 12, 522 S.E.2d 137, 143 (1999). The public policy of South Carolina is expressed in the statutory law. Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 225, 337 S.E.2d 213, 216 (1985) ("The public policy of South Carolina is manifestly reflected in the penal statute with which Ludwick was compelled to comply."); White v. J.M. Brown Amusement Co., Inc., 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) (contract is not enforceable that "violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions."); Nationwide Mut. Ins. Co. v. Rhoden, 398 S.C. 393, 403, 728 S.E.2d 477, 482 (2012), reh'g denied (July 31, 2012) (citing UIM statutes as establishing the public policy of South Carolina). Defendant failed to cite to any case that supports Defendant's arguments that it is a fair act for a defendant to violate a statute or that statutes do not express the public policy of South Carolina. Defendant's argument that the Court erred in issuing this charge to the jury is not supported by the law and is rejected.

Similarly, Defendant's arguments that actions that violate a statute are not unfair acts under the Dealers Act are also rejected. S.C. Code Ann. § 56-15-30 (a) provides: "Unfair methods of competition and unfair or deceptive acts or practices as defined in § 56-15-40 are hereby declared to be unlawful." This statute declares unfair acts to be unlawful. Also, the statute declares acts or practices as defined in § 56-15-40 which includes arbitrary/unreasonable acts to be unlawful. A car dealer's violation of a statute, in addition to being unfair, can also be arbitrary and unreasonable. Certainly, the jury could have reached this conclusion given the facts of this case. The jury could have also reached the conclusion that violation of the statute was in bad faith given the Vice President of Compliance's and the General Manager's admissions that they always knew they were limited to reimbursing themselves for closing costs through the closing fee. Thus, the Defendant was not harmed by the charge and there is no error in charging the jury with a correct statement of law that an action that violates a statute is an unfair act under the Dealers Act. *See Taylor v. Nix*, 307 S.C. 551, 555-56, 416 S.E.2d 619, 621-22 (S.C.,1992) (holding new trial not warranted where Court charged wrong definition of arbitrary under the Dealers Act) ("Furthermore, we find the defendants were not harmed by it as it is not conceivable under the facts of this case that the jury found the defendants acted merely maliciously arbitrary and not in bad faith."). The Court's charge on this issue does not warrant the grant of a new trial.

i. Duty to Read Charge Does Not Apply

The Court did not err in refusing to charge Defendant's "duty to read charge" which provided:

Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. One who signs a contract has the duty to exercise reasonable care to protect himself. One cannot complain of fraud and misrepresentation in the contents of a document if the truth could have been

ascertained by reading it. The law does not impose a duty on one party to explain to an individual what he could learn from simply reading the documents.

Defendant's memo., p. 45. This charge has no application to the cause of action at issue or the facts of this case as presented through the evidence at trial. Plaintiff has not submitted a claim for "fraud and misrepresentation in the contents of a document" where "the truth could have been ascertained by reading it." Plaintiff, instead, asserted a cause of action against Defendant under the Dealers Act for unfairly, unreasonably, arbitrarily, and in bad faith charging closing fees that were not for the reimbursement of Defendant's closing costs. This is not a fraud claim. More importantly, the alleged "truth" that Defendant was charging closing fees to pad senior management pay and profit is not disclosed on any document given to Plaintiff. Thus, there was no way Plaintiff could have "ascertained" the truth "by reading" a document. This charge simply does not apply to the cause of action at issue or the evidence presented at trial. As such, I decline to grant a new trial due to the absence of this charge.

j. Charge on the Meaning of the Term Arbitrary Under the Dealers Act

The jury charge included a statement that arbitrary acts violate the Dealers Act. Additionally, the charge included a statement that an unreasonable act is an arbitrary act. Defendant's argument that the Court needed to use particular verbiage beyond these definitions and also state that a Dealer's conduct is not arbitrary if it has "some reasonable basis" are wrong. "The substance of the law is what must be instructed to the jury, not any particular verbiage." Keaton ex rel. Foster v. Greenville Hosp. System, 334 S.C. 488, 496, 514 S.E.2d 570, 574 (S.C. 1999)("Even though the jury charge in the present case was not a word for word quotation of previous case law, we believe that the charge adequately covered the law of South Carolina medical malpractice."). Here the substance of the law was adequately charged. It is axiomatic that an unreasonable act does not have a reasonable basis. The language that Defendant now

argues should have been added would not have added anything to the charge and was not necessary. Accordingly, Defendant's argument that a new trial is needed due to the decision not to charge the Defendant's particular verbiage on arbitrary act is rejected.

k. Unconscionable Contract Charge Does Not Apply.

This case does not involve a defense that a written provision or term in a contract is unenforceable due to unconscionability. See e.g. S.C. Code Ann. § 36-2-302. Instead, this case included allegations that Defendant violated the Dealers Act by charging a closing fee that was not for the purpose of reimbursing itself for closing costs. The actual components of the closing fee were at issue in the case and not any specific term, provision or language used in a written contract. As such, the requested charge which addresses "one-sided provisions together with terms that are ..oppressive" has no application to the allegations at issue and the Court declined to charge same. Accordingly, I also find that the absence of this charge does not warrant the grant of a new trial.

l. Federal Trade Commission Discretionary Charge

Defendants argue that the Court should have issued a jury charge using 15 U.S.C. § 45(n) of the Federal Trade Commission Act. This statute provides in part:

(n) Standard of proof; public policy consideration

The Commission shall have no authority under this section or 57a of this title to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practices causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.

Defendants cite §56-15-30(b) of the Dealers Act as the basis for this argument. § 56-15-30(b) provides: "In construing paragraph (a) the courts may be guided by the definitions in the Federal Trade Commission Act (15 U.S.C. 45)."

15 U.S.C. § 45(n) was not applied to this case because it is not a definition. The Federal Trade Commission Act's definitions are listed in 15 U.S.C. §44 entitled "Definitions" and in 15 U.S.C. §55 entitled "Additional Definitions." 15 U.S.C. § 45(n) simply deals with the "Standard of proof; public policy consideration" to be applied by the Federal Trade Commission.

Even if 15 U.S.C. § 45(n) was a definition, which it is not, the charge at issue does not apply to the facts as established by the evidence at trial. Defendant contends that because they disclose the closing fee on the invoice that the closing fee may be reasonably avoided by consumers. This argument is rejected. In this case, the harm complained of is the Dealers charging closing fees for purposes other than to reimburse itself for closing costs. Consumers cannot reasonably avoid a Dealer charging closing fees that are not for reimbursing closing costs because the consumer does not have access to the dealer's books and records and is not in a position to know whether they are paying the fee dealer for profit or reimbursement of closing costs. Similarly, paying the fee is not reasonably avoidable as evidenced by Plaintiff's Ex. 17 which shows that all of Hendrick's customers paid the fee.

Regardless, the Court was not required to use any definition from the Federal Trade Commission Act because the Dealers Act makes this decision discretionary and does not mandate the use of any such definition. § 56-15-30(b) provides: "In construing paragraph (a) the courts may be guided by the definitions in the Federal Trade Commission Act (15 U.S.C. 45)."

(emphasis added). As such, the Court's decision not to use the Federal Trade Commission charge at issue does not warrant the grant of a new trial.

m. The Damages Charge Was Sufficient.

Defendant on page 46 of its memorandum argues that the Court erred by declining "the portion of the charge related to speculative damages." This argument is rejected. The charge given succinctly set forth the standard to apply for damages and accurately stated that Plaintiff was limited to her actual damages. This was not a case involving potentially speculative damages, like lost profits, as such an additional charge on speculative damages was not needed.

Also, the charge was correct in that it allowed the jury to determine what the damages were from zero to the full amount of the collected fee. The charge gave the jury discretion to determine if any part of the fee was for reimbursement of closing costs or not. The complete charge (Defendant omits the last sentence in its brief which critiques the charge) stated:

[S]he cannot recover more than her loss. And as applied to this claim and the—if the Defendant's closing fees exceeded the amount necessarily reimburse the Defendant for his actual closing costs, then actual damages [are] a portion of that fee which exceeded the actual closing costs. So if you find that she's entitled to damages, obviously you've got a wide range in this case, anywhere from zero to two hundred ninety-nine dollars. Of course, she's the representative of the full class, so if you find that maybe perhaps some it was involved in the closing, but not others, then you can—you have that discretion.

The jury applied this charge and found that none of the closing fees charged by Hendrick were for purposes of reimbursing Hendrick for its closing costs. The charge properly gave the jury discretion to determine what amount of the closing fee, if any, was involved in the closing.

Moreover, contrary to Defendant's argument, the above charge is not inconsistent with the earlier portion of the charge that reads "you must make a determination in your findings, in

this case your analysis must be whether or not what the dealer charged in this case was, in fact a closing fee as defined by the declaratory judgment order, or was it not a closing fee." The charges are consistent and correct because both give the jury discretion to return the entire closing fees collected if the jury determines that the fees were unfair, unreasonable, arbitrary, and in bad faith because the fees were not for purposes of reimbursing the dealer for its closing costs. Based on the foregoing, Defendant's argument that the damages charge warrants a new trial is rejected.

3. The Jury Verdict Form Was Proper

a. Standard

[T]he question of whether to require a jury to return a special verdict is one committed to the discretion of the trial court. *See* Rule 49(a), SCRPC ("The court *may* require a jury to return only a special verdict in the form of a special written finding upon each issue of fact.") (emphasis added); *Butler v. Gamma Nu Chapter of Sigma Chi*, 314 S.C. 477, 483, 445 S.E.2d 468, 471 (Ct.App.1994) ("The question of whether to grant a party's request for a special verdict form is a matter committed to the sound discretion of the trial court."); 9 MOORE'S FEDERAL PRACTICE 3D § 49.11[2] [a], at 49-16 (1997) ("Rule 49 is a rule of discretionary implementation, solely in the control of the trial judge. No party has a right to the use of a special verdict.").... *See* 5A C.J.S. *Appeal & Error* § 1762(b), at 1136 (1958) ("Error in the refusal to submit special interrogatories or special issues to the jury will constitute ground for reversal only if prejudice results to the complaining party.").

Steele v. Dillard, 327 S.C. 340, 343, 486 S.E.2d 278, 279-80 (Ct. App. 1997).

"The prejudicial effect of a defective verdict form may be cured where the trial court provides clear and cogent jury instructions." S. Carolina Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 303, 641 S.E.2d 903, 908 (2007).

b. Use of a General Verdict Form Was Proper, Not an Abuse of Discretion, and there Was No Prejudice to Defendant.

In this case, the jury was given a general verdict form. There was no need for the special verdict form requested by the Defendant. The jury charges adequately described the law that needed to be applied and there was no need for the questionnaire propounded by Defendant.

Moreover, there was no prejudicial effect in using the general verdict form because as admitted by Defendant on p. 52 of their brief, the Court provided sufficient instructions "that walked the jury through the very process" included on "Defendant's proposed verdict form." See Carolina Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 303, 641 S.E.2d 903, 908 (2007) ("The prejudicial effect of a defective verdict form may be cured where the trial court provides clear and cogent jury instructions.").

Last, the jury returned the entire amount of every closing fee charged to the customers. This amount was included on Plaintiff's Ex. 17 which was the stipulated closing fees collected by Hendrick. There is no prejudice created by use of the general verdict form because the dollar amount returned is the same as that set forth on Plaintiff's Ex. 17. The jury's verdict is self-explanatory and amounts to a return of the closing fees collected from all represented purchasers. There was no need for a questionnaire to understand the jury's finding and thus there is no need for a new trial to be granted due to the use of a general verdict form.

4. A New Trial is Not Warranted Under the Thirteenth Juror Doctrine.

a. Standard.

[T]he thirteenth juror doctrine is a vehicle by which the trial court may take its own view of the evidence and grant a new trial if it disagrees with the jury's verdict. This is also called granting a new trial upon the facts....The granting of a new trial upon the facts is not the equivalent of granting a directed verdict." The question of whether the evidence is legally sufficient to sustain a verdict, a question of law, is distinguishable from the question of whether a fair preponderance of the evidence supports a verdict, which is a matter involving the exercise of discretion. Stated another way, a party's evidence might

make a case one for the jury, but the evidence might be so outweighed by the countervailing evidence that, in the exercise of its discretion, a trial court could choose to set aside the verdict under the thirteenth juror doctrine.

RFT Management Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 334, 732 S.E.2d 166, 172 (S.C.,2012) (emphasis added).

b. The Evidence Relied Upon by the Jury is Not So Outweighed by Countervailing Evidence that the Verdict Should be Set Aside.

As discussed in detail above, the evidence could reasonably be construed to show that Hendrick unreasonably, unfairly, arbitrarily, and in bad faith charged closing fees that were not for purposes of reimbursing their closing costs and instead charged closing fees to pad management pay and profit. There was no countervailing evidence that so outweighs the above described evidence that warrants a new trial being granted on the facts. The jury properly weighed the facts and credibility of the witnesses and reached a reasonable decision. Thus, I decline to act under thirteenth juror doctrine and deny Defendant's motion on this issue.

5. A New Trial Nisi Remittitur Is Not Warranted.

a. Standard

The trial court alone has the power to grant a new trial *nisi* when he finds the amount of the verdict to be merely inadequate or excessive. However, compelling reasons must be given to justify invading the jury's province by granting a new trial *nisi remittitur*. The consideration for a motion for a new trial *nisi remittitur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented.

Proctor v. Dep't of Health & Env'tl. Control, 368 S.C. 279, 320-22, 628 S.E.2d 496, 518-19 (Ct. App. 2006). "The jury's determination of damages, however, is entitled to substantial deference." Id.

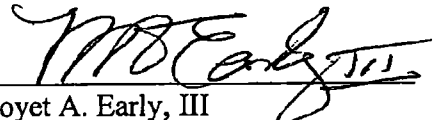
b. There Are No Compelling Reasons Present to Invade the Jury's Province and Order a New Trial Nisi Remittitur.

As discussed in detail above, the evidence could reasonably be construed to show that Hendrick unfairly, unreasonably, arbitrarily, and in bad faith charged closing fees that were not for purposes of reimbursing their closing costs and instead charged closing fees to pad management pay and profit. The verdict amount was not excessive as it was for exactly the amount of unfair closing fees collected by Defendant. Moreover, there are no compelling reasons present to invade the jury's province. Thus, the requested *New Trial Nisi Remittitur* is denied.

CONCLUSION⁹

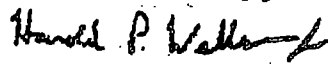
As stated above, Defendant's Motion for Judgment Notwithstanding the Verdict, or, In the Alternative, a New Trial Nisi Remittitur is denied.

AND IT IS SO ORDERED.


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

Bamberg, South Carolina

This 13th day of March, 2014

Certified Copy

Clerk of Court
Pickens County, SC
Dated 4/17/2014

⁹Any other arguments/ grounds for a new trial asserted by Defendant but not specifically addressed herein are hereby rejected and the motions based on these grounds are denied.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-39-01554

Julie Freeman, et al

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

J.H. Investments, LP, a/k.a Hendrick Honda of Easley

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motions for Reconsideration dated March 26, 2014 are DENIED.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

0136

Judge Code

3/31/14

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 2 day of April, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Grady Ryan Thomas
James David Butler

ATTORNEY(S) FOR THE PLAINTIFF(S)

Sarah Patrick Spruill
 James Becker

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Watson - x Deputy
CLERK OF COURT

Court Reporter:

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no text or other markings on the paper.

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

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

Plaintiffs,)

v.)

Defendant CarMax Auto Superstores, Inc.,)
Defendant Dick Dyer & Associates, Inc.,)
Defendant Dick Smith Motors, Inc.,)
Defendant Galeana Chrysler-Jeep, Inc.,)
Defendant Galeana Chrysler-Plymouth, Inc.,)
Defendant Pulliam Motor Co., Defendant)
Ben Satcher Motors, Inc., Defendant Dick)
Smith Infiniti, Inc., Defendant Dick Smith)
Nissan of Lexington, Inc., Defendant Dick)
Smith Nissan, Inc., Defendant Land Rover)
of Columbia, Defendant Toyota Center,)
LLC, Defendant Stokes Automotive, Inc.,)
Defendant Stokes Motors, Inc., Defendant)
Stokes-Craven Automotive, Inc.,)
Defendant Stokes Mazda, Inc., Defendant)
Palmetto Chevrolet Company, Inc.,)
Defendant Palmetto Nissan, Inc.,)
Defendant Palmetto Ford, Inc.,)
Defendant Jones Ford, Inc., Defendant)
Harold Arnold's Sentry Buick, Inc.,)
Defendant J. L. Investments, LP,)
Defendant Rick Hendrick Chevrolet,)
LP, Defendant Oak Tree, Inc., Defendant)
Gene Reed Imports, Inc., Defendant)
Hoover Jeep Chrysler, Inc., Defendant)
Hoover Motors, Inc., Defendant)
Hoover Chrysler-Dodge, Inc., Defendant)
Strom Altman Dodge, Inc., Defendant)
Baker Motor Company of Charleston, Inc.,)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 06-CP-02-1230

COMPLAINT

(Jury Trial Demanded)

COPY
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AIKEN COUNTY
CLERK OF COURT

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

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

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

PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

principal place of business in Spartanburg County, South Carolina.

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

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

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

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

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

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

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

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

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

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

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

92. Plaintiffs seek a declaratory judgment from this Court that:

- a. A permanent injunction issue preventing Defendants from deceptively charging future customers with the administrative fees;
- b. Defendants be ordered to disgorge all fees collected from Plaintiffs and all car buyers whom paid administrative fees to Defendants;

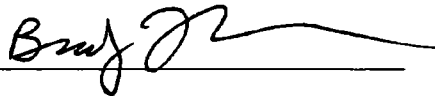
WHEREFORE, Plaintiffs prays for judgment against all of the Defendants for actual and compensatory damages, for two times actual damages pursuant to Plaintiffs' first cause of action, for three times actual damages for punitive damages pursuant to Plaintiffs' first cause of action, for disgorgement of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

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(864)583-3235

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Charleston, SC 29402
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RICHARD A. HARPOOTLIAN, PA
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Columbia, SC 29202
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LEWIS & BABCOCK, L.L.P.
A. Camden Lewis
Brady R. Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, SC 29211
(803)771-8000

By: 

Attorneys for the Plaintiffs

August 28, 2006

Columbia, South Carolina

) IN THE COURT OF COMMON PLEAS

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Plaintiffs,

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(Jury Trial Demanded)

OCT 31 2006

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

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

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

FORD-LINCOLN-MERCURY; BMS, INC.)
 D/B/A BREAKAWAY HONDA;)
 BRADSHAW ACURA; BROCKMAN)
 AUTOMOTIVE; CAROLINA)
 INTERNATIONAL TRUCKS-GREENVILLE;)
 CHEROKEE KENWORTH, INC.;)
 CHRISTOPHER TRUCKS, INC.; CROWN)
 JEEP-CHRYSLER; CROWN NISSAN)
 GREENVILLE; DICK SMITH MITSUBISHI;)
 FAIRWAY FORD, INC.; FAIRWAY)
 MOTORCARS LLC; GEORGE COLEMAN)
 FORD, INC.; HERITAGE)
 LINCOLN-MERCURY; JOHN FINGER)
 MAZDA; KEVIN WHITAKER)
 CHEVROLET-CADILLAC; KEVIN)
 WHITAKER CHEVROLET, INC.;)
 SIMPSONVILLE CHEVROLET, INC.;)
 SITTON BUICK-PONTIAC-GMC TRUCK,)
 INC.; STOKES-TRAINOR FORD; C.)
 THOMPSON AUTOMOTIVE; GARY RUSS)
 CHEVROLET-CADILLAC, INC.; GEORGE)
 BALLENTINE FORD-LINCOLN-)
 MERCURY; QUALITY CHRYSLER CITY;)
 BRUNSON AUTOMOBILE SALES, INC.;)
 TISON MOTOR CO., INC.; ADDY'S)
 HARBOR DODGE; ATLANTIC¹)
 CHRYSLER-JEEP-DODGE; ATLANTIC)
 FORD, INC.; BEACH)
 FORD-LINCOLN-MERCURY-VOLVO, INC.;)
 BELL & BELL PONTIAC-GMC, INC.;)
 CONWAY CHRYSLER-DODGE-JEEP, INC.;)
 CONWAY FORD, INC.; DIAMOND)
 AUTOMOTIVE GROUP, INC.; EAST)
 COAST HONDA; EAST COAST)
 VOLKSWAGEN; FOWLER MOTORS;)
 GRAND STRAND NISSAN, INC.;)
 HADWIN-WHITE)
 PONTIAC-BUICK-GMC-SUBARU; HYATT)
 BUICK-GMC TRUCKS; JUD KUHN)
 CHEVROLET; KIA OF MYRTLE BEACH;)
 ✓ LAY-FISHER CHEVROLET, INC.; MYRTLE)
 BEACH CHEVROLET, INC.; MYRTLE)
 BEACH CHRYSLER-JEEP, INC.; MYRTLE)
 BEACH)

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

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

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

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

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

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

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

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

that:

PARTIES

1. Plaintiff Heather Herron is a citizen and resident of Richland County, South Carolina.
2. Plaintiff Natalie Armstrong is a citizen and resident of Richland County, South Carolina.
3. Plaintiff Alison Dannert is a citizen and resident of Spartanburg County, South Carolina.
4. Plaintiff Michael Ritz is a citizen and resident of Aiken County, South Carolina.
5. Plaintiff Julie Freeman is a citizen and resident of Greenville County, South Carolina.
6. Plaintiff Christine Watts is a citizen and resident of Greenville County, South Carolina.
7. Plaintiff Michael Watts is a citizen and resident of Greenville County, South Carolina.
8. Plaintiff Michael Blease is a citizen and resident of Horry County, South Carolina.
9. Defendant CarMax Auto Superstores, Inc. is a licensed motor vehicle dealer and corporation organized and existing under the laws of the State of Virginia with places of business in Richland County and Greenville County, South Carolina.
10. Defendant Dick Dyer & Associates, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.
11. Defendant Dick Smith Motors, Inc. is a licensed motor vehicle dealer and a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

principal place of business in Charleston County, South Carolina.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

principal place of business in Greenville County, South Carolina.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Anderson County, South Carolina.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

business in Berkley County, South Carolina.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

business in Charleston County, South Carolina.

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

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

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

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

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

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

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

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

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

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

129. Nourse Chester Automotive is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chester County, South Carolina.

130. Nourse Motors of Chester LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chester County, South Carolina.

131. Bennett Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chesterterfield County, South Carolina.

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

133. Lawrence Chevrolet-Pontiac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chesterterfield County, South Carolina.

134. Prothro Chevrolet-Buick-Pontiac-GMC Truck is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

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

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

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

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

139. Walterboro Motor Sales Co. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Colleton County, South Carolina.

140. Action Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Darlington County, South Carolina.

141. John Newsome, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Darlington County, South Carolina.

142. Raceway Chrysler-Jeep-Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its

principal place of business in Darlington County, South Carolina.

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

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

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

146. Summerville Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

147. Herlong Pontiac-Chevrolet-Buick, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Edgefield County, South Carolina.

148. Jim Satcher, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Edgefield County, South Carolina.

149. Yonce Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Edgefield County, South Carolina.

150. Wilson Chevrolet-Oldsmobile, Inc. is a licensed motor vehicle dealer and a

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

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

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

153. Cale Yarborough Honda, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

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

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

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

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

158. Floyd Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

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

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

161. King Cadillac-Buick-Pontiac-GMC Truck, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

162. Lake City Ford-Mercury, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

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

164. Raceway Chevrolet-Pontiac-Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

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

Florence County, South Carolina.

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

167. Coastal Nissan-Chevrolet-Cadillac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

168. Hemingway Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

169. Parrish Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

169. Tideland's Chrysler Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

170. Tideland's Ford-Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

171. BMS, Inc. d/b/a Breakaway Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

172. Bradshaw Acura is a licensed motor vehicle dealer and a corporation organized

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

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

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

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

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

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

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

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

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

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

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

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

184. John Finger Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

185. Kevin Whitaker Chevrolet-Cadillac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

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

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

business in Greenville County, South Carolina.

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

189. Stokes-Trainor Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

190. C. Thompson Automotive is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenwood County, South Carolina.

191. Gary Russ Chevrolet-Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenwood County, South Carolina.

192. George Ballentine Ford-Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenwood County, South Carolina.

193. Quality Chrysler City is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenwood County, South Carolina.

194. Brunson Automobile Sales, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Hampton County, South Carolina.

195. Tison Motor Co., Inc. is a licensed motor vehicle dealer and a corporation

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

196. Addy's Harbor Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

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

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

199. Beach Ford-Lincoln-Mercury-Volvo, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

200. Bell & Bell Pontiac-GMC, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

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

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

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

204. East Coast Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

205. East Coast Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

206. Fowler Motors is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

207. Grand Strand Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

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

209. Hyatt Buick-GMC Trucks is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

210. Jud Kuhn Chevrolet is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Horry County, South Carolina.

211. Kia of Myrtle Beach is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

212. Lay-Fisher Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

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

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

215. Myrtle Beach Hyundai-Isuzu is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

216. Myrtle Beach Suzuki is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

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

218. Sun Coast Mazda-Mitsubishi is a licensed motor vehicle dealer and a corporation

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

219. Suzuki Outlet of Myrtle Beach SC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

220. Hilton Head Chrysler Jeep Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

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

222. Key Infiniti LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

223. Key Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

224. Key Nissan, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

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

226. Prestige Motorcars, LLC dba Hilton Head Jaguar is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

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

228. Heritage Chevrolet-Buick, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Kershaw County, South Carolina.

229. James Ervin Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Kershaw County, South Carolina.

230. Redfearn Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Kershaw County, South Carolina.

231. Burns Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lancaster County, South Carolina.

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

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

business in Lancaster County, South Carolina.

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

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

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

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

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

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

240. Lynn Cooper, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

241. Smith Chevrolet-Cadillac, Inc. is a licensed motor vehicle dealer and a

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

242. Addy Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

243. Cherokee Kenworth is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

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

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

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

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

248. Twin City Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

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

250. Pee Dee Ford Lincoln Mercury Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Marion County, South Carolina.

251. Griffin-Flythe Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Marlboro County, South Carolina.

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

253. Cromley's Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County, South Carolina.

254. Jeffrey Dean Chrysler Dodge Jeep GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County, South Carolina.

255. Kirby Schrader is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County, South Carolina.

256. Stokes-Trainor Chevrolet-Old-Pontiac-Cadillac-Buick is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina

with its principal place of business in Newberry County, South Carolina.

257. Bobby Wood Chevrolet-Pontiac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

258. Edwards Auto Sales, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

259. Lake Keowee Chrysler-Dodge LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

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

261. Performance Chevrolet-Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

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

263. Fairey Chevrolet-Cadillac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

264. Orangeburg Chrysler-Dodge-Nissan, Inc. is a licensed motor vehicle dealer and a

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

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

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

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

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

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

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

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

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

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

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

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

276. Capitol Chevrolet is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

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

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

279. Columbia Freightliner, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Richland County, South Carolina.

280. Dodgeland of Columbia is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

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

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

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

284. Jim Moore Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

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

286. Shealy's Truck Center-Cola is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

287. Stivers Lincoln-Mercury is a licensed motor vehicle dealer and a corporation

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

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

289. Cromley's Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Saluda County, South Carolina.

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

291. Dave Edwards Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

292. Dick Brooks Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

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

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

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

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

297. Shealy's Truck Center is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

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

299. Toyota of Greer is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

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

301. Vic Bailey Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

302. Vic Bailey Lincoln-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its

principal place of business in Spartanburg County, South Carolina.

303. Vic Bailey Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

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

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

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

307. Goodwin Buick-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

308. Goodwin Honda-Mitsubishi-VW is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

309. Jones Chevrolet Co. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

310. Jones Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized

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

311. Jones Pontiac-GMC Truck, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

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

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

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

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

316. Haselden Brothers, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Williamsburg County, South Carolina.

317. Longstreet Chevrolet-Buick-Cadillac-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Williamsburg County, South Carolina.

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

319. Clinton Family Ford-Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

320. Dickerson Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

321. Dunlap-Johnson Chevrolet Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

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

323. Fred Caldwell's Clover Chevrolet is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

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

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

York County, South Carolina.

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

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

328. Harrelson Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

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

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

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

VENUE

332. Venue is proper in Aiken County because Defendant Taylor Investments, Inc. d/b/a Taylor Toyota maintains an office and agent for the transaction of business in Aiken County and/or maintains its principal place of business in Aiken County.

FACTS

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

334. Each individual Defendant's conduct vis-a-vis' all consumers was the product of unfair, misleading and/or unconscionable business practices.

335. Defendants have all engaged in a common practice of presenting/advertising car prices in a misleading manner. Defendants set and advertise a sticker price for cars and then in addition charge a second fee often referred to as an "administrative fee," a "recording and processing fee," "closing fee," "dealer documentation and closing fee" (collectively "administrative fees"). Defendants present and advertise the "administrative fees" in a misleading manner and/or in an effort to mislead car buyers. This practice is a deceptive way to secretly artificially raise the sticker price.

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

337. Defendants' advertising is misleading because it fails to include / adequately disclose the fact that Defendants will be charging "administrative fees" that are in addition to the advertised price of the car.

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

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

overhead expected to be included in the overhead and advertised price.⁹ Instead, the “administrative fees” are tricky and deceptive add-ons.

340. The “administrative fees” are presented to car buyers in a misleading manner because car buyers are mislead into believing that administrative fees are mandatory fees required to be paid on every car such as taxes and license fees.

341. The “administrative fees” are charged in addition to advertised and/or list prices for cars.

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

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

344. If a customer inquires about the fee, Defendants’ sales people say that the “administrative fee” is a standard fee that has to be included on every vehicle.

345. In 2000, the General Assembly enacted a very narrow exception for charging these illegal “administrative fees.”

346. S.C. Code Ann. §37-2-307 allows a dealership to do what would otherwise be illegal, charge “administrative fees,” only if the dealership follows strict rules.

347. S.C. Code Ann. §37-2-307 requires that “administrative fees” be included in the advertised price, disclosed on the sales contract, and conspicuously displayed at the dealership.

348. In order to charge administrative fees, Defendants are also required to annually

register with the Department of Consumer Affairs.

349. Defendants have not availed themselves of the limited exception in S.C. Code Ann. §37-2-307.

350. Even if Defendants had complied with S.C. Code Ann. §37-2-307, Defendants actions are in violation of S.C. Code Ann. §56-15-10 *et. seq.*

351. In 2004, Defendant CarMax Auto Superstores, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

352. In 2003, 2004, 2005, and 2006, Defendant CarMax Auto Superstores, Inc. charged "administrative fees" and failed to separately register for each location in the State with the Department of Consumer Affairs Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

353. In 2005, Defendant Dick Smith Motors, Inc. charged "administrative fees" and failed to register for each location in the State with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

354. In 2003, 2004, 2005, and 2006, Defendant Dick Smith Motors, Inc. charged "administrative fees" and failed to register for each location in the State with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

355. In 2003 and 2004, Defendant Pulliam Motor Co. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

356. In 2003, 2004, 2005, and 2006, Defendant Dick Smith Infiniti, Inc. charged "administrative fees." In 2005, Defendant Dick Smith Infiniti, Inc. failed to register with the

Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307 and failed to file a registration specific to this entity in the years 2003, 2004 and 2006.

357. In 2003, 2004, 2005, and 2006, Defendant Dick Smith Nissan of Lexington, Inc. charged "administrative fees." In 2005, Defendant Dick Smith Nissan of Lexington, Inc. failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307 and failed to file a registration specific to this entity in the years 2003, 2004 and 2006.

358. In 2003, 2004, 2005, and 2006, Dick Smith Nissan, Inc. charged "administrative fees." In 2005, Dick Smith Nissan, Inc. failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307 and failed to file a registration specific to this entity in the years 2003, 2004 and 2006.

359. In 2003 and 2004, Defendant Overland Inc. d/b/a Land Rover of Columbia charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

360. In 2003, 2004, 2005 and 2006, Defendant Toyota Center, LLC charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

361. In 2003, 2004, 2005 and 2006, Defendant Stokes Motors, Inc. charged "administrative fees" and failed to file a registration specific to this entity with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

362. In 2003, 2004, 2005 and 2006, Defendant Stokes-Craven Automotive Group, Inc. charged "administrative fees" and failed to file a registration with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

363. In 2003, 2004, 2005 and 2006, Defendant Stokes Mazda, Inc. charged

"administrative fees" and failed to file a registration specific to this entity with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

364. In 2003, 2004, 2005, and 2006, Defendant Palmetto Chevrolet Company, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

365. In 2003, Defendant Palmetto Ford, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

366. In 2003, 2004, 2005, and 2006, Defendant Jones Ford, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

367. In 2006, Defendant Rick Hendrick Chevrolet, LP charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

368. In 2003, 2004, 2005, and 2006, Defendant Hoover Chrysler-Dodge, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

369. In 2003, 2004, 2005, and 2006, Defendant Baker Motor Company of Charleston charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

370. In 2003, 2004, and 2005, Defendant Big "O" Dodge of Greenville, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

371. In 2003, 2004, 2005, and 2006, Defendant Spartanburg Chrysler Jeep, Inc.

charged “administrative fees” and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

372. In 2003, 2004, and 2005, Defendant Kia of Anderson, LLC charged “administrative fees” and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

373. In 2003, Defendant Farrell Automotive, Inc. charged “administrative fees” and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

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

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

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

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

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

379. Defendant Galeana Chrysler-Jeep, Inc.’s sales invoice includes a separate line

item for Admin. Fee. This Admin. Fee is an "administrative fee" as described above.

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

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

382. Plaintiff Julie Freeman purchased a 1999 Mazda from Defendant Rick Hendrick Honda Cars Co.

383. Defendant Rick Hendrick Honda Cars Co.'s sales invoice includes a separate line item for Procurement Fee. This Procurement Fee is an "administrative fee" as described above.

384. Plaintiff Christine Watts purchases a 2004 BMW from Defendant Sonic Automotive, Inc. d/b/a Century BMW.

385. Defendant Sonic Automotive, Inc. d/b/a Century BMW's Retail Buyer's Order includes a separate line item for Recording & Processing Fees. This Recording & Processing Fee is an "administrative fee" as described above.

386. Plaintiff Michael Blease purchased a 2002 Volvo from Defendant Dick Dyer & Associates, Inc.

387. Defendant Dick Dyer & Associates, Inc.'s Buyer's Order and Invoice includes a separate line item for Processing Fee. This Processing Fee is an "administrative fee" as described above.

388. Plaintiff Michael Watts purchased a Toyota from Defendant Toyota of Greenville, Inc.

389. Defendant Toyota of Greenville, Inc.'s purchase order includes a separate line

item for a Procurement Fee. This Procurement Fee is an "administrative fee" as described above.

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

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

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

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

393. Defendants deceptive use of "administrative fees" is arbitrary, in bad faith and unconscionable and in violation of statute.

394. Defendants' use and presentation of the administrative fees is designed to deceive and/or mislead car buyers and is thus is arbitrary, in bad faith and unconscionable and in violation of statute.

395. Defendants failure to adequately disclose and/or include "administrative fees" in the advertised price of cars constitutes misleading advertising in violation of statute.

396. Defendants conspired together to all apply similar administrative fees in an effort to cause damage to South Carolina car buyers. This conspiracy in and of itself is a violation of statute.

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

398. Accordingly, Plaintiffs are suing for the benefit of all South Carolina car buyers

whom paid administrative fees to Defendants and against all motor vehicle dealers owned or controlled by Defendants as defined in S.C. Code Ann. §56-15-10(h).

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

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

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

FOR A SECOND CAUSE OF ACTION

(Civil Conspiracy as to Defendants Dick Smith Motors, Inc., Pulliam Motor Co., Dick Smith Infiniti, Inc., Dick Smith Nissan of Lexington, Inc., Dick Smith Nissan, Inc., Overland, Inc. d/b/a Land Rover of Columbia, Toyota Center, LLC, Stokes Automotive, Inc., Stokes Motors, Inc., Stokes-Craven Automotive, Inc., Stokes Mazda, Inc., Palmetto Chevrolet Company, Inc., Palmetto Nissan, Inc., Palmetto Ford, Inc., Jones Ford, Inc., Harold Arnold's Sentry Buick, Inc., J. L. Investments, LP, Rick Hendrick Chevrolet, LP, Rick Hendrick Jeep Eagle, L.P., Oak Tree, Inc. d/b/a West Ashley Toyota, Inc., Gene Reed Imports, Inc., Hoover Jeep Chrysler, Inc., Hoover Motors, Inc., Hoover Chrysler-Dodge, Inc., Strom Altman Dodge, Inc., Baker Motor Company of Charleston, Inc., Miller Cadillac, Inc., Benson Chrysler-Plymouth, Inc., Benson Ford Mercury, Inc., Big "O" Dodge of Greenville, Inc., Bradshaw Automotive Group, Inc., Spartanburg Chrysler Jeep, Inc., Kia of Anderson, LLC, Toyota of Easley, Inc., Farrell Automotive, Inc., Fairway Ford, Inc., Saturn of Greenville, Inc., Steve White Motors of South Carolina, Inc., D&D Motors, Inc., Burns Chrysler Dodge Jeep, LLC, John Finger Motors, Inc., Bob Richards Nissan, Dick Smith Chrysler-Jeep, Goodman Chevrolet, Inc., Henna Chevrolet-Olds-Cadillac, LLC, Honda Cars of Aiken, Johnson Motor Company of SC, Sanders Truck Sales, Carolina Ford, Carolina International Trucks of Anderson, Clinkscales Chevrolet, Inc., Fairway Ford-Mazda, Piedmont Chrysler-Jeep, Piedmont Honda, Planet Ford, Ralph Hayes Toyota, Inc., Tom Hunter Pontiac-Buick-GMC, LLC, Upstate Automotive (Chevrolet-Cadillac), Upstate Automotive (Isuzu-Kia), Upstate Automotive (Mitsubishi), Upstate Automotive (Nissan), Gibbes Ford, Inc., Zeigler Chevrolet, Inc., B & B Ford, Inc., Whittle Motor Company, Inc., Butler Chrysler-Dodge-Jeep, Carolina Volvo, Hilton Head Automotive LLC, Hilton Head Honda, Land Rover Hilton Head, Modern Classic Motors, O. C. Welch Ford-Lincoln-Mercury,

Parks Automotive Group, Parks Cadillac, Stokes Honda Cars of Beaufort, Inc., Stokes
 Mitsubishi, Stokes-Brown Toyota, Dick Smith Chevrolet, Inc. Hoover Jeep-Chrysler, Inc.,
 Hoover Motors, Inc., McElveen Pontiac-Buick-GMC, Inc., Altman Lincoln-Mercury-Hyundai,
 Carolina International Trucks-Charleston, Charleston Mitsubishi, Hendrick Honda of Charleston,
 Hoover Chrysler-Jeep, Inc., Hughes Motors, Inc., Kia Country, Lexus of Charleston, Low
 Country Mazda, Low Country Volkswagen, Marathon Chevrolet of N Charleston, Marchant
 Chevrolet, Inc., McDaniels Acura of Charleston, McElveen Chevrolet, LLC, Morris Nissan,
 Northside Nissan, Ravenel Ford, Inc., Rick Hendrick Dodge, Rick Hendrick's Import Showplace,
 Saturn of Charleston, Stokes Honda North Charleston, Stokes Isuzu-Kia-Subaru, Stokes
 Volkswagen, Victory Hyundai of Charleston, Burns Chevrolet-Chrysler-Dodge-Jeep, Inc., Joe
 Gibson Suzuki, Roger Shiflett Ford, Inc., Wallace White Pontiac-Buick-GMC, Nourse Chester
 Automotive, Nourse Motors of Chester LLC, Bennett Motor Co., Inc., John Donoghue Ford, Inc.,
 Lawrence Chevrolet-Pontiac, Prothro Chevrolet-Buick-Pontiac-GMC Truck, Stokes-Craven
 Chrysler-Jeep-Dodge, Stokes-Craven Ford, Peters Pontiac Buick-GMC, Rizer Chevrolet Co.,
 Inc., Walterboro Motor Sales Co., Action Ford-Mercury, Inc., John Newsome, Inc., Raceway
 Chrysler-Jeep-Dodge, Inc., Raceway Ford, Carolina International Trucks LLC, Marathon
 Chevrolet, Summerville Ford-Mercury, Inc., Herlong Pontiac-Chevrolet-Buick, Inc., Jim Satcher,
 Inc., Yonce Ford-Mercury, Inc., Wilson Chevrolet-Oldsmobile, Inc., Wilson
 Chrysler-Dodge-Jeep, Inc., Auddie Brown Mitsubishi, Cale Yarborough Honda, Inc., Carolina
 International Trucks, Efird Chrysler-Jeep-Dodge, Inc., Florence Mack, Inc., Florence Toyota,
 Floyd Motor Co., Inc., Horne Ford, Inc., Kia of Florence, King Cadillac-Buick-Pontiac-GMC
 Truck, Inc., Lake City Ford-Mercury, LLC, Peterbilt of Florence, Raceway
 Chevrolet-Pontiac-Buick-GMC, Saturn of Florence, Service Motor Company, Inc., Coastal
 Nissan-Chevrolet-Cadillac, Hemingway Motor Co., Inc., Parrish Motor Co., Inc., Tideland
 Chrysler Dodge, Tideland Ford-Lincoln-Mercury, BMS, Inc. d/b/a Breakaway Honda, Bradshaw
 Acura, Brockman Automotive, Carolina International Trucks-Greenville, Cherokee Kenworth,
 Inc., Christopher Trucks, Inc., Crown Jeep-Chrysler, Crown Nissan Greenville, Dick Smith
 Mitsubishi, Fairway Ford, Inc., Fairway Motorcars LLC, George Coleman Ford, Inc., Heritage
 Lincoln-Mercury, John Finger Mazda, Kevin Whitaker Chevrolet-Cadillac, Kevin Whitaker
 Chevrolet, Inc., Simpsonville Chevrolet, Inc., Sitton Buick-Pontiac-GMC Truck, Inc., Steve
 White Motors of SC, Inc., Stokes-Trainer Ford, C. Thompson Automotive, Gary Russ
 Chevrolet-Cadillac, Inc., George Ballentine Ford-Lincoln-Mercury, Quality Chrysler City,
 Brunson Automobile Sales, Inc., Tison Motor Co., Inc., Addy's Harbor Dodge, Atlantic
 Chrysler-Jeep-Dodge, Atlantic Ford, Inc., Beach Ford-Lincoln-Mercury-Volvo, Inc., Bell & Bell
 Pontiac-GMC, Inc., Conway Chrysler-Dodge-Jeep, Inc., Conway Ford, Inc., Diamond
 Automotive Group, Inc., East Coast Honda, East Coast Volkswagen, Fowler Motors, Grand
 Strand Nissan, Inc., Hadwin-White Pontiac-Buick-GMC-Subaru, Hyatt Buick-GMC Trucks, Jud
 Kuhn Chevrolet, Kia of Myrtle Beach, Lay-Fisher Chevrolet, Inc., Myrtle Beach Chevrolet, Inc.,
 Myrtle Beach Chrysler-Jeep, Inc., Myrtle Beach Hyundai-Isuzu, Myrtle Beach Suzuki, Sparks
 Toyota, Inc., Sun Coast Mazda-Mitsubishi, Suzuki Outlet of Myrtle Beach SC, Hilton Head
 Chrysler Jeep Dodge, Hilton Head Hyundai, Key Infiniti LLC, Key Mazda, Key Nissan, LLC,
 Porsche of Hilton Head, Prestige Motorcars, LLC dba Hilton Head Jaguar, Dick Smith
 Pontiac-Chrysler-Dodge-GMC-Jeep, Heritage Chevrolet-Buick, Inc., James Ervin Toyota,
 Redfearn Motor Co., Inc., Burns Ford-Mercury, Inc., Elrod Pontiac-Buick-GMC, Inc., H & H
 Chevrolet, Inc., Lancaster Dodge-Chrysler-Jeep, Lancaster Motor Co., Baldwin

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

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

403. Defendants Dick Smith Motors, Inc., Pulliam Motor Co., Dick Smith Infiniti, Inc., Dick Smith Nissan of Lexington, Inc., Dick Smith Nissan, Inc., Overland, Inc. d/b/a Land Rover of Columbia, Toyota Center, LLC, Stokes Automotive, Inc., Stokes Motors, Inc., Stokes-Craven Automotive, Inc., Stokes Mazda, Inc., Palmetto Chevrolet Company, Inc., Palmetto Nissan, Inc., Palmetto Ford, Inc., Jones Ford, Inc., Harold Arnold's Sentry Buick, Inc., J. L. Investments, LP, Rick Hendrick Chevrolet, LP, Rick Hendrick Jeep Eagle, L.P., Oak Tree, Inc. d/b/a West Ashely

Toyota, Inc., Gene Reed Imports, Inc., Hoover Jeep Chrysler, Inc., Hoover Motors, Inc., Hoover
 Chrysler-Dodge, Inc., Strom Altman Dodge, Inc., Baker Motor Company of Charleston, Inc.,
 Miller Cadillac, Inc., Benson Chrysler-Plymouth, Inc., Benson Ford Mercury, Inc., Big "O"
 Dodge of Greenville, Inc., Bradshaw Automotive Group, Inc., Spartanburg Chrysler Jeep, Inc.,
 Kia of Anderson, LLC, Toyota of Easley, Inc., Farrell Automotive, Inc., Fairway Ford, Inc.,
 Saturn of Greenville, Inc., Steve White Motors of South Carolina, Inc., D&D Motors, Inc., Burns
 Chrysler Dodge Jeep, LLC, John Finger Motors, Inc., Bob Richards Nissan, Dick Smith
 Chrysler-Jeep, Goodman Chevrolet, Inc., Henna Chevrolet-Olds-Cadillac, LLC, Honda Cars of
 Aiken, Johnson Motor Company of SC, Sanders Truck Sales, Carolina Ford, Carolina
 International Trucks of Anderson, Clinkscales Chevrolet, Inc., Fairway Ford-Mazda, Piedmont
 Chrysler-Jeep, Piedmont Honda, Planet Ford, Ralph Hayes Toyota, Inc., Tom Hunter
 Pontiac-Buick-GMC, LLC, Upstate Automotive (Chevrolet-Cadillac), Upstate Automotive
 (Isuzu-Kia), Upstate Automotive (Mitsubishi), Upstate Automotive (Nissan), Gibbes Ford, Inc.,
 Zeigler Chevrolet, Inc., B & B Ford, Inc., Whittle Motor Company, Inc., Butler
 Chrysler-Dodge-Jeep, Carolina Volvo, Hilton Head Automotive LLC, Hilton Head Honda, Land
 Rover Hilton Head, Modern Classic Motors, O. C. Welch Ford-Lincoln-Mercury, Parks
 Automotive Group, Parks Cadillac, Stokes Honda Cars of Beaufort, Inc., Stokes Mitsubishi,
 Stokes-Brown Toyota, Dick Smith Chevrolet, Inc. Hoover Jeep-Chrysler, Inc., Hoover Motors,
 Inc., McElveen Pontiac-Buick-GMC, Inc., Altman Lincoln-Mercury-Hyundai, Carolina
 International Trucks-Charleston, Charleston Mitsubishi, Hendrick Honda of Charleston, Hoover
 Chrysler-Jeep, Inc., Hughes Motors, Inc., Kia Country, Lexus of Charleston, Low Country
 Mazda, Low Country Volkswagen, Marathon Chevrolet of N Charleston, Marchant Chevrolet,
 Inc., McDaniels Acura of Charleston, McElveen Chevrolet, LLC, Morris Nissan, Northside

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

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

Chevrolet-Cadillac, Orangeburg Chrysler-Dodge-Nissan, Inc., Orangeburg Ford, Superior Honda, Superior Motors, Inc., Benson Ford-Mercury, Inc., Crane Chevrolet-Cadillac, Inc., Easley Mitsubishi, Easley Pontiac-Buick-GMC Truck, Inc., Hendrick Honda, Norris Ford, Inc., Tinsley Chevrolet Co., Inc., Bob Bennett Ford, Inc., Capitol Chevrolet, Capitol Hyundai, Carolina International Trucks-Cola, Columbia Freightliner, LLC, Dodge of Columbia, Hancock Motor Co., Hancock Volkswagen, Honda Cars of Columbia, Jim Moore Cadillac, Inc., McDaniels Acura-Porsche, Shealy's Truck Center-Cola, Stivers Lincoln-Mercury, Wray Automotive, Inc., Cromley's Inc., Saluda Motor Sales, Inc., Dave Edwards Toyota, Dick Brooks Honda, Foothills Ford of Chesne, Joe Gibson Mitsubishi, Kia of Greer, Saturn of Spartanburg, Shealy's Truck Center, Spartanburg Dodge, Inc., Vic Bailey Ford, Inc., Vic Bailey Honda, Vic Bailey Lincoln-Mercury, Inc., Vic Bailey Volkswagen, Wakefield Buick-Pontiac-GMC, Inc., Boyle Motor Company, Boyle Toyota, Inc., Goodwin Buick-Jeep, Goodwin Honda-Mitsubishi-VW, Jones Chevrolet Co., Jones Nissan, Inc., Jones Pontiac-GMC Truck, Inc., McLaughlin Motors, Inc., Sumter Chrysler-Plymouth-Dodge, Union Chrysler-Dodge-Jeep, Inc., Big Country Chevrolet, Inc., Haselden Brothers, Inc., Longstreet Chevrolet-Buick-Cadillac-GMC, Carolina Mazda, Clinton Family Ford-Lincoln-Mercury, Dickerson Motor Co., Inc., Dunlap-Johnson Chevrolet Co., Inc., Fort Mill Ford, Inc., Fred Caldwell's Clover Chevrolet, Good Motor Company, Griffin Mitsubishi, Griffin Pontiac-Buick-GMC, Harrelson Nissan, Harrelson Toyota, Honda Cars of Rock Hill, Rick Ford, Inc., Stateline Chrysler Jeep Dodge Inc., and the South Carolina Automobile Dealers Association have combined together for the purposes of injuring Plaintiffs and all South Carolina car buyers whom paid administrative fees to Defendants.

404. Defendants have conspired together in a common scheme designed to deceive all

car buyers by all engaging in a common practice of presenting/advertising car prices in a misleading manner by charging "administrative fees."

405. Plaintiffs have suffered special damages as a result of Defendants conspiracy.

FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment)

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

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

408. Plaintiffs seek a determination of their rights and legal relations with the Defendants under S.C. Code Ann. §56-15-10 *et. seq.* and/or §37-2-307.

409. The issues raised by Defendants' common practice of charging administrative fees are of such wide concern and public interest that this declaratory judgment action should be decided for future guidance to insure that the public is protected.

410. Plaintiffs seek a determination of the following questions:

- a. Does Defendants charging of "administrative fees," and further acts as described above, violate S.C. Code Ann. §56-15-10 *et. seq.*
- b. Does Defendants charging of "administrative fees" and further acts as described above, violate S.C. Code Ann. §37-2-307.
- c. Are Defendants actions as described above outside the scope of S.C. Code Ann. §37-2-307.

411. Plaintiffs seek a declaratory judgment from this Court that:

- a. A permanent injunction issue preventing Defendants from advertising/charging future customers with administrative fees in a manner which violates S.C. Code Ann. §56-15-10 *et. seq.*;
- b. A permanent injunction issue preventing Defendants from advertising/

charging future customers with administrative fees in a manner which violates S.C. Code Ann. §37-2-307;

- c. Defendants be ordered to disgorge all fees collected from Plaintiffs and all car buyers whom paid administrative fees to Defendants;

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

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By: Bryce J. [Signature]

Attorneys for the Plaintiffs

October 28, 2006

Columbia, South Carolina

) IN THE COURT OF COMMON PLEAS

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1)

1) CIVIL ACTION NO.: 2012-CP-39-01554

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CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2013 JAN 16 A 11:39

PARTIES

- 1

FACTS

3. This case arises from the Defendant's charging of illegal "closing fees." Closing fees are sometimes referred to by a variety of names. In this case, Defendant Defendant Hendrick Honda charged Julie Freeman Hair a \$299.00 closing fee and called it a "Procurement Fee."

4. Every transaction by Defendant includes a closing fee that would reduce the price of motor vehicles if not charged.

5. Closing fees used to be illegal in South Carolina but were legalized by the enactment of S.C. Code Ann. §37-2-307 which provides:

Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

6. The enactment of a statute legalizing closing fees definitively shows that charging closing fees in absence of meeting the statute's requirements is illegal.

Otherwise, the statute is meaningless.

7. The first requirement that Defendant violated is that Defendant can only charge closing fees that are for reimbursement of certain overhead costs.

8. This requirement arises from the plain language in S.C. Code Ann. §37-2-307 which authorizes the charging of "closing fees." S.C. Code Ann. §37-2-307 provides:

Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

(emphasis added).

9. The use of the term "closing fees" necessarily involves the reimbursement of the certain

costs that are associated with an automobile closing such as document retrieval and document preparation.

10. Nothing in the statute authorizes a dealer to charge hidden profit fees.

11. Nothing in the statute authorizes a dealer to charge closing fees for anything but the reimbursement of closing costs.

12. The fact that §37-2-307 allows closing fees for reimbursement of certain closing costs was confirmed by the Department of Consumer Affairs.

13. In 2001, the Department of Consumer Affairs, which is charged with implementing and interpreting the Consumer Protection Code (including §37-2-307), issued an interpretation which limits the charging of closing fees to only a **"means of reimbursing [the dealer] for certain overhead costs such as document retrieval and document preparation."**

14. This interpretation and rule by the Department of Consumer Affairs regarding S.C. Code Ann. §37-2-307 is valid for the enforcement of the law.

15. The Department of Consumer Affairs has filled up the details and clarified that S.C. Code Ann. §37-2-307 only allows closing fees to be charged as a means of reimbursement for "certain overhead costs."

16. The Department of Consumer Affairs' interpretation is consistent with the plain language of §37-2-307 which allows the charging of "closing fees"- i.e. fees associated with automobile closings "such as document retrieval and document preparation."

17. The Department of Consumer Affairs does not approve the amount that dealers register to charge as closing fees. This is because the Department cannot look at dealers' records and works through a complaint process not a monitoring process.

18. Defendant has always known that it may not charge closing fees for a profit.

19. Defendant has always known that its closing fees charged had to be for the reimbursement of its closing costs.

20. Defendant recognized this limitation in §37-2-307 and posted signs in their dealership admitting that closing fees are only for reimbursement of certain overhead costs.

21. The following language shows the Defendant's own interpretation of §37-2-307 as reflected in their signs:

"THIS DEALERSHIP CHARGES A \$299 CLOSING FEE AS MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION."

22. Defendant's sign is an admission that the Defendant has always known that §37-2-307 only permits closing fees for purposes of reimbursing the certain overhead costs related to automobile closings and have, through mandatorily required signage, affirmatively made that representation to their customers.

23. Defendant's closing fee did not cover any particular overhead or other costs.

24. Defendant annually collected millions of dollars charging these fees.

25. Defendant made no effort prior to setting its closing fees to ensure that the fees charged were for the reimbursement of closing costs.

26. Defendant did not calculate its closing costs per vehicle annually in effort to ensure that its closing fees for the next year were charged for the reimbursement of its closing costs.

27. Defendant has not calculated its closing costs for 2002.

28. Defendant has not calculated its closing costs for 2003.

29. Defendant has not calculated its closing costs for 2004.

30. Defendant has not calculated its closing costs for 2005.

31. Defendant has not calculated its closing costs for 2006.
32. The dollar amount charged by Defendant was not decided by looking at the actual amount of closing costs incurred by Defendant.
33. Defendant cannot satisfy the closing fee statute by doing an "after the fact" calculation" because the statute requires that the fees be for actual reimbursement of "certain" overhead costs.
34. Defendant intended for its closing fees to cover salaries of its employees.
35. Defendant intended for its closing fees to cover general overhead costs.
36. S.C. Code Ann. §37-2-307 authorizes the charging of "closing fees" which are for the reimbursement of certain overhead costs arising from automobile closings such as document retrieval and document preparation. The statute does not authorize the charging of hidden profit fees or fees that are attempted to be justified after the fact.
37. The second requirement at issue is that the closing fee must be included in the advertised price of the motor vehicle. S.C. Code Ann. §37-2-307 provides:

Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. **The closing fee must be included in the advertised price of the motor vehicle,** disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

(Emphasis added).

38. In 2001, the Department of Consumer Affairs, in an official interpretation of §37-2-307, stated that this requirement is designed to avoid unfair surprise by having a closing fee added-on.
- The 2001 interpretation provides in part:

If the closing fee is charge, and the vehicle is advertised, the closing fee must be included in the advertised price **so that consumers cannot be unfairly surprised by having the closing fee added on** after the acceptance of an advertisement's terms.

39. The Department of Consumer Affairs regularly sends out advertising warning letters that

get sent to all car dealers in the state, restating this interpretation. One such letter provides in part:

The advertised price shall be the delivered price that the consumer will have to pay, except for taxes, title and tags, as required by the Government. The enclosed ads by your dealership, which appeared in The AutoMart Magazine on September 12- September 19, 2008, on pages A16, A17 and A18, discloses in the fine print, "Prices Plus TTL and \$299 Dealer Closing Fee". **Add-ons (Closing Fees)** of this nature **must be included in the cash price.**

The purchase price of a vehicle enables the consumer to know how much money it will cost to purchase the vehicle. **Using add-ons such as fee disguises the actual cost [sic], making the advertised price misleading.**

40. Danny Collins, Esq., the Department of Consumer Affairs deputy for regulatory enforcement, explained in his deposition that the closing fee must be included in the advertised price because it's a charge the dealer knows in advance:

A: The closing fee must be included in the advertised price of the motor vehicle.

Q: And what does that mean?

A: When they advertise a price—and its easier to see in the newspaper because you've got that, you can take it with you, you can look at over and over. But A lot of times they'll have a price—and if they want to leave out, they can leave out taxes, tags, and title because the Government imposes those charges. But **if it is a type of charge that the dealer knows in advance, it needs to be included in the advertised sale price....**

41. This requirement is designed to prevent a surprise add-on at the end.

Q: The purpose of putting in the language included in the advertised price of the vehicle is to prevent a surprise add-on at the end, isn't it?

...

A: That is what the advertising letters will say and that is what the administrative interpretation says.

42. Plaintiff Julie Freeman Hair's transaction illustrates the harm sought to be avoided by requiring that "[t]he closing fee must be included in the advertised price of the motor vehicle."

43. At the time of her purchase, June 2006, Julie Freeman Hair was a twenty three year old second grade teacher.

44. Juile Freeman Hair was looking to purchase her first car.
45. On June 11, 2006, after Julie Freeman Hair arrived at Defendant Hendrick Honda's dealership, she approached a Honda with a price on a window sticker.
46. The advertised price on the window sticker was for \$18,995.
47. The vehicle was a certified used car.
48. Ms. Freeman then test drove the car, went back into the dealership, and negotiated a price in her targeted monthly payment range.
49. These negotiations are shown on a worksheet maintained by Hendrick Honda which lists: the advertised price for the car \$18,995, then shows a crossed out \$18,295, and finally a circled "SELLING PRICE" of \$17,975. Right next to the circled \$17,975, the worksheet states "7/11/06 Good for 2 weeks."
50. The next day, July 12, 2006, Ms. Freeman returned to the dealership. At that time, Ms. Freeman "already had this price that he had told me the day before."
51. Ms. Freeman then signed the paperwork completing the purchase. Significantly, Ms. Freeman's invoice provides:

CASH PRICE OF VEHICLE & ACCESSORIES	\$ 17975.00
TRADE-IN ALLOWANCE	\$ 900.00
DIFFERENCE	\$ 17075.00
PROCUREMENT FEE	\$ 299.00
STATE TAXES	\$ 300.00
LICENSE, LICENSE TRANSFER, TITLE, REGISTRATION FEE	\$ 39.00
TOTAL PRICE OF UNIT	\$ 17713.00
LIEN PAYOFF OWED CUSTOMER GUARANTEES	\$ 377.57
DOWN PAYMENT	\$ N/A
BALANCE	\$ 18090.57

52. As shown above, Hendrick Honda took the agreed to "SELLING PRICE" from the day before, \$17,975, and then added a \$299.00 closing fee, which was pre-printed on the invoice next to state taxes and title/ registration fees.

53. No one working for Defendant remembers any discussions about the \$299.00 closing fee charged to Ms. Freeman.

54. Mr. Collins, the Consumer Affairs deputy for regulatory enforcement, addressed this issue in his deposition:

Q: Okay. If you're sitting there in the little cubicle across from whoever is doing the selling, whether it's the salesman or the manager or whatever, and y'all struck a bargain on the price of the car, and let's say that's \$15,000, okay.
And the man across the desk with you in his cubical puts that big long form, the buyer's order, in his printer and it comes out and he attaches a whole bunch of other documents to it, an agreement to arbitrate and this and all that other stuff, and then passes you the buyer's order and you look down there at the bottom and it's \$15,000 that you agreed on, plus taxes of \$300, plus tags, and then it has a closing cost on it and that's the first you ever knew about it.

....
A: They should have let the person know before that.

55. As Mr. Collins deposed, if the dealer is going to add-on a closing fee at the end of the purchase, the Dealer needs to "let the person know before that."

56. Hendrick Honda allowed Ms. Freeman to negotiate \$1,000.00 off the advertised price of the car (advertised price \$18,995 and promised "SELLING PRICE" \$17,975) and then when the paperwork was presented Hendrick Honda added on a \$299.00 closing fee.

57. The \$299.00 closing fee was the "type of charge that dealer knows in advance" and therefore was required to be "included in the advertised sales price."

58. The closing fee was not included in the advertised price because the invoice shows the fee being added-on after the negotiated "SELLING PRICE."

59. If S.C. Code Ann. §37-2-307 had been followed, the advertised price of Plaintiff Freeman's car would have included the \$299.00 closing fee and the closing fee would not be a later add on. In other words, if the closing fee were included in the advertised price of the car the initial negotiating point between the consumer and the dealer would have included the \$299.00.
60. §37-2-307 was designed to prevent this late add-on.
61. In order to comply with the statute, the initial advertised price of a vehicle must include the closing fee.
62. Defendant violated §37-2-307 by adding the closing fees to the advertised price for the vehicles it was selling.
63. The advertised price of a vehicle includes all hang tags, prices shown on supplemental stickers, the first verbal statement of price given by a dealership, a price in a newspaper, and prices displayed on vehicles, other than the Moroney stickers.
64. Nothing in §37-2-307 says that the closing fee must be included in the advertised price "only when a customer does not negotiate" (a situation that almost never occurs and an interpretation that would render the statute meaningless). Instead, the statute states that: "The closing fee must be included in the advertised price of the motor vehicle."
65. There is no exception in the statute that says it does not apply if a customer negotiates. If the legislature wanted to include this exception it would have done so.
66. Defendant has unfairly added closing fees in addition to the advertised price of its vehicles including the vehicle purchased by Julie Freeman Hair.
67. Charging a closing fee in violation of S.C. Code Ann. § 37-2-307 is an unfair act.
68. An act is unfair if it violates a statute.
69. An act is unfair if it is offensive to public policy.

70. Defendant's customers, including Julie Freeman Hair, cannot reasonably avoid Defendant charging closing fees that are not limited to Defendant's closing costs because the customers do not have access to Defendant's books and records and are thus not in a position to know whether they are paying the fee for illegal purposes or reimbursement of closing costs.
71. There is no evidence that Julie Freeman Hair paid the Closing fee to Defendant knowing that the fee was illegally charged.
72. There is no evidence that any purchaser paid the Closing fee to Defendant knowing that the fee was illegal.
73. Defendant engaged in a scheme and charged all car buyers (the term "car" as used herein includes new and used cars, trucks, sport utility vehicles and automobiles of all kinds) illegal fees in violation of the public policy of this state and statute.
74. Defendant engaged in a common practice of presenting/advertising car prices in a misleading manner. Defendant set and advertised a sticker price for cars and then in addition charge a second fee often referred to as an "administrative fee," a "recording and processing fee," "closing fee," "dealer documentation and closing fee" (collectively "closing fees"). Defendant presents and advertises the "closing fees" in a misleading manner and/or in an effort to mislead car buyers. This practice is a deceptive way to secretly artificially raise the sticker price.
75. Defendant's advertising is misleading because it fails to include / adequately disclose the fact that Defendants will be charging "closing fees" that are in addition to the advertised price of the car.
76. Defendants' placement of the "closing fee" on the dealer invoice is deceptive in that it implies that the fee is separate and distinct from the general overhead that car buyers expect to be

included within the sticker price for a car and that the set fee is mandatory.

77. The "closing fees" are not separate and distinct from Defendants' general overhead expected to be included in the overhead and advertised price. Instead, the "closing fees" are tricky and deceptive add-ons.

78. The "closing fees" are presented to car buyers in a misleading manner because car buyers are misled into believing that administrative fees are mandatory fees required to be paid on every car such as taxes and license fees.

79. The "closing fees" are charged in addition to advertised and/or list prices for cars.

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

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

82. If a customer inquires about the fee, Defendant's sales people say that the "closing fee" is a standard fee that has to be included on every vehicle.

83. In 2000, the General Assembly enacted a very narrow exception for charging these illegal "closing fees."

84. S.C. Code Ann. §37-2-307 allows a dealership to do what would otherwise be illegal, charge "closing fees," only if the dealership follows strict rules.

85. S.C. Code Ann. §37-2-307 requires that "closing fees" be included in the advertised price, disclosed on the sales contract, and conspicuously displayed at the dealership.

86. In order to charge administrative fees, Defendant is also required to annually register with the Department of Consumer Affairs.
87. Additionally, the Department of Consumer Affairs, which is charged with implementing and interpreting the Consumer Protection Code (including §37-2-307) has limited the charging of closing fees to only a "means of reimbursing [the dealer] for certain overhead costs."
88. Defendant has not availed themselves of the limited exception in S.C. Code Ann. § 37-2-307.
89. Even if Defendants had complied with S.C. Code Ann. §37-2-307, Defendants actions are in violation of S.C. Code Ann. §56-15-10 *et. seq.*
90. Plaintiff Julie Freeman purchased a 1999 Mazda from Defendant.
91. Defendant's sales invoice includes a separate line item for Procurement Fee. This Procurement Fee is an "closing fee" as described above.
92. The Defendant violated S.C. Code Ann. §37-2-307 by failing to include charging of closing fees in the advertised price of motor vehicles.
93. The Defendant violated S.C. Code Ann. §37-2-307 by charging closing fees that were not for reimbursement of certain closing costs.
94. Defendant violated §37-2-307 by failing to include the charging of closing fees in the advertised price of its motor vehicles and by charging illegal closing fees that were not for reimbursement of certain closing costs.
95. Defendant's charging of closing fees in violation of §37-2-307 renders the fees illegal and in violation of the Dealers Act, §56-15-10 *et. seq.*

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

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

forth verbatim.

97. Defendant is a motor vehicle dealer subject to Title 56 of the S.C. Code.

98. Defendant's charging of "closing fees" is arbitrary, in bad faith and unconscionable and in violation of statute.

99. Defendant's use and presentation of the closing fees is unfair, designed to deceive and/or mislead car buyers, and is arbitrary, in bad faith and unconscionable and in violation of statute.

100. Defendant's failure to adequately disclose and/or include "closing fees" in the advertised price of cars constitutes misleading advertising in violation of statute.

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

102. Accordingly, Plaintiff is suing for the benefit of all South Carolina car buyers whom paid administrative fees to Defendant.

103. Plaintiff and all South Carolina car buyers whom paid administrative fees to Defendant have been injured by Defendant's illegal acts as described above.

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

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

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

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

forth verbatim.

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

108. Plaintiff seeks a determination of her rights and legal relations with the Defendant under S.C. Code Ann. §56-15-10 *et. seq.* and/or §37-2-307.

109. The issues raised by Defendant's common practice of charging closing fees are of such wide concern and public interest that this declaratory judgment action should be decided for future guidance to insure that the public is protected.

110. Plaintiff seeks a determination of the following questions:

- a. Does Defendant's charging of "closing fees," and further acts as described above, violate S.C. Code Ann. §56-15-10 *et. seq.*
- b. Does Defendant's charging of "closing fees" and further acts as described above, violate S.C. Code Ann. §37-2-307; and
- c. Are Defendant's actions as described above outside the scope of S.C. Code Ann. §37-2-307?

111. Plaintiff seeks a declaratory judgment from this Court that:

- a. A permanent injunction issue preventing Defendant from advertising/charging future customers with closing fees in a manner which violates S.C. Code Ann. §56-15-10 *et. seq.*;
- b. A permanent injunction issue preventing Defendant from advertising/charging future customers with closing fees in a manner which violates S.C. Code Ann. §37-2-307;
- c. Defendant be ordered to disgorge all fees collected from Plaintiff and all car buyers whom paid administrative fees to Defendant in the four years before and all those after the filing of the Complaint;

WHEREFORE, Plaintiff prays for judgment against Defendant for actual and compensatory damages, for two times actual damages pursuant to Plaintiff's first cause of action,

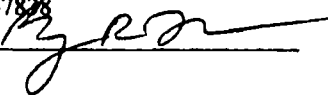
for three times actual damages for punitive damages pursuant to Plaintiff's first cause of action, for disgorgement of all administrative fees collected by Defendant pursuant to Plaintiffs' second cause of action, for a permanent injunction pursuant to Plaintiff's second cause of action, together with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

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By: 

Attorneys for the Plaintiff

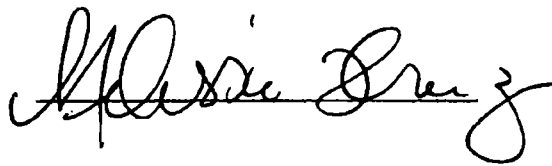
January 15, 2013

Barnwell, South Carolina

CERTIFICATE OF MAILING

I, Melissa T. Cruz, an employee of Richardson, Patrick, Westbrook & Brickman, LLC, counsel for the Plaintiff, do hereby certify that I have this date mailed postage paid, a true copy of **PLAINTIFF'S THIRD AMENDED COMPLAINT** to all counsel of record as follows:

James Y. Becker, Esq.
Haynsworth Sinkler Boyd, PA
P.O. Box 11889
Columbia, SC 29211

A handwritten signature in cursive script, reading "Melissa Cruz", written over a horizontal line.

January 21, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

Case No. 2012-CP-39-01554

Julie Freeman,

Plaintiff,

v.

J.L.H. Investments, LP, a/k/a Hendrick
Honda of Easley,

Defendant.

AMENDED ANSWER TO THIRD AMENDED COMPLAINT

Defendant J.L.H. Investments, LP, d/b/a Hendrick Honda of Easley ("Hendrick Honda of Easley"), by and through its undersigned counsel, answers Plaintiff's Third Amended Complaint filed January 16, 2013, ("Complaint") as follows:

FOR A FIRST DEFENSE

1. Hendrick Honda of Easley denies each and every allegation of the Complaint that it does not expressly admit herein.

2. Hendrick Honda of Easley admits the allegations of paragraph 1 upon information and belief.

3. Hendrick Honda of Easley admits the allegations of paragraph 2, except that the limited partnership is properly named J.L.H. Investments, LP.

4. Answering paragraph 3 of the Complaint, Hendrick Honda of Easley admits that it has charged a closing fee, also referred to as an administration fee or a procurement fee, as allowed by law. It further admits it charged such a fee in the amount of \$299.00 to Julie Freeman Hair. Otherwise, the allegations are denied.

5. Hendrick Honda of Easley denies the allegations of paragraph 4.

6. The allegations of paragraphs 5 and 6 state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

7. Hendrick Honda of Easley denies the allegations of paragraph 7.

8. The allegations of paragraphs 8 thru 16 state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

9. Hendrick Honda of Easley denies the allegations of paragraph 17.

10. Answering the allegations of paragraph 18, Hendrick Honda of Easley admits only that, in setting its closing fees in each year from 2002 through 2006, it was guided in setting its closing fee by the express language of the Closing Fee Statute, the Department of Consumer Affairs' Administrative Interpretation 2.307.0100, dated June 7, 2001 ("2001 Administrative Interpretation"), and the annual registration forms it filed with the Department of Consumer Affairs. Hendrick Honda of Easley denies that it has made a profit from charging closing fees.

11. Answering the allegations of paragraph 19, Hendrick Honda of Easley admits only that, in setting its closing fee in each year from 2002 through 2006, it was guided in setting its closing fee by the express language of the Closing Fee Statute, the 2001 Administrative Interpretation, and the annual registration forms it filed with the Department of Consumer Affairs. Hendrick Honda of Easley denies that, prior to certain rulings in this lawsuit, it had any knowledge of any statutory or regulatory limit on closing fees, other than the amount the Department of Consumer Affairs would approve in the annual registration process.

12. Answering the allegations of paragraphs 20 through 22, Hendrick Honda of Easley admits only that it posted notices in its dealerships that were exact copies of the proposed notices recommended by the Department of Consumer Affairs in its 2001 Administrative

Interpretation, and Hendrick Honda of Easley refers to the specific language contained in the notices posted. Defendant denies the remaining allegations of paragraphs 20 through 22.

13. Answering the allegations of paragraph 23, Hendrick Honda of Easley admits only that it charged its closing fee as a means of reimbursing it for certain direct and indirect costs arising from the closing of motor vehicle sales transactions to consumers, such as document preparation, storage, and retrieval. These costs were known to Hendrick Honda of Easley's general manager, who established the amount of each closing fee registered with the Department of Consumer Affairs. In every year from 2002 through 2006, Hendrick Honda of Easley's closing fee was less than those closing costs. Hendrick Honda of Easley contends that it has complied in all respects with the express language of the Closing Fee Statute and 2001 Administrative Interpretation. All other allegations within this paragraph are denied.

14. Hendrick Honda of Easley denies the allegations of paragraph 24.

15. Answering the allegations of paragraphs 25 through 32, Hendrick Honda of Easley admits only that it charged its closing fee as a means of reimbursing it for certain direct and indirect costs arising from the closing of motor vehicle sales transactions to consumers, such as document preparation, storage, and retrieval. These costs were known to Hendrick Honda of Easley's general manager, who established the amount of each closing fee registered with the Department of Consumer Affairs. In every year from 2002 through 2006, Hendrick Honda of Easley's closing fee was less than those closing costs. Hendrick Honda of Easley contends that it has complied in all respects with the express language of the Closing Fee Statute and 2001 Administrative Interpretation. All other allegations within these paragraphs are denied.

16. The allegations of paragraph 33 state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

17. Answering the allegations of paragraphs 34 and 35, Hendrick Honda of Easley admits only that it charged its closing fee as a means of reimbursing it for certain direct and indirect costs arising from the closing of motor vehicle sales transactions to consumers, such as document preparation, storage, and retrieval. These costs were known to Hendrick Honda of Easley's general manager, who established the amount of each closing fee registered with the Department of Consumer Affairs. In every year from 2002 through 2006, Hendrick Honda of Easley's closing fee was less than those closing costs. Hendrick Honda of Easley contends that it has complied in all respects with the express language of the Closing Fee Statute and 2001 Administrative Interpretation. All other allegations within these paragraphs are denied.

18. The allegations of paragraphs 36 and 37 state legal conclusions to which no response is required. To the extent a response is required, Hendrick Honda of Easley denies the allegations.

19. Answering the allegations of paragraph 38, Hendrick Honda of Easley refers to the express language of the 2001 Administrative Interpretation. Hendrick Honda of Easley denies any allegation that is inconsistent with the express language of the 2001 Administrative Interpretation.

20. Hendrick Honda of Easley is without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 39, and therefore denies them.

21. Answering paragraphs 40 and 41 of the Complaint, the allegations are denied, except to the extent that such allegations state legal conclusions, to which no response is required. To the extent these paragraphs reference the deposition of Danny Collins, Hendrick Honda of Easley objects to these allegations as an improper, out-of-context use of deposition testimony.

22. Hendrick Honda of Easley denies the allegations of paragraph 42.

23. Hendrick Honda of Easley admits the allegations of paragraph 43 and 44 upon information and belief.

24. Hendrick Honda of Easley denies the allegations of paragraphs 45 and 46.

25. Hendrick Honda of Easley admits the allegations of paragraph 47.

26. Hendrick Honda of Easley denies the allegations of paragraph 48.

27. Answering paragraphs 49 through 52 of the Complaint, Hendrick Honda of Easley refers to express language of the referenced documents in their entirety. Hendrick Honda of Easley denies the remaining allegations of these paragraphs.

28. Answering paragraph 53 of the Complaint, Hendrick Honda of Easley admits that, upon information and belief, no party to the transaction between the Plaintiff and Hendrick Honda of Easley has any specific recollection of conversations occurring in connection with the transaction. Hendrick Honda of Easley denies any inconsistent allegations of this paragraph.

29. Answering paragraphs 54 and 55 of the Complaint, the allegations are denied, except to the extent that such allegations state legal conclusions, to which no response is required. To the extent these paragraphs reference the deposition of Danny Collins, Hendrick Honda of Easley objects to these allegations as an improper, out-of-context use of deposition testimony.

30. Answering paragraph 56 of the Complaint, Hendrick Honda of Easley admits only that on or about July 12, 2006, it sold a 2005 Honda Accord to Plaintiff. Hendrick Honda of Easley refers to the express language of the referenced documents in their entirety. Hendrick Honda of Easley denies any inconsistent allegations of this paragraph.

31. Answering paragraphs 57 through 89 of the Complaint, the allegations are denied, except to the extent that such allegations state legal conclusions, to which no response is required. To the extent these paragraphs reference the Closing Fee Statute and the 2001 Administrative Interpretation, Hendrick Honda of Easley refers to the express language of the Closing Fee Statute and the 2001 Administrative Interpretation. Hendrick Honda of Easley contends that it has complied with the express language of the Closing Fee Statute and the 2001 Administrative Interpretation at all times relevant to this action.

32. Hendrick Honda of Easley denies the allegations of paragraph 90.

33. Answering paragraph 91 of the Complaint, Hendrick Honda of Easley refers to the referenced document in its entirety. Hendrick Honda of Easley admits only that its sales invoice for the sale of the 2005 Honda Accord to Plaintiff Julie Freeman includes a separate line item listing a closing fee, which is referred to in the sales invoice as a procurement fee. Otherwise, the allegations are denied.

34. Answering paragraphs 92 through 95 of the Complaint, the allegations are denied, except to the extent that such allegations state legal conclusions, to which no response is required. To the extent these paragraphs reference the Closing Fee Statute, Hendrick Honda of Easley refers to the express language of the Closing Fee Statute. Hendrick Honda of Easley contends that it has complied with the express language of the Closing Fee Statute and the 2001 Administrative Interpretation at all times relevant to this action.

FIRST CAUSE OF ACTION
(Violation of S.C. Code § 56-15-10, *et seq.*)

35. Answering paragraph 96 of the Complaint, each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

36. Answering paragraph 97 of the Complaint, Hendrick Honda of Easley admits only that it is a motor vehicle dealer subject to the provisions of S.C. Code § 56-15-10 to -600, known as the Motor Vehicle Manufacturers, Distributors, and Dealers Act ("Dealers Act"). Otherwise, the allegations are denied.

37. Hendrick Honda of Easley denies the allegations of paragraphs 98 through 100.

38. Answering paragraphs 101 and 102 of the Complaint, Hendrick Honda of Easley admits only that Plaintiff purports to bring her claims in a representative capacity on behalf of certain other customers of Hendrick Honda of Easley and that such an action is commonly known as a class action lawsuit, but Plaintiff refers to this action as a group action. Otherwise, the allegations are denied.

39. Hendrick Honda of Easley denies the allegations of paragraphs 103 through 105.

SECOND CAUSE OF ACTION
(Declaratory Judgment)

40. Answering paragraph 106, each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

41. Answering paragraphs 107 through 111, Hendrick Honda of Easley admits only that Plaintiff purports to bring a declaratory judgment cause of action. Otherwise, the allegations are denied. As reflected in this Court's order dated January 11, 2010, as applied in this action by order dated December 18, 2012, Hendrick Honda of Easley further answers as follows: to the extent that the Third Amended Complaint purports to assert a cause of action for declaratory

judgment, that claim has been limited to an interpretation of two terms used in S.C. Code Ann. § 37-2-307, namely the terms "closing fee" and "advertised price." Any remaining allegations or claims for declaratory judgment have been abandoned by the Plaintiff over the course of this action. Also with respect to paragraph 111, the claims in this case are limited to those that existed as of August 29, 2006, the date of filing of the original complaint in this action. South Carolina law, Rule 15, SCRCP, and federal law will not allow the expansion of this action to include claims of persons who transacted business with Hendrick Honda of Easley after August 29, 2006.

42. Hendrick Honda of Easley denies that Plaintiff is entitled to the relief requested in her prayer for relief, or any other relief from Hendrick Honda of Easley whatsoever.

FOR A SECOND DEFENSE
(Arbitration)

43. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

44. Certain customers of Hendrick Honda of Easley may have signed a sales or financing-related document, including, but not limited to, a buyer's order, invoice, retail installment contract or lease agreement, that contains an arbitration agreement governed by the Federal Arbitration Act or South Carolina arbitration laws. These agreements likely allow a party or entity to which the agreement applies to require submission to binding arbitration of all disputes covered by the arbitration agreement, including any claim or dispute arising in contract, tort or otherwise. The claims of any such customers whom Plaintiff purports to bring in a representative capacity must be dismissed or, in the alternative, stayed pending the submission of such claims to binding arbitration as provided in such agreements.

FOR A THIRD DEFENSE
(Failure to Plead Rule 23, SCRCP)

45. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

46. Plaintiff's claims on behalf of any other unnamed or absent customers of Hendrick Honda of Easley must be dismissed on the grounds that the Third Amended Complaint fails to allege that Plaintiff has met the requirements of Rule 23, SCRCP, pertaining to class action lawsuits. Plaintiff may not rely solely on S.C. Code Ann. § 56-15-110(2) in bringing a purported class action, but still must allege and meet the requirements of Rule 23. In the alternative, Plaintiff must be required to allege and meet the requirements of Rule 23.

FOR A FOURTH DEFENSE
(Failure to Meet Rule 23, SCRCP Requirements)

47. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

48. For a further defense, Plaintiff has not pleaded and proven, and will not be able to prove, all prerequisite requirements necessary to bring a class action lawsuit as contained in Rule 23, SCRCP, and applicable case law.

49. The requirements of Rule 23 include proof that the class is so numerous that joinder of all members is impracticable, that there are questions of law or fact common to the class, that the claims or defenses of the representative parties are typical of the claims or defenses of the class, that the representative parties will fairly and adequately protect the interests of the class, and that in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds \$100 for each member of the class.

FOR A FIFTH DEFENSE

(Unconstitutionality of S.C. Code Ann § 56-15-110(2))

50. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

51. Plaintiff purports to bring the claims of unnamed or absent "group" or class members in a representative capacity pursuant to S.C. Code § 56-15-110(2) and without pleading and proving the requirements of Rule 23, SCRCp. Any such action is unconstitutional and violates Hendrick Honda of Easley's due process and equal protection rights in that it creates a different standard from the class certification procedures under Rule 23, SCRCp, for motor vehicle dealers only, and not any other entity, person, or business, without any reason or justification. Thus, Plaintiff's claims brought in a representative capacity are barred and should be dismissed because S.C. Code Ann. § 56-15-110(2) violates the due process and equal protection rights afforded to motor vehicle dealers.

52. Plaintiff's claims brought in a representative capacity on behalf of unnamed or absent "group" or class members are also barred because federal and state constitutional due process requirements preclude "group" or class-wide relief without notice to the unnamed or absent group or class members, without providing the unnamed or absent group or class members an opportunity to opt out of the action, and where the unnamed or absent group or class members are not bound by the result.

53. Further, any alleged violation by Hendrick Honda of Easley of the Dealers Act, the Closing Fee Statute, or any other law governing motor vehicle dealers or the charging of closing fees requires an individualized inquiry, and any determination of liability on behalf of Plaintiff on a class-wide or "group-wide" basis will deprive Hendrick Honda of Easley of its due process rights under the state and federal constitutions to present all the evidence and defenses

which may be applicable to the claims of unnamed or absent group or class members and this will cause Hendrick Honda of Easley irreparable harm.

FOR A SIXTH DEFENSE
(Exclusive Remedy)

54. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

55. The South Carolina Consumer Protection Code, S.C. Code § 37-1-101, *et seq.* provides the exclusive remedy for alleged violations of the Closing Fee Statute or any other legal or equitable claim alleging the improper charging of closing fees in motor vehicle sales and lease transactions, and thus Plaintiff may not pursue her claims under the Dealers' Act.

56. Furthermore, Plaintiff may not pursue her claims based on an alleged improper or illegal closing fee in a representative capacity, because the South Carolina Consumer Protection Code does not allow class or "group" actions. S.C. Code Ann. § 37-5-202(1).

FOR A SEVENTH DEFENSE
(Compliance with S.C. Code Ann. §§ 37-6-506(3), 37-6-104(4): Safe Harbor)

57. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

58. Closing fees charged in motor vehicle sales transactions, are authorized under the provisions of the Closing Fee Statute and regulated by the 2001 Administrative Interpretation, which interprets the Closing Fee Statute and establishes certain requirements and conditions for motor vehicle dealers to charge closing fees in motor vehicle sales and lease transactions. At all relevant times, Hendrick Honda of Easley has charged closing fees in conformity with the requirements and conditions of the 2001 Administrative Interpretation. and thus, pursuant to S.C. Code § 37-6-506(3) and § 37-6-104(4), Hendrick Honda of Easley should not be liable for

actions which, to date, have not been considered violations of the Closing Fee Statute by the South Carolina Department of Consumer Affairs. Any interpretation adopted by the Court regarding Hendrick Honda of Easley's compliance with the Closing Fee Statute should affect future transactions only and Hendrick Honda of Easley should be held harmless for any actions based on the Department of Consumer Affairs' prior rules and interpretations.

FOR A EIGHTH DEFENSE

(Compliance with S.C. Code Ann. § 37-5-202(7): Good Faith Error)

59. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

60. Hendrick Honda of Easley has never intended to violate any portion of the Dealer's Act, the South Carolina Consumer Protection Code, or the requirements, regulations, and administrative interpretations established by the South Carolina Department of Consumer Affairs with regard to the charging of a closing fee in motor vehicle sales and lease transactions. Hendrick Honda of Easley has established and maintained compliance procedures which are reasonably adapted to avoid any violation of the law. To the extent any violation occurred, it was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. Plaintiff's claims are thus barred by the provisions of S.C. Code § 37-5-202(7).

FOR A NINTH DEFENSE

(Filed Rate Doctrine)

61. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

62. Pursuant to the 2001 Administrative Interpretation, Hendrick Honda of Easley, at all relevant times, has been required to and has filed and registered its closing fee with the South

Carolina Department of Consumer Affairs, which is vested with authority to regulate the charging of closing fees by motor vehicle dealers and to determine what amount of closing fee is just and reasonable. The South Carolina Department of Consumer Affairs has accepted and approved the amount of the closing fees filed and registered by Hendrick Honda of Easley. Hendrick Honda of Easley has never exceeded the amount of the closing fee filed, registered, accepted, and approved by the South Carolina Department of Consumer Affairs. Thus, Plaintiff's claims are barred by the Filed Rate Doctrine as adopted by the South Carolina Supreme Court in *Edge v. State Farm Mutual Insurance Company*, 366 S.C. 511, 623 S.E.2d 387 (2005) and its progeny.

FOR A TENTH DEFENSE
(Estoppel by Silence/ Consent)

63. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

64. Plaintiff's claims are barred by the doctrine of estoppel by silence. Plaintiff had a duty to inform Hendrick Honda of Easley of her objections to paying closing fees at the time of her vehicle closings.

65. Plaintiff voluntarily and intentionally relinquished her rights to object to the charging of a closing fee because her actions and conduct during the vehicle closings are inconsistent with her allegations in the Complaint.

66. Plaintiff's claims are further barred by the doctrine of consent because they consented to pay the closing fees after being informed of the fees prior to the vehicle closings. At no time prior to the filing of the Complaint did Plaintiff object to Hendrick Honda of Easley charging closing fees.

FOR AN ELEVENTH DEFENSE
(Equitable Defenses)

67. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

68. Plaintiff's claims are barred or limited by all other equitable doctrines available to Hendrick Honda of Easley, including, but not limited to, unclean hands, actual or implied waiver, setoff, consent, ratification, estoppel, unjust enrichment, and laches.

FOR A TWELFTH DEFENSE
(Voluntary Payment Doctrine)

69. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

70. Plaintiff knowingly and voluntarily paid the fee of which she now complains after it was conspicuously disclosed to her in writing on at least two documents signed by her. Plaintiff's claims are thus barred by the voluntary payment doctrine.

FOR A THIRTEENTH DEFENSE
(Injury Reasonably Avoidable)

71. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

72. Plaintiff's alleged injury was reasonably avoidable by them, in that they were aware of the closing fee and had the option of not purchasing the vehicle and paying the closing fee. Thus, Plaintiff's claims under S.C. Code Ann. § 56-15-110 are barred.

FOR A FOURTEENTH DEFENSE
(Statutes of Limitation)

73. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

74. Plaintiff's claims are barred, in whole or in part, by any applicable statutes of limitation.

FOR A FIFTEENTH DEFENSE
(Failure to Mitigate Damages)

75. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

76. To the extent that Plaintiff's claims sound in contract, Plaintiff has failed to take actions which may have mitigated or reduced her damages, and thus any recovery from Hendrick Honda of Easley is barred in whole or in part.

FOR A SIXTEENTH DEFENSE
(Failure to State a Claim)

77. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

78. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A SEVENTEENTH DEFENSE
(Sole Fault)

79. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

80. To the extent Plaintiff's claims sound in tort law or the law of negligence, Plaintiff's claims are barred because her own actions make her solely responsible for any damages she allegedly has suffered.

FOR AN EIGHTEENTH DEFENSE
(Comparative Negligence)

81. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

82. To the extent Plaintiff's claims sound in tort law or the law of negligence, Plaintiff's claims are barred by the doctrine of comparative negligence because Plaintiff's negligence exceeds any alleged negligence by Hendrick Honda of Easley.

FOR A NINETEENTH DEFENSE
(Statutory or Punitive Damages Unconstitutional in this Case)

83. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

84. An award of statutory or punitive damages in this case would violate the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution.

FOR A TWENTIETH DEFENSE
(Unconstitutionality of the Closing Fee Statute as Applied)

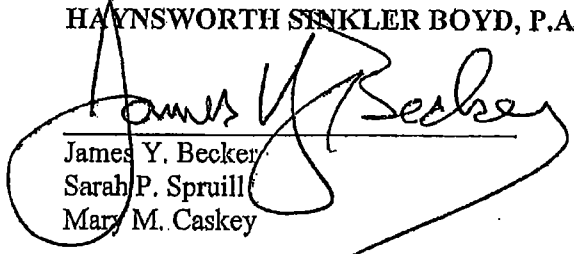
85. Each and every allegation of the preceding paragraphs is hereby re-alleged and restated as if fully set forth herein.

86. The Closing Fee Statute, as applied in this case, violates the due process requirements of the federal and state constitutions, because the statute is vague and does not give fair and adequate notice that the amount of the fee is limited to an amount less than the amount that is registered or filed with the South Carolina Department of Consumer Affairs.

WHEREFORE, having fully answered Plaintiff's Third Amended Complaint, Hendrick Honda of Easley prays that the Court deny all relief and remedies requested by Plaintiff, enter a judgment in favor of Hendrick Honda of Easley, and dismiss the Complaint with prejudice. To

the extent that any declaratory judgment is issued, Hendrick Honda of Easley requests that the Court declare its actions are proper and not in violation of any applicable law. Hendrick Honda of Easley further prays that the Court award such other and further relief to Hendrick Honda of Easley as the Court may deem just and proper, including attorney's fees and costs that may be allowed by statute, contract, or court rule.

HAYNSWORTH SINKLER BOYD, P.A.



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SEPTEMBER
February 11, 2013

Attorneys for J.L.H. Investments, LP, d/b/a
Hendrick Honda of Easley

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

Case No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiffs,

v.

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

Defendants.

**DEFENDANTS'¹ STATUS CONFERENCE MEMORANDUM
OUTLINING PROCEDURAL POSTURE OF CASE
AND BACKGROUND INFORMATION ON LAW AND FACTS**

A. PROCEDURAL POSTURE

This case, at its core, is about the ability of automobile dealers in South Carolina to fairly charge closing fees to customers to assist them in purchasing automobiles. The concept of closing fees is not a new one. In fact, the South Carolina Supreme Court and State Legislature have approved the fees. Plaintiffs in this lawsuit challenge the charging of a "closing fee" by automobile dealerships, a type of fee which the South Carolina Legislature explicitly authorized by statute in 2000,² and which was previously upheld in two South Carolina appellate cases.³

¹ This memorandum is presented by Steven W. Hamm and the firm of Richardson, Plowden, Carpenter & Robinson, P.A. as Defendants' coordinating counsel. Mr. Hamm and his firm were selected and retained in this capacity by the South Carolina Automobile Dealers Association. Mr. Hamm and his firm represent some, but not all, of the Defendant dealerships which have been served to date in this action.

² S.C. Code Ann. § 37-2-307 (2002), *see* discussion *infra* Part B.2.

³ Other plaintiffs in previous cases have unsuccessfully challenged the legitimacy of closing fees in three lawsuits brought since the early 1990s before the enactment of the present statute authorizing the charging of closing fees. In two of those cases, the circuit court explicitly rejected the plaintiffs' claims that the closing fee constituted an unfair or deceptive act. *See* discussion *infra* at attached Exhibit A.

Plaintiffs filed their original Summons and Complaint August 29, 2006, in which four plaintiffs brought actions against fifty-one defendant motor vehicle dealerships located in thirteen counties. In the First Amended Complaint dated October 28, 2006, eight plaintiffs bring actions against 324 dealerships in forty-one counties. Each of the named Plaintiffs alleges he or she purchased a vehicle from a single, particular dealership. An estimated sixty dealerships have since been voluntarily dismissed from this lawsuit, primarily because they either do not charge a fee or charge a low fee such as \$25.

Plaintiffs' Complaint essentially creates a "mass action" which completely ignores the elemental legal requirements of standing, joinder, and Rule 23 relating to class actions, and which poses monumental manageability problems for the Court and the litigants. As currently pled, this lawsuit appears to encompass at least 700,000 vehicle transactions involving hundred of dealers and different transaction documents, many including provisions for arbitration of disputes. Simply serving the Defendants in the case has taken months, and all of the Defendants have not yet been served. Even though numerous Defendant dealerships have elected to employ common counsel, no single law firm could even begin to represent all of the defendant Dealerships, and more than a dozen different law firms now represent the various Defendant dealerships. With so many litigants and so many counsel, scheduling and conducting discovery in this case in its current posture will be virtually impossible.

Most Defendants have not filed an Answer, but instead have filed motions to dismiss for lack of standing, improper joinder or severance, improper venue and other grounds. Plaintiffs and some Defendants have filed a motion to designate this case as complex and assign it to a single judge. A listing of the various motions filed by the various Defendants are provided in

Exhibit B attached hereto. Defendants plan to present memoranda in support of the various motions before they are heard by the Court.

Plaintiffs have served a first set of interrogatories and requests for production and a second set of requests for production. Plaintiffs also have served notices of deposition pursuant to Rule 30(b)(6), SCRCF, on ten dealerships. Most Defendants have filed motions for a protective order regarding discovery. Defendants have not responded to discovery requests or produced witnesses in light of their motions for a protective order and in light of a joint motion to quash the notices of deposition, among other reasons.

It is Defendants' understanding that the purpose of the status conference on January 12, 2007, is to discuss a method for the orderly resolution of the various pending motions. Defendants submit this background memorandum briefly outlining relevant law and facts for the benefit of the Court. For reasons discussed herein, Defendants recommend that the Court address all Defendants' motion for protective order and then the motions to dismiss for lack of standing before proceeding to any other issues or ruling on any other motions. See attached Exhibit B.

B. BACKGROUND INFORMATION ON LAW AND FACTS

The sale of an automobile is a document intensive and time-consuming process. Typically, the process begins with a worksheet or a buyer's order where certain essential terms including the price are negotiated. If financing is involved, a credit application is necessary. Considerable time may be spent conducting a credit investigation and submitting information about the customer and the transaction to various lenders for approval.

Once financing is secured, the process resumes with the preparation of a retail installment contract and perhaps other documents reflecting additional financial products purchased in

connection with the vehicle. Additional documents are required by the Department of Motor Vehicles to perfect the lender's security interest and to register the vehicle in the customer's name. If the transaction involves a trade-in, one or more liens may require satisfaction, perhaps in distant states. Documentation of the transaction must be submitted to the vehicle manufacturer's warranty division in appropriate cases. Finally, title to the trade in vehicle must be properly transferred.

A closing fee is a charge by which dealers recoup all or part of the costs obtaining, preparing and delivering numerous documents related to the sale of a vehicle on behalf of or as required by the buyer, the seller, the Department of Motor Vehicles in South Carolina and similar agencies in other states, lenders, insurance companies, and automobile manufacturers' warranty divisions.

(1) The Complaint

The Plaintiffs named in the First Amended Complaint, the Defendant dealerships with whom they transacted business, and the county in which the Defendant dealerships are located are set forth in the table below:

Named Plaintiff	Associated Defendant	County
Heather Herron	Land Rover of Columbia	Richland
Natalie Armstrong	Galeana Chrysler-Jeep, Inc.,	Richland
Alison Darnert	Carmax Auto Superstores, Inc.	Greenville
Michael Ritz	Taylor Investments, Inc. d/b/a Taylor Toyota, Inc.	Aiken
Julie Freeman	Rick Hendrick Honda Cars Co.	Richland
Christine Watts	Sonic Automotive, Inc. d/b/a Century BMW	Greenville
Michael Blease	Dick Dyer and Associates, Inc.	Richland
Michael Watts	Toyota of Greenville, Inc.	Greenville

(Complaint ¶¶ 374-389.)

Plaintiffs allege they "are suing for the benefit of all South Carolina car buyers who paid administrative fees to Defendants and against all motor vehicle dealers owned or controlled by Defendants as defined in S.C. Code Ann. § 56-15-10(h)."⁴ (Complaint ¶ 398.) Plaintiffs purport to represent all persons who "paid 'administrative fees' (often referred to as an 'administrative fee,' a 'recording and processing fee,' 'closing fee,' 'dealer documentation and closing fee')" in connection with the purchase of a vehicle during the four years preceding the filing of the lawsuit. (Complaint p.8.)

Plaintiffs assert three causes of action in the First Amended Complaint:

First, Plaintiffs assert Defendants have violated the South Carolina Regulation of Manufacturers, Distributors and Dealers Act (the Dealers Act) contained in Chapter 15 of Title 56 of the South Carolina Code of Laws (S.C. Code Ann. §§ 56-15-10 to -600 (2006)). Plaintiffs allege that Defendants' "deceptive use of 'administrative fees' is arbitrary, in bad faith and unconscionable" and thus in violation of the Dealers Act. Plaintiffs wish to recover damages for all buyers who paid administrative fees to the Defendants during the four years preceding the date of the lawsuit. Plaintiffs seek to recover their alleged actual damages, which if awarded would be doubled under the Dealers Act, plus attorney's fees and court costs. In addition, Plaintiffs allege Defendants have acted "maliciously" and they seek punitive damages equal to three times the amount of actual damages pursuant to the Dealers Act. (Complaint ¶¶ 391-401.)

Second, Plaintiffs allege Defendants have engaged in a "civil conspiracy" by conspiring "together in a common scheme designed to deceive all car buyers by all engaging in a common

⁴ Section 56-15-10(h) defines a "motor vehicle dealer" as "any person who sells or attempts to effect the sale of any motor vehicle." The definition excludes distributors, wholesalers, receivers or others acting under a court order, persons selling vehicles acquired for
continued . . .

practice of presenting/advertising car prices in a misleading manner by charging 'administrative fees.'" Plaintiffs claim they have suffered special damages as a result of Defendants' conspiracy. (Complaint ¶¶ 402-406.)

Finally, Plaintiffs ask the Court to declare "their rights and legal relations with Defendants" pursuant to the Dealers Act and § 37-2-307, the statute which regulates administrative fees. Plaintiffs want the Court to declare whether Defendants' charging of an administrative fee violates either the Dealers Act or § 37-2-307. Plaintiffs also want the Court to issue a permanent injunction prohibiting Defendants from advertising or charging future customers an administrative fee in violation of either the Dealers Act or § 37-2-307. Plaintiffs seek a court order requiring Defendants to disgorge or refund all fees wrongfully collected from past car buyers. (Complaint ¶¶ 406-411.)

(2) The closing fee statute and administrative interpretation

South Carolina Code Ann. § 37-2-307 (2002) (the "closing fee statute") provides:

Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

Section 37-2-307 requires a dealer to take four steps in order to comply with the statute. First, the dealer must pay an annual fee of \$10 and file a form establishing the amount of the closing or administrative fee with the Department of Consumer Affairs. Second, the dealer must include the fee in the advertised price of the motor vehicle. Third, the fee must be disclosed on

their own use (unless the person sells more than five vehicles each year), and lenders or insurance companies which sell repossessed vehicles.

the sales contract.⁵ And finally, the existence and amount of the fee must be displayed in a conspicuous location at the dealership.

In 2001, the South Carolina Department of Consumer Affairs issued Administrative Interpretation 2.307-0101 concerning fees identified as a "closing," "documentation," "administrative," "processing," or "procurement" fee. The interpretation states that "[p]reviously, there had been some question concerning the propriety of charging such fees." The interpretation states that the dealer should file or register the disclosure it seeks to use and provides a form for disclosure. While the form is not required, dealers are "deemed compliant if the form is properly filled out" and submitted to the Department.

Significantly, the interpretation states that "[f]orms considered to be deceptive or to misstate the law will be rejected by the Department." The form of notice provided in the interpretation describes the fee as "a means of reimbursing it for certain overhead costs such as document retrieval and document preparation. It is a charge that is permitted but not required by law. . . . The closing fee will not exceed \$ _____ prior to July, ____."

A copy of the administrative interpretation is attached as Exhibit C.

(3) The Dealers Act

A review of the Regulation of Manufacturers, Distributors and Dealers Act shows it primarily was designed to regulate the relationship between local automobile dealers and automobile manufacturers and distributors. Such acts are sometimes referred to as "Dealer's Day In Court" Acts because legislatures enacted them to prevent larger, more powerful manufacturers and distributors from employing abusive tactics and practices which would harm local dealerships. However, the Dealers Act also prohibits motor vehicle dealers, as well as

⁵ A significant question exists as to how a dealership can simultaneously comply with the second and third continued . . .

manufacturers and distributors, from using unfair or deceptive practices to sell vehicles to consumers.

The Dealers Act provides that "[u]nfair methods of competition and unfair or deceptive acts or practices as defined in Section 56-15-40 are hereby declared to be unlawful." S.C. Code Ann. § 56-15-30(a) (2006). The Dealers Act provides that it is a violation "for any . . . motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public." S.C. Code Ann. § 56-15-40(1) (2006).

The Dealers Act does not specifically address closing fees. The Act lists several specific acts or practices which are explicitly prohibited because they are viewed as unfair or deceptive: to require a buyer to purchase special features or equipment which the buyer does not want (except when the special feature or equipment already is installed on the car when it is received by the dealer); to sell a used or demonstration vehicle as a new vehicle; or to use any false or misleading advertisements.

The Dealers Act provides that any person who is injured or damaged by an unfair or deceptive act or practice may bring a lawsuit to recover "double the actual damages by him sustained, and the cost of suit, including a reasonable attorney's fee." S.C. Code Ann. § 56-15-110(1) (2006). If a jury finds that a defendant acted "maliciously," the jury "may award punitive damages not to exceed three times the actual damages." Section 56-15-110(3). The Act does not define the term "maliciously."

One or more plaintiffs may bring a class action lawsuit on behalf of other persons who suffered similar damages as a result of violations of the Act. Section 56-15-110(2). However,

requirements.

nothing in the Dealers Act suggests that a plaintiff is relieved from the usual requirements of standing individually or as a class representative, or the usual requirements contained in Rule 23, SCRCF, pertaining to class actions. A plaintiff must bring a lawsuit within four years after he has a right to do so, i.e., within four years after the alleged violation of the Dealers Act occurred. S.C. Code Ann. § 56-15-120 (2006).

(4) Past cases involving closing fees

Three reported cases in South Carolina have involved the issue of closing fees in motor vehicle sales transactions to consumers. All were brought or decided before the Legislature enacted the statute authorizing closing fees in 2000. However, these cases are relevant to the issues before this Court and are briefly outlined in Exhibit A attached to this Memorandum.

C. DEFENDANTS' SUGGESTIONS TO THE COURT

Defendants suggest the following method for moving forward with the case: (1) schedule a number of dates on which the motions will be heard; (2) establish a briefing schedule for each motion; and (3) hold all discovery in abeyance until the motions are decided.

Defendants suggest that the motion for a protective order be addressed first in order to protect confidential documents pending the Court's determination of which parties ultimately remain in this litigation. Because the named Plaintiffs have not done business with 97% of the Defendants, Plaintiffs lack standing to bring this action against all Defendants since Plaintiffs allege that they purchased motor vehicles only at certain specific dealerships. The ruling on this motion could significantly reduce the number of Defendants in the case and streamline the case as it moves forward.

Plaintiffs' claims and causes of action against the various Defendants DO NOT ARISE out of the same transaction, DO NOT ARISE out of the same occurrence, DO NOT ARISE out

of the same series of transactions or occurrences, and DO NOT INVOLVE common questions of law or fact. Defendants suggest that the motions for improper joinder and change of venue should, therefore, be addressed next.

These are all procedural issues. Judicial economy suggests that the parties involved in the case should be clearly defined and it should be established whether the Defendants are properly joined together before other matters in the case are heard.

The motion for complex case designation should be heard following the jurisdictional issues. Once the issue of complex case designation has been determined, the remaining motion can be set before the appropriate decision maker.

Approximately three hundred twenty-four South Carolina car dealers, employing thousands of South Carolina families find themselves in a "Catch 22". The Judicial and Legislative branches have said it is appropriate to charge a closing fee, but now the dealers face expensive, back breaking litigation miles from home, sued by people with whom 97% of them never did business. The purpose of this status conference is to seek guidance in dealing with this dilemma.

Respectfully submitted, this __ day of January 2007.

**RICHARDSON, PLOWDEN, CARPENTER
& ROBINSON, P.A.**



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COLUMBIA, SOUTH CAROLINA

Exhibit A

R.000246

EXHIBIT A

Discussion of South Carolina Cases Involving Closing Fees

This memorandum briefly outlines the three reported cases in South Carolina which implicate closing fees, all of which were brought or decided before the enactment of South Carolina Code Ann. § 37-2-307 (2002), which explicitly authorizes the charging of closing fees.

The first reported case in South Carolina implicating closing fees is Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 404 S.E.2d 200 (1991). In this case, a single plaintiff attempted to bring a class action lawsuit against a single dealership in Kershaw County,¹ alleging that a \$99.50 charge identified as a "closing fee" on the sales contract constituted an unfair or deceptive practice pursuant to S.C. Code Ann. 56-15-30 (2006), a provision of the Regulation of Manufacturers, Distributors and Dealers Act (Dealers Act). The trial court held the plaintiff had satisfied all requirements of Rule 23, SCRCP, except the "amount in controversy" requirement.

The only issue addressed by the Supreme Court was whether the fee met the "amount in controversy" requirement of Rule 23(a)(5), SCRCP. This rule requires each class member's claim to exceed \$100. The Supreme Court held the requirement was met because a prevailing plaintiff is entitled to double his actual damages pursuant to S.C. Code Ann. § 56-15-110 of the Dealers Act. Thus, the amount awarded to a prevailing plaintiff in this instance would be \$199, satisfying the requirement. The Court further held that attorney's fees and punitive damages would not be considered in calculating the amount in controversy. The Court remanded the cases for further proceedings. Gardner, 304 S.C. at 330-31, 404 S.E.2d at 201-02. It is Defendants' understanding, upon information and belief, that the case later was settled for a nominal amount.

¹ The Gardner appeal was consolidated with a related case raising the same issue, which was brought by the same lawyers, but involved a different single plaintiff suing a different single dealership (Newsome Toyota, Inc. of Kershaw County).

Five years later, the Supreme Court issued its second opinion in which closing fees were an issue. In Fanning v. Fritz's Pontiac Cadillac Buick, Inc., 322 S.C. 399, 472 S.E.2d 242 (1996), the plaintiff in a class action filed against a single Newberry dealer alleged the dealer violated the state Consumer Protection Code by charging an \$87 "procurement fee."² The plaintiff alleged the fee was an illegal "additional charge" and that it was unconscionable. The Supreme Court affirmed the trial court's ruling that the fee was permissible under the Consumer Protection Code, finding it to be "an element of the negotiated cash price of the vehicle" which was charged to cash and credit buyers alike. Fanning, 322 S.C. at 402, 472 S.E.2d at 244. The Court noted that "to accept the [plaintiff's] contention that the only permissible inclusions to 'cash price' are those specifically enumerated in § 37-2-110 would prevent car dealers, and other merchants, from including expenses, overhead, profit, etc., [in the] total cash price. This would produce an illogical result, not intended by the [Consumer Protection Code]." Id. at 403 n.6, 472 S.E.2d at 245 n.6. "[C]ash and credit customers alike are free to negotiate" the procurement fee. Id. at 404, 472 S.E.2d at 245.

The Fanning Court further held that the procurement fee was not unconscionable, i.e., there was no evidence the transaction entailed "the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them." Id. at 403, 472 S.E.2d at 245. The Court explicitly did not express an opinion on the plaintiff's claims of fraud, misrepresentation, and unfair trade practices related to the procurement fee, which remained pending in circuit court. Id. at 404 n.8, 472 S.E.2d at 245 n.8.

² Fritz Waidner, chief executive officer of the defendant dealership in Fanning, stated in an affidavit filed March 24, 1992, in circuit court that "[t]his fee was used to receive the tags from the Highway Department, and for title, odometer, and registration administration, as well as travel to and from Columbia to Newberry."

Following the Supreme Court's opinion in Fanning, both parties moved for summary judgment in circuit court on the issue of whether the disclosure and imposition of the procurement fee constituted an unfair or deceptive act in violation of §§ 56-15-30(a) and 56-15-40(1) of the Dealers Act. (Plaintiff's Motion for Summary Judgment filed March 20, 1998, in Fanning v. Fritz's Pontiac-Cadillac-Buick et al., C.A. No. 90-CP-40-3555; Defendant Fritz's Cross Motion for Summary Judgment filed April 20, 1998.) The Honorable L. Henry McKellar by order filed October 14, 1998, granted the defendant dealership's motion for summary judgment. Judge McKellar ruled that the procurement fee, a component of the cash price of the vehicle, was properly and fully disclosed to the plaintiffs. The circuit court further ruled that the defendant dealer's conduct surrounding the charging of the procurement fee was not arbitrary, in bad faith or unconscionable, and thus there was no violation of the Dealers Act. (Order of Judge McKellar at pp. 3-8).

The plaintiffs in Fanning also sued the bank which financed their vehicle purchase, alleging the dealership and bank had conspired to conceal the procurement fee by not including it on disclosure forms submitted to the bank. After the Supreme Court issued its opinion, the plaintiffs settled the class action lawsuit against the defendant bank for \$25,000, with about one-third paid to the plaintiffs' attorneys and each class member expected to receive about \$52. (Order of the Honorable J. Derham Cole filed March 18, 1998.)

Six years after Fanning, the Supreme Court issued its opinion in Ferguson v. Charleston Lincoln Mercury, 349 S.C. 558, 564 S.E.2d 94 (2002).³ In that case, the plaintiff in a purported class action lawsuit alleged the dealer committed an unfair or deceptive act by charging a \$189.50 "closing fee" in a used car sale. The Honorable R. Markley Dennis, Jr., ruled that the

³ The Court of Appeals' opinion is reported at Ferguson v. Charleston Lincoln-Mercury, Inc. 344 S.C. 502, 544 S.E.2d 285 (Ct. App. 2001).

charging of the closing fee was not unfair or deceptive act, and the defendant dealer had a reasonable basis for charging the fee. Judge Dennis granted summary judgment to the dealer on that ground. (Orders of Judge Dennis filed January 11 and 15, 1999, in Ferguson v. Charleston Lincoln Mercury, Inc., C.A. No. 97-CP-10-2020).

Neither appellate court addressed the legitimacy of the closing fee. Id. at 561-62, 564 S.E.2d at 95-96. Instead, the appellate courts focused on whether the cause of action survived the death of the plaintiff, such that the plaintiff's wife should be able to step in as the named plaintiff and continue the litigation. The Supreme Court, affirming the Court of Appeals, held that a cause of action grounded in fraud and deceit does not survive the plaintiff's death under the general survivability statute; therefore the case was properly dismissed. The Supreme Court further held that the issue of whether the lower court erred in denying the plaintiff's motion for class certification was moot. Ferguson, 349 S.C. at 562-65, 564 S.E.2d at 96-98.

In short, none of the plaintiffs in the three reported cases who challenged the legitimacy of the closing fee prevailed either on appeal or after appeal. Circuit court judges in Fanning and Ferguson – in cases brought before the Legislature explicitly authorized the charging of closing fees in 2000 – rejected arguments that the imposition of a closing fee is an unlawful, unfair or deceptive act. Furthermore, the Supreme Court in Fanning indicated that a closing fee is a lawful component of the negotiated cash price of a vehicle.

Exhibit B

R.000251

EXHIBIT B

PENDING MOTIONS

Defendants respectfully suggest the Court consider the various motions in the following order:¹

- (1) **MOTION FOR A PROTECTIVE ORDER (Rule 26(c), SCRPC)**
- (2) **MOTIONS TO DISMISS (Rule 12(b)(6), SCRPC)**
- (3) **MOTION FOR COMPLEX CASE DESIGNATION FOR PRETRIAL PURPOSES ONLY**
- (4) **DISMISS SECOND CAUSE OF ACTION FOR CIVIL CONSPIRACY (Rule 12(b)(6), SCRPC)**
- (5) **DISMISS THIRD CAUSE OF ACTION FOR DECLARATORY JUDGMENT (Rule 12(b)(6), SCRPC)**
- (6) **DISMISS THE COMPLAINT AS TO ALL UNNAMED PLAINTIFFS FOR FAILURE TO MEET THE REQUIREMENTS OF S.C. CODE ANN. § 56-15-110(2) (2005) AND RULE 23, SCRPC**
- (7) **DISMISS BASED ON INSUFFICIENT PROCESS AND LACK OF PERSONAL JURISDICTION (Rules 12(b)(2), 12(b)(4) and 12(b)(5), SCRPC)**
- (8) **DISMISS ON THE GROUND THAT DEFENDANTS' CONDUCT IS AUTHORIZED BY LAW (Rule 12(b)(6), SCRPC)**
- (9) **STRIKE ALL "DEALERS DEFINED" LANGUAGE**
- (10) **MOTION FOR SEPARATE TRIALS - Rule 42, SCRPC**
- (11) **MOTION FOR COURT TO AWARD COSTS AND ATTORNEY FEES**

¹ Defendants plan to submit memoranda in support of the various motions before they are heard by the Court. While this memo outlines the most commonly filed motions, some Defendants have submitted other motions which apply only to a particular dealership.

Exhibit C

R.000253

June 7, 2001

Administrative Interpretation 2.307-0101

- ♦ The assessment of a "closing" or "documentation" fee (also occasionally denominated as an "administrative," "processing," or "procurement" fee) in a consumer credit sale of a motor vehicle is dependant on four factors: 1.) The dealer must pay the Department a registration fee each state fiscal year in the amount of ten (\$10.00) dollars prior to the assessment of a closing fee; 2.) The existence of a closing fee must be disclosed on the sales contract; 3.) The closing fee must be disclosed in a statement displayed in a conspicuous location in the motor vehicle dealership; and 4.) If the closing fee is charged, and the vehicle is advertised, the closing fee must be included in the advertised price. A dealership may use the attached form to make its filing with the Department. A closing fee may only be assessed once these factors are met and the dealership has in its possession a date stamped copy of its disclosure stamped by the Department. The charging of a "closing," "documentation," or similar fees in connection with a consumer credit sale of a motor vehicle in the absence of any of these requirements constitutes the charging of an excess charge for Consumer Protection Code purposes.

In Part II, Section 82 of the 2000-2001 General Appropriations Act, the General Assembly passed an amendment to the Consumer Protection Code to add § 37-2-307 which reads as follows:

Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership

Previously, there had been some question concerning the propriety of charging such fees. The Supreme Court, in the case of *Fanning v. Fritz's Pontiac-Cadillac-Bulck*, 322 S. C. 399, 472 S.E. 2d 242 (1996), clarified the issue somewhat by stating that based on the stipulated facts of that case (that the fees were charged to cash and credit customers alike, and that the fees were disclosed and subject to negotiation prior to the consumer being obligated to the contract), the dealership did not violate

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the Consumer Protection Code's provisions concerning excess charges [S.C. Code Ann. § 37-2-201 and -202] or unconscionability [S.C. Code Ann. § 37-5-108].

With Section 37-2-307 the General Assembly provided further clarification concerning whether and under what circumstances such fees may be charged. The section does not give an indication of the meaning of the term "motor vehicle dealer." For purposes of construing this section, the Department will assume the intended meaning of the term "motor vehicle dealer" will be the definition used elsewhere in the Code, at S.C. Code Ann. § 56-15-10(h).

As clearly indicated from the terminology of Section 37-2-307, from the effective date of that section (June 30, 2000), any dealer choosing to assess a closing or documentation fee must: 1.) File a registration fee of ten dollars (\$10.00) with the Department each state fiscal year prior to the assessment of a closing fee; 2.) Disclose the closing fee on its sales contract; 3.) Display in a conspicuous place in the dealership a statement that indicates the closing fee may be charged; and 4.) If the closing fee is charged, and the vehicle is advertised, the closing fee must be included in the advertised price so that consumers cannot be unfairly surprised by having the closing fee added on after the acceptance of an advertisement's terms. In the absence of any of these requirements, the charging of a closing or other similar fee is an excess charge for Consumer Protection Code purposes.

The section clearly contemplates that the registration fee must be charged in future fiscal years but is silent as to what date, if any, in the fiscal year might be deemed as a due date beyond which the filing is ineffective under the then existing statute. The only analogous statute of which the Department is aware requiring similar filings in a fiscal year are Sections 37-2-305(8) and -3-305(8), concerning the maximum rate schedule filing. Subsection 37-2-305(8) was amended by Section 6 of Act 142 of 1991 to specify that the deadline for filing maximum rate schedules was January 31 of each year, as subsection 37-3-305(8) for consumer loans had been previously amended pursuant to Section 3 of Act 119 of 1989. Previously, the subsection had not affirmatively stated a deadline but simply specified that the filings had to be made once each state fiscal year. The Department construed such filings to have lapsed as of July 1 of any year in which there had been no filing on any day during the previous State fiscal year (July 1 to June 30). The court of Appeals upheld this construction in *Bell Finance Co., Inc. v. S.C. Department of Consumer Affairs*, 297 S.C. 111, 374 S.E.2d 918 (1988). We construe Section 37-2-307 similarly to the versions of Sections 37-2-305 and -3-305 as they existed prior to the enactment of Act 142 of 1991.

While the section does not directly say so, the registration fee is referred to as a registration fee and not merely as a fee, with the apparent implication that the

Appendix B

**The South Carolina
Consumer Protection Code**

dealership seeking to charge closing fees should likewise file or register the disclosure it seeks to use. The attached disclosure may be used for this purpose. It is not required that the dealers use the attached form, but if they do, they will be deemed compliant if the form is properly filled out. Forms considered to be deceptive or to misstate the law will be rejected by the Department.

The section does not specify the content of the disclosure other than to indicate that it must be displayed in a conspicuous place. Regarding this conspicuousness requirement, the word "conspicuous" is defined in Section 37-1-301(9) as follows: "'Conspicuous' means a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term is conspicuous or not is for decision by the Court." Thus, the disclosure should be displayed in order to ensure that the consumer has an opportunity to see it prior to making a purchasing or financing decision.

The Supreme Court specifically indicated in its holding in *Fanning* that it did not imply such fees might not be actionable under other applicable law. 322 S.C. at 404, 472 S.E.2d at 245, N.8. Likewise, the General Assembly did not further clarify the issue other than to indicate the fees might be legally charged for Consumer Protection Code purposes if the requisite filing and disclosures are made. The Department is aware of nothing in the General Assembly's enactment that legitimizes a closing fee or any fee or charge if it is assessed through fraud or misrepresentation.

NOTICE- CLOSING FEES

THIS DEALERSHIP CHARGES CLOSING FEES AS A MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION. IT IS A CHARGE THAT IS PERMITTED BUT NOT REQUIRED BY LAW. THE FULL CASH PRICE CHARGED AT ANY DEALERSHIP DEPENDS ON MANY FACTORS, INCLUDING ALL PRODUCTS AND SERVICES BOUGHT WITH THE VEHICLE.

THE CLOSING FEE CHARGED BY

DEALER NAME
DEALER ADDRESS
CITY, S.C. ZIP CODE

WILL NOT EXCEED \$ _____
PRIOR TO July 2, 1991

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Heather Herron, Natalie Armstrong,
Alison Dannert, Michael Ritz, Julie Freeman,
Christine Watts, Michael Blease, Michael
Watts, Individually And For The Benefit Of All
Car Buyers Whom Paid "Administrative Fees"
As Described Below To Defendants,

Plaintiffs,

vs.

Defendant CarMax Auto Superstores, Inc.,
et al.

Defendants.

) IN THE COURT OF COMMON PLEAS
)
) FOR THE SECOND JUDICIAL CIRCUIT
)

) Civil Action No.: 06-CP-02-1230
)

) **PLAINTIFFS' MOTION UNOPPOSED**
) **BY CARMAX TO CERTIFY CLASS FOR**
) **SETTLEMENT PURPOSES ONLY AND**
) **FOR PRELIMINARY APPROVAL OF**
) **SETTLEMENT AGREEMENT**
)

COPY
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MAR 2 9 2007
8:30 Am
AIKEN COUNTY
CLERK OF COURT

Alison Dannert, Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease and Michael Watts, individually and for the benefit of all car buyers whom paid administrative fees to CarMax Auto Superstore, Inc. ("CarMax") as described in the Complaint and Amended Complaint, by and with the consent of CarMax, hereby move the Court pursuant to Rules 41(a)(2) and 23(c) of the South Carolina Rules of Civil Procedure for an Order preliminarily approving the parties' stipulated Settlement Agreement, attached hereto and incorporated as Exhibit "A," and preliminarily certifying a plaintiff class for settlement purposes only in accordance with the accompanying Order.

Respectfully submitted,



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**ATTORNEYS FOR NAMED PLAINTIFFS
AND SETTLING PLAINTIFFS**

CERTIFICATE OF SERVICE

I, Melanie B. Blease, Paralegal for the law firm of Lewis & Babcock, L.L.P., hereby certify that I have served a copy of **Motion Unopposed by Carmax to Certify Class for Settlement Purposes only and for Preliminary Approval of Settlement Agreement** upon opposing counsel and/or their registered agents, by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said parties at the following address:

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COPY
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MAR 29 2007
8:30 AM
AIKEN COUNTY
CLERK OF COURT

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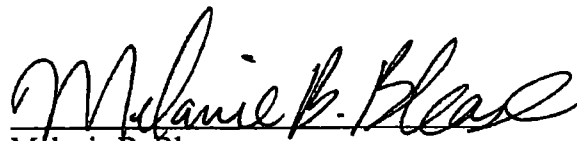
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Melanie B. Blease

March 26, 2007
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Heather Herron, Natalie Armstrong,	)	
Alison Dannert, Michael Ritz, Julie Freeman,	)	Civil Action No.: 06-CP-02-1230
Christine Watts, Michael Blease, Michael	)	
Watts, Individually And For The Benefit Of All	)	
Car Buyers Whom Paid "Administrative Fees"	)	
As Described Below To Defendants,	)	
	)	CLASS ACTION
	)	SETTLEMENT AGREEMENT
Plaintiffs,	)	
	)	
vs.	)	
	)	
CarMax Auto Superstores, Inc., <i>et al.</i> ,	)	
	)	
Defendants.	)	

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MAR 29 2007
3:30 AM
AIKEN COUNTY
CLERK OF COURT

This Class Action Settlement Agreement ("Settlement Agreement" or "Agreement") is entered into this the 26 day of March, 2007, by and between CarMax Auto Superstores, Inc. ("CarMax"), on the one hand, and Heather Herron, Natalie Armstrong, Alison Dannert, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease and Michael Watts ("Named Plaintiffs") individually and for the benefit of all car buyers who paid "administrative fees" as defined herein to CarMax ("Plaintiffs"), on the other hand (together, the "Parties"):

RECITALS

WHEREAS, the above-captioned action (the "Action") was brought by Heather Herron, Natalie Armstrong, Alison Dannert, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease and Michael Watts individually and for the benefit of all car buyers who paid administrative fees as defined herein to CarMax and other Defendants, alleging, among other things, that the manner in which CarMax charged administrative fees in connection with the sale of motor vehicles was unlawful; and

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WHEREAS, CarMax has vigorously denied and continues to vigorously deny all of the aforementioned claims and, denies that it acted improperly or wrongfully in any way; and

WHEREAS, the Parties to this Settlement Agreement have conducted a thorough examination and investigation of the facts and law relating to the matters set forth in the complaints filed in this Action and the claims set forth therein; and

WHEREAS, the Parties to this Settlement Agreement have concluded that they desire to settle the Action to avoid the uncertainties and risks of trial, to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the covenants, releases, orders and judgments contemplated by this Settlement Agreement to resolve finally the matters settled herein; and

WHEREAS, the Plaintiffs have determined that it is in the best interests of themselves and the putative class to settle and terminate this litigation as to CarMax, and they have agreed to the settlement described in this Agreement, subject to the approval of the Court; and

WHEREAS, arm's length, adversarial settlement negotiations have taken place between counsel for the Parties hereto over an extended period and, as a result, a fair, reasonable and adequate Settlement Agreement with respect to the interests of the Plaintiffs has been reached, subject to Court approval; and

WHEREAS, Plaintiffs will file a motion to certify the Settlement Class as defined herein for purposes of settling with CarMax and to obtain preliminary approval of this Settlement Agreement, and CarMax, without waiving its right to contest class certification if the Action were to be litigated, consents to the conditional certification of a class of persons for the purposes of this Settlement Agreement; and

WHEREAS, the Parties to this Settlement Agreement agree it should be approved by the Court pursuant to Rules 41(a)(2) and 23(c) of the South Carolina Rules of Civil Procedure and

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by signing this Settlement Agreement, Named Plaintiff Alison Dannert agrees not to opt out of the Plaintiffs' Settlement Class, and the Parties and their respective counsel agree not to object to approval of the Settlement Agreement;

NOW, THEREFORE, in consideration of the promises and representations, covenants and releases contained herein and for other good and valuable consideration, the receipt and sufficiency of which the Parties now acknowledge, the undersigned Parties stipulate and agree that all claims of the Plaintiffs and Settlement Class Members (defined below as "Plaintiffs' Claims" and "Class Claims") against CarMax shall be finally settled, discharged, and resolved on the terms and conditions set forth below.

AGREEMENT

It is hereby stipulated by and between the Parties hereto that the Action will be and is hereby compromised and settled subject to Court approval, upon and subject to the following terms and conditions:

1. **DEFINITIONS.** As used in this Settlement Agreement and in the Notice, the following terms shall have the defined meanings set forth below. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

1.1 "Action" or "Lawsuit" means the lawsuit styled: *Heather Herron, Natalie Armstrong, Alison Dannert, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease, Michael Watts, individually and for the benefit of all Car Buyers Whom Paid 'Administrative Fees' as described below to Defendants v. CarMax Auto Superstores, Inc. et al.*, bearing Case No. 06-CP-02-1230, and pending in the Court of Common Pleas, Aiken County, South Carolina, and assigned to The Honorable Doyet A. Early, III.

1.2 "Administrative Fee" as used herein is synonymous with the term(s) "closing fee," "processing fee," "documentary preparation fee," "documentation fee," "document fee,"

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"document closing preparation fee," "recording and processing fee," "dealer documentation/processing fee," and the like, which means the fee or fees described as administrative fees in the Complaint in the Action charged by CarMax to consumers in connection with the purchase of a motor vehicle from CarMax.

1.3 "Agreement" and "Settlement Agreement" mean this Settlement Agreement and the terms and conditions herein.

1.4 "Aggregate Claim Fund: means the sum total of \$50 times the total number of vehicles sold whereby the customer paid a \$99.00 administrative fee to a CarMax store in South Carolina from August 28, 2002 through March 30, 2005 plus \$75 times the total number of vehicles sold whereby the customer paid \$149.00 administrative fee to a CarMax store in South Carolina from March 31, 2005 through March 21, 2007. CarMax will make available the monies in the Aggregate Claim Fund for payment of Cash Claim Forms that are properly and timely presented.

1.5 "Business Day" means those days which are considered business days under the South Carolina Rules of Civil Procedure and shall exclude weekend days and all court holidays.

1.6 "CarMax" means CarMax Auto Superstores, Inc., a Virginia corporation doing business in South Carolina, a named Defendant in the Action as well as all predecessors, successors and assigns.

1.7 "Cash Claim Period" means the time period during which the Settlement Administrator may receive "Cash Claim Forms" from Class Members who wish to receive a "Cash Settlement," such period commencing forty-five (45) days after the Effective Date, as defined herein, and terminating forty-five (45) days thereafter, the date on which all completed Cash Claim Forms must be postmarked or otherwise received by the Settlement Administrator.

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1.8 "Cash Claim Submission" means the procedure that Class Members must complete to receive the Cash Settlement portion of the Settlement.

1.9 "Certificate Redemption Period(s)" means the time periods during which the Class Members may redeem their "Settlement Certificates."

1.9.1 If used as a credit in the face amount of the Certificate to reduce the cost a motor vehicle purchased from CarMax, a coupon may be redeemed for a period of exactly six (6) years from the Issuance Date.

1.9.2 If used as a credit in the face amount of the Certificate to reduce the cost of a 30,000 or 60,000 mile service purchased from CarMax, a coupon may be redeemed for a period of exactly three (3) years from the Issuance Date.

1.10 "Class" and "Settlement Class" means the class to be certified in the Action pursuant to the Settlement Agreement, defined as:

All persons or entities (1) who purchased a motor vehicle (2) from CarMax's Columbia and/or Greenville, South Carolina store(s), (3) who paid a \$99.00 administrative fee and/or a \$149.00 administrative fee (4) during the Class Period.

1.11 "Class Claims" means all causes of action and forms of relief asserted in this Action against CarMax, and those which could have been asserted in this Action against CarMax, inclusive of all claims in the form and type as those released herein below by Named Plaintiff Alison Dannert individually and on behalf of the Class Members. This release is in the nature of a "Covenant Not to Sue" and does in no way release other joint tortfeasors named or un-named or other co-defendants, whether named or un-named.

1.12 "Class Counsel" means Michael E. Spears of Michael Spears, P.A.; Gedney M. Howe, III of Gedney M. Howe, III, P.A.; Richard A. Harpootlian of Richard A. Harpootlian, P.A.; and A. Camden Lewis and Brady R. Thomas of Lewis & Babcock, L.L.P.

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1.13 "Class Members" means all persons or entities within the Settlement Class who do not elect to exclude themselves from ("opt out of") the Class as provided for under the terms of this Agreement.

1.14 "Class Period" means August 28, 2002 through March 21, 2007.

1.15 "Court" means the Court of Common Pleas, Aiken County, South Carolina, The Honorable A. Doyet Early III, Presiding.

1.16 "Discharged Parties" means CarMax, including its successors, current and former parent(s), subsidiaries, affiliates, instrumentalities, agents, assignors, assignees, transfers, transferees, and their present and former directors, officers, employees, agents, servants, loaned agents, loaned servants, servicers and servicing agents, attorneys, insurers and any person, firm, corporation or other entity of any type or description for whose acts or omissions the Discharged Parties may be held liable.

1.17 "Effective Date" means:

(a) If no appeal is taken from the Final Order, the date five (5) days after the time for appeal of the Final Order has expired; or

(b) If appeal is taken from the Final Order on any issue, the date five (5) days after all such appeals have concluded and the case has been remitted to the Circuit Court, with no further review or appeal, and such appeals have been resolved in such manner as to permit consummation of the settlement.

1.18 "Final Hearing" means the hearing to be held by the Court for purposes of entering an Order finally approving the Settlement Agreement and determining the fairness and adequacy of this settlement.

1.19 "Final Order" or "Final Judgment" means the occurrence of each of the following events:

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(a) This Settlement Agreement is approved in all respects by the Court without material modification unless expressly agreed to by CarMax and Plaintiffs' counsel; and

(b) An Order and Final Judgment is entered by the Court and filed with the Clerk of Court.

1.20 "Issuance Date" shall mean the date identified on the Settlement Certificates as the date on which the Settlement Certificates were issued in connection with effectuating this Settlement and shall be the same date as the beginning of the Cash Claim Period, which shall not be earlier than the date of mailing of the Settlement Certificates.

1.21 "Named Plaintiffs" means Plaintiffs Heather Herron, Natalie Armstrong, Alison Dannert, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease and Michael Watts and any other individuals who may be added as Named Plaintiffs prior to the Final Order.

1.22 "Notice" means the Notice of the Class Action Settlement to be provided to the Settlement Class as provided herein below, and the "Date of Notice" means the date upon which Notice is mailed and the website is made available as provided herein below.

1.23 "Opt-Out Notice" means a hardcopy letter timely delivered to the Settlement Administrator as provided herein and containing, at a minimum: (1) an affirmative representation that the Settlement Class member does not desire to participate in the Settlement; (2) the Settlement Class member's contact information (*i.e.*, full name, complete mailing address, and telephone number); (3) the make, model and year of the motor vehicle purchased from CarMax and (4) the location of the CarMax store where the motor vehicle was purchased.

1.24 "Parties" means the Named Plaintiffs, Class Members and CarMax.

1.25 "Preliminary Approval Order" means the Order to be entered by the Court as provided herein below, in substantially the same form as is attached hereto as Exhibit "B."

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1.26 "Post-Settlement Distribution Balance" means the balance of funds remaining in the Aggregate Cash Claim Fund following the distribution of checks to Class Members who have completed a Cash Claim Submission as provided herein.

1.27 "Settlement Administrator" means a third-party entity designated by CarMax at CarMax's sole discretion which shall establish a mailing address to be maintained for the implementation and administration of this Settlement Agreement.

1.28 "Settlement Certificate" means the document bearing a unique serial number, sent to each Class Members at his or her last known address on the Issuance Date, which may be redeemed, transferred, and/or stacked as provided for herein during the applicable Certificate Redemption Period(s). Each Settlement Certificate shall bear a unique serial number corresponding to the motor vehicle purchased by Class Member to whom the Settlement Certificate is issued.

1.29 "Stacked" for purposes of Settlement Certificates means:

1.29.1 If used as a credit to reduce the cost of a motor vehicle purchased from CarMax within the Certificate Redemption Period, a customer may use as many Settlement Certificates as he or she may present at the time of said purchase, whether the Settlement Certificates were received by way of original issuance in accordance with this Settlement or by way of transfer. A credit in an amount equal to the sum total of all Settlement Certificates physically presented for redemption at the time of purchase shall be applied to reduce the purchase price of the motor vehicle.

1.29.2 If used as a credit to reduce the cost of a 30,000 or 60,000 mile service purchased from CarMax within the Certificate Redemption Period, a customer may use an unlimited number of Settlement Certificates during the subject Certificate Redemption Period,

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but only two Settlement Certificates at a time may be used in connection with the purchase of any one 30,000 or 60,000 mile service.

2. PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT AND CLASS CERTIFICATION.

2.1 The Parties agree that the Complaint in this Action shall be treated as amended to be a Class Action under Rule 23 of the South Carolina Rules of Civil Procedure. This agreed amendment is for settlement purposes only. Furthermore, the Parties hereby stipulate to entry of an Order certifying the Action as a class action solely for the purpose of this Settlement, its implementation, and defining the Settlement Class. Class certification, class definition, and complete settlement of the Action are contingent upon the entry of the Final Order.

2.2 Upon execution of this Settlement Agreement, the Plaintiffs will move the Court to certify the Settlement Class and to preliminarily approve the Settlement Agreement. Plaintiffs will file the Motion attached as Exhibit "A" and submit the proposed Preliminary Approval Order attached as Exhibit "B". The Court will determine whether the proposed settlement on the terms and conditions provided for in this Agreement is fair, reasonable, and adequate, and whether the Preliminary Approval Order should be entered.

2.3 All Parties and counsel will use their best efforts to cause the Court to give preliminary approval to this Agreement as promptly and efficiently as possible and to take all steps contemplated by the Agreement to effectuate the settlement on the stated terms and conditions. The Named Plaintiffs and Class Counsel agree to recommend the settlement contained in this Agreement as being in the best interests of the Settlement Class as a whole under the circumstances.

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3. GIVING NOTICE TO THE CLASS.

3.1 CarMax will, at its expense, provide the Settlement Administrator with a list of the Class Members and will cause the Settlement Administrator to mail to all persons within the Class a copy of a Notice in content substantially the same as set forth in Exhibit "C". The Parties agree that Exhibit C is calculated and adequate to inform the Settlement Class of the terms of the Settlement and notify the Class of the opportunity to participate or opt-out of the Settlement.

3.2 Such Notice shall be placed in the U.S. Mail via first class delivery within forty-five (45) days of the entry of the Preliminary Approval Order (the "Date of Notice"). Prior to the Date of Notice, the Settlement Administrator shall update the addresses of the Settlement Class using the U.S. Postal Service's National Change of Address database.

3.3 If a Notice is returned with a new forwarding address provided by the U.S. Postal Service, the Settlement Administrator will reissue the Notice to the new forwarding address. If a Notice is returned as undeliverable and there is no forwarding address, the Settlement Administrator will update the address using a web-based service, such as LEXIS. The Settlement Administrator shall not be required to update addresses and reissue Notices for any Notices returned more than twenty (30) days after the Date of Notice.

3.4 CarMax will, at its expense, also provide Notice to the Settlement Class by publication on a website (the "Settlement Website") to be maintained by CarMax or Settlement Administrator in content substantially the same as set forth in Exhibit "C"

3.5 The Settlement Website will be made available from the Date of Notice through the conclusion of the Certificate Redemption Periods. While CarMax will endeavor to make the Settlement Website consistently accessible throughout this period, it makes no representations that there will be access to the Settlement Website at all times, including but not limited to:

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scheduled or emergency maintenance, excessive traffic, denial of service attacks, catastrophic hardware failure, and events or circumstances beyond the reasonable control of CarMax.

3.6 Within thirty (30) days after the Date of Notice, CarMax will file with the Court and serve upon Class Counsel an affidavit from the Settlement Administrator showing that Notice has been provided to Class Members as set forth above in paragraphs 3.1 and 3.4 of this Agreement.

4. **EXCLUSION REQUESTS.** Each person within the Class shall be provided the individual right to exclude himself or herself from ("opt out of") this class settlement, as follows:

4.1 Persons within the Class may elect to opt out of this Settlement Agreement, relinquishing their rights to benefits hereunder. Consistent with paragraph 1.23 herein, the right to opt out shall be described in the Notice as approved by the Court. Persons who wish to opt out must send to the Settlement Administrator within forty-five (45) days after the Date of Notice (the "Opt-Out Deadline"), a letter containing the information set forth in paragraph 1.23 herein. Any request for exclusion must be postmarked on or before the Opt Out Deadline. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Persons within the Class who fail to submit a valid and timely request for exclusion containing all necessary information shall be bound by all terms of the Settlement Agreement and the Final Order and Judgment.

4.2 Any person within the Class who submits a valid and timely request for exclusion may not file an objection to the settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

4.3 Within ten (10) days after the Opt-Out Deadline, the Settlement Administrator shall compile a list of those individuals who have excluded themselves from the settlement, and provide a copy of this list to Class Counsel and counsel for CarMax.

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4.4 If more than nine percent (9%) of the persons within the Settlement Class opt out of the settlement, CarMax, upon notice to Class Counsel prior to the Final Hearing, shall have the option to withdraw from the Settlement and declare all terms to be null and void, and the Parties will return to their respective positions before the settlement..

4.5 CarMax expressly reserves all rights in any subsequent action involving any person who opts-out of the Settlement Class, including without limitation its rights to assert all of its defenses, claims, and/or counterclaims against any such person.

5. FINAL APPROVAL.

5.1 The Court will hold a Final Hearing as set forth in the Notice. The Parties will request that the Court rule on objections, if any, determine the fairness and adequacy of the settlement, and finally approve the Settlement Agreement. If, after the Final Hearing, this Agreement is finally approved by this Court, the Parties intend that a Final Order consistent with the terms of this Agreement will be entered by the Court and that the Action will thereafter be dismissed with prejudice.

5.2 All Parties and counsel will use their best efforts to obtain final approval of the settlement contained in this Agreement. Specifically, the Named Plaintiffs and Class Counsel agree to recommend the settlement contained in this Agreement as being in the best interests of the Settlement Class as a whole under the circumstances. The Parties and their counsel agree not to: (a) solicit, request, or advise persons within the Class to object to the settlement; (b) represent members of the Class who object to or opt out of the settlement; or (c) arrange representation for members of the Class who object to or opt out of the settlement. The Named Plaintiffs will be precluded from raising objections to the Settlement at Final Hearing. If there are any Class Members who object to the settlement and the Court rules on their objections and approves the settlement, Class Counsel agree to serve written notice of the entry of the order approving the

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settlement on such objectors, as required, and to provide proof of service to counsel for CarMax immediately after such service has been effected.

5.3 In the event that (a) the Final Order is not entered; (b) this Settlement Agreement is not finally approved and the settlement is not consummated as provided herein; or (c) the Final Order is reversed on appeal or otherwise fails to gain affirmance in full on appeal, then any Party may withdraw its stipulation for certification as a class action; CarMax shall have the right to object to class certification *de novo*; the Settlement Agreement shall be null and void *ab initio*; this Settlement Agreement shall not be offered or received into evidence or utilized for any purpose in the Action or in any other action, suit, or proceeding regarding the class certification issue or any other issue and the parties will return to their positions before the settlement. .

6. BENEFITS TO CLASS MEMBERS.

6.1 Prospective Benefits.

6.1.1 CarMax will pay to the South Carolina Department of Consumer Affairs a registration fee as required by law.

6.1.2 CarMax's administrative fee will be disclosed on line two (2) of the Buyer's Order.

6.1.3 CarMax will disclose its administrative fee in a statement displayed in a conspicuous location in each CarMax store in South Carolina.

6.1.4 CarMax will include the amount of its administrative fee in the advertised price of the vehicle on its website, in all advertisements and on its window stickers.

6.1.5 Notwithstanding the foregoing, CarMax reserves the right to change its administrative fee practices to the extent permitted or required by any change in the law, including without limitation the repeal and/or amendment of S.C. Code § 37-2-307. CarMax further reserves the right to modify the amount of its administrative fee.

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6.2 Retrospective Benefits.

6.2.1 Settlement Certificates

6.2.1.1 Each Class Member who actually paid a \$99.00 administrative fee at CarMax during the Class Period shall receive a Settlement Certificate in the face amount of \$99.00, in the time and manner as set forth herein.

6.2.1.2 Each Class Member who actually paid a \$149.00 administrative fee at CarMax during the Class Period shall receive a Settlement Certificate in the face amount of \$149.00, in the time and manner as set forth herein.

6.2.1.3 Each Settlement Certificate shall be transferable and may be redeemed at any CarMax location during the Certificate Redemption Period(s) as provided in paragraph 1.9 of this Agreement for a credit in the amount of the face value shown on the Settlement Certificate to reduce the cost of the purchase of (a) a motor vehicle purchased from any CarMax location; or (b) a 30,000 mile or 60,000 mile service at any CarMax location.

6.2.1.4 Settlement Certificates applied toward a 30,000 mile or 60,000 mile service at CarMax may be used for this purpose regardless of whether the vehicle was purchased at CarMax so long as CarMax provides service for the type of vehicle to be serviced in the regular course of business.

6.2.1.5 Settlement Certificates presented after the expiration of the applicable Certificate Redemption Period(s) shall have no value and be null, void and useless.

6.2.1.6 Settlement Certificates may be "Stacked" as that term is defined in paragraph 1.29 of this Agreement.

6.2.1.7 The Settlement Certificates shall bear the following notice in no less than 10-point font, and the Parties expressly agree that for purposes of effectuating this settlement 10-point font is conspicuous and prominent:

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THIS CERTIFICATE MAY BE REDEEMED AT ANY CARMAX STORE IN ONE OF THE TWO FOLLOWING WAYS.

YOU MAY REDEEM THIS CERTIFICATE FOR A CREDIT IN ITS FACE AMOUNT TOWARD THE PURCHASE OF A MOTOR VEHICLE FROM ANY CARMAX STORE BETWEEN _____ (THE ISSUANCE DATE) AND _____ (INSERT LAST DAY OF SIX YEAR TERM), AT WHICH TIME THIS CERTIFICATE WILL EXPIRE FOR THIS PURPOSE.

OR

YOU MAY REDEEM THIS CERTIFICATE FOR A CREDIT IN ITS FACE AMOUNT TOWARD THE PURCHASE OF A 30,000 MILE OR 60,000 MILE SERVICE FROM ANY CARMAX STORE BETWEEN _____ (THE ISSUANCE DATE) AND _____ (INSERT LAST DAY OF THREE YEAR TERM), AT WHICH TIME THIS CERTIFICATE WILL EXPIRE FOR THIS PURPOSE. YOU NEED NOT HAVE PURCHASED THE VEHICLE TO BE SERVICED FROM CARMAX, BUT IN ORDER TO REDEEM YOUR CERTIFICATE FOR THIS PURPOSE, CARMAX MUST PROVIDE SERVICE FOR THE TYPE OF VEHICLE IN THE REGULAR COURSE OF ITS BUSINESS.

6.2.1.8 Each Settlement Certificate's unique serial number will be canceled as part of the transaction in which it is applied.

6.2.1.9 CarMax makes no representation that one or even two Settlement Certificates will independently be sufficient to purchase a motor vehicle or a 30,000 mile or 60,000 mile service. The Parties acknowledge and agree that a customer may have to make payment in addition to the Settlement Certificate in order to purchase a motor vehicle or to purchase a 30,000 mile or 60,000 mile service and that the customer will be required to pay applicable taxes related to purchase.

6.2.1.10 CarMax shall not honor any Settlement Certificate which bears a serial number corresponding to a vehicle purchased by member of the Settlement Class who opted out of this settlement. Said serial numbers of "opt outs" will be provided by the Settlement Administrator to Class Counsel and CarMax.

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6.2.2 Cash Payment

6.2.2.1 Class Members who actually paid a \$99.00 administrative fee at CarMax during the Class Period shall receive a \$50.00 payment upon complying with the Cash Claim Submission procedure set forth herein.

6.2.2.2 Class Members who actually paid a \$149.00 administrative fee at CarMax during the Class Period shall receive a \$75.00 payment upon complying with the Cash Claim Submission procedure set forth herein.

7. ATTORNEYS' FEES, COSTS, EXPENSES, AND PAYMENTS TO THE NAMED PLAINTIFFS.

7.1 Class Counsel shall be entitled to apply to the Court for an award of attorneys' fees, costs, and expenses in an aggregate amount not exceeding Seven Hundred Fifty Thousand Dollars (\$750,000.00) and 00/100 cents. Plaintiffs and Class Counsel will not request payment or reimbursement of attorneys' fees, costs, and expenses in excess of this sum, on appeal or otherwise, and expressly agree to waive enforcement of the portion of any award of fees, costs and expenses exceeding this sum. CarMax agrees not to oppose such application for fees, costs and expenses by Class Counsel so long as such application is consistent with the terms of this Settlement Agreement. The actual amount of any award of attorneys' fees, costs, and expenses will be determined by the Court.

CarMax shall pay Named Plaintiff Alison Dannert the sum of One Thousand Dollars (\$1000.00) and 00/100 cents for her efforts in prosecuting the class action. No other Named Plaintiff shall be entitled to monies arising out of this settlement with CarMax. The named Plaintiff Alison Dannert shall be made within ten (10) days of Class Counsel's receipt of the award of attorneys' fees, costs and expenses.

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7.2 No later than five (5) business days before the Final Hearing, Class Counsel will submit their application requesting court approval of payment of attorneys' fees, costs and expenses. This application shall also request court approval of the payments to be made by Class Counsel to the Named Plaintiff described above in this Agreement.

7.3 Payment of Attorneys' Fees, Costs, and Expenses. Provided the Court approves Class Counsel's petition for attorneys' fees, costs, and expenses and no appeal is taken, payment of the same will be made no later than forty-five (45) days after the Effective Date provided for in paragraph 1.17(a) in which case said payment shall be made to Michael Spears, P.A., upon instructions to be provided by him no later than thirty (30) days after the Effective Date and such payment shall fully satisfy CarMax's obligations to pay Class Counsels' attorneys' fees, costs and expenses. If appeal is taken, payment of attorneys' fee by CarMax shall be made to Michael Spears, P.A. within forty-five (45) days after such appeal is resolved in such a manner as to permit payment of attorneys' fees in the amount then ordered, which the parties have agreed herein shall not, in any event, exceed \$750,000.00

7.4 It is expressly acknowledged and agreed by Plaintiffs on behalf of themselves and the other Class Members, by and through their counsel, that under no circumstances whatsoever will CarMax be responsible to pay any additional costs, expenses or attorneys' fees in settlement of this Action or to do anything other than as specified herein.

8. PROCESSING BENEFITS TO CLASS MEMBERS AND POST-SETTLEMENT DISTRIBUTION BALANCE.

8.1 The Issuance Date for Settlement Certificates and the Cash Claim Forms shall be within forty-five (45) days after the Effective Date. On the Issuance Date, the Settlement Administrator shall place in the U.S. Mail to the Class Members the Settlement Certificates, as provided for in paragraph 6 of this Agreement, and the Cash Claim Forms.

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8.2 Cash Claim Forms shall be substantially similar to the form attached hereto as Exhibit "D." Additionally, as of the Issuance Date, Cash Claim Forms will be made available for download on the Settlement Website.

8.3 Cash Claim Submission.

8.3.1 Class Members who wish to participate in the Cash Settlement must complete the Cash Claim Submission by forwarding a Cash Claim Form to the Settlement Administrator within the Cash Claim Period as defined in paragraph 1.7 of this Agreement. As set forth on the Cash Claim Form, a Class Member must provide his or her full name, current address and telephone number, verification that he/she actually paid an administrative fee at CarMax during the Class Period and the serial number of the Settlement Certificate issued to him/her. The Cash Claim Form shall be signed under penalty of perjury.

8.3.2 In the event a claim form is submitted by a legal guardian, conservator, or personal representative on behalf of a Class Member, in order to constitute a valid Cash Claim Form, the claim form must be accompanied by written proof that the person submitting the form on behalf of the Class Member is authorized to do so.

8.3.3 If a Class Member attempts Cash Claim Submission during the Cash Claim Period which is defective and/or unable to be processed for any reason, including but not limited to: (1) failing to include required information; or (2) failing to provide information that could be corroborated by the Settlement Administrator's database of motor vehicle purchases, then the Settlement Administrator shall have the obligation to retain record of the defective Claim Submission and shall within seven (7) days following the deadline for Claim Submission notify Class Counsel and CarMax by electronic excel spreadsheet of any Class Member who has submitted a defective Cash Claim Submission. The Settlement Administrator shall agree to cooperate with Class Counsel to resolve any deficiency but shall have no obligation to any Class

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Member, except for the duty of due diligence and fundamental fairness. If a Cash Claim Submission remains deficient for thirty (30) days following electronic transmission of the defective Cash Claim submission to Class Counsel and CarMax, the Settlement Administrator shall deny the claim for Cash Settlement and such denial shall not be revived absent agreement of the Settlement Administrator. The Settlement Administrator shall employ its best efforts to effectuate the dispersion of Cash Claims to all properly entitled recipients (Class Members).

8.4 Payment.

8.4.1 Within sixty (60) days after the conclusion of the Cash Claim Period as defined in paragraph 1.7 herein, the Settlement Administrator will mail the checks to Class Members who completed the Cash Claim Submission.

8.4.2 CarMax shall issue the checks to the Settlement Administrator drawn on CarMax's Aggregate Claim Fund.

8.4.3 Reversion of Non-Negotiated Checks to Cy Pres. Checks provided to Class Members under this Agreement must be negotiated by Class Members within sixty (60) days of their issuance date and shall be null and void if not negotiated in that time frame. No lost checks will be reissued more than thirty (30) days after issuance date. The Cy Pres fund shall be entitled to retain any funds represented by checks that are not timely negotiated and shall be distributed pursuant to paragraph 8.6.1.

8.4.4 Within ninety (90) days after all checks have been mailed, the Settlement Administrator will serve upon CarMax and Class Counsel an affidavit attesting to the completion of the tasks relative to payments to Class Members. Said Affidavit shall set forth the original Aggregate Claim Fund, the dollar amount of all settlement checks, and the Post-Settlement Distribution Balance.

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8.5 CarMax will bear the costs of mailing Settlement Certificates and Cash Claim Forms, receiving and processing Cash Claim Forms, and of mailing checks.

8.6 Post-Settlement Distribution Balance.

8.6.1 The Parties agree to distribute the Post-Settlement Distribution Balance set forth in the Settlement Administrator's affidavit, as follows: forty percent (40%) thereof shall revert to CarMax, and sixty percent (60%) thereof shall be available for cy pres distribution as ordered by the Court.

8.6.2 No later than five (5) business days before the Final Hearing, Class Counsel Michael E. Spears and CarMax's Counsel Ronald J. Tryon shall each submit to the Court a list of up to three (3) charitable organizations as potential recipients of the cy pres funds. At the Final Hearing, after hearing from both Class Counsel and CarMax Counsel concerning the proposed charitable organizations, the Court shall issue an order designating one or more charities to receive sixty percent (60%) of the Post-Settlement Distribution Balance, to whom CarMax shall issue one or more checks within ten (10) days of receipt of the Settlement Administrator's affidavit as provided for above. In addition, upon receipt of the Settlement Administrator's affidavit, CarMax shall take over all responsibilities of Settlement Administration.

9. CONSIDERATION FOR THE BENEFITS PROVIDED HEREIN. As an express element and condition of this Settlement Agreement and in consideration of the benefits conferred hereunder:

9.1 Release. Named Plaintiff Alison Dannert, individually and on behalf of all Class Members, will and does hereby settle, compromise, resolve, release, waive, discharge, and terminate any and all of Plaintiff's Claims and the Class Claims and does intend through this Settlement Agreement to effect such release as to the Discharged Parties. This release and

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discharge includes, but is not limited to, any claims that have been asserted or could have been asserted by or on behalf of the Class Members in the above-captioned proceeding.

9.1.1 Subject to Court approval, the Named Plaintiff Alison Dannert, individually and on behalf of all Class Members, will and does hereby release the Discharged Parties and the Settlement Administrator from any and all claims, demands, actions, causes of action, rights, offsets, suits, damages, lawsuits, liens, losses or liabilities of any kind whatsoever, in law or in equity, including monetary, injunctive or declaratory relief, whether known or unknown, alleged or not alleged, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, which such Class Member has had, now has, or may have in the future, arising from or connected in any way with obtaining, using and/or disclosing the Class Members' personal information in connection with the implementation of the terms of this Agreement, including but not limited to, all action taken in connection with the mailing of the Class Notices to the Class Members as provided in this Agreement, and the distribution to the Class Members of any benefits in accordance with this Agreement.

9.2 Dismissal with Prejudice. The Action as against CarMax and all Named Plaintiffs' Claims and Class Claims against CarMax as hereinabove defined will be dismissed on the merits, with prejudice, thereby forever barring such claims against the Discharged Parties. The Parties agree and the Court shall so order that the payments and other relief afforded Named Plaintiff Alison Dannert and the Class Members by way of compromise settlement in this Action represent all the monies and relief CarMax shall ever be required to pay to any party, person or entity, including but not limited to, all other Named Plaintiffs in this action and the persons or entities on whose behalf they have asserted claims, in connection with the above-captioned litigation who purchased a vehicle in South Carolina during the Class Period and prior to the date

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of entry of the Court's Final Order and Judgment and dismissal with prejudice. Furthermore, the parties agree and the Court shall so order that CarMax shall be removed from the case caption, on all orders, discovery and other documents filed in the litigation which remains pending before the Court against all non-settling Defendants.

9.3 Performance by CarMax. The payments by CarMax and performance of its other obligations will entitle CarMax and Discharged Parties to the full and complete benefits of this Agreement, including, but not limited to the release of all of Named Plaintiff Allison Dannert's Claims and the Class Claims. If any Class Members do not obtain payment as a result of their failure to comply with the Notice ordered by the Court or because they do not qualify for relief under the terms of the Settlement Agreement, their failure to obtain payment will not affect the release of all of Named Plaintiff Alison Dannerts' Claims and Class Claims herein, and this Agreement will retain its full, binding effect. Discharged Parties will not be required to pay additional sums of money to the Court for any of the Class Members on account of the failure of Class Members to submit Valid Cash Claim Forms on a timely basis, their failure to negotiate refund checks in a timely fashion, or their forfeiture of partial refund payments.

9.4 Implementation. Named Plaintiff Alison Dannert, on behalf of herself and the Class Members, by and through Class Counsel, will do all things necessary under this Agreement to obtain the entry of a Final Order that, among other things, dismisses (as in a "Covenant Not To Sue", but not in any manner which releases or diminishes the liability and damages which may be the responsibility of current or future co-defendants) CarMax from the Action on the merits, with prejudice, and entry of the Final Order which fully and forever discharges all of the Named Plaintiffs' Claims, including Named Plaintiff Alison Dannert's claims, all class claims against this defendant only. and any and all claims of persons and entities on whose behalf all Named Plaintiffs have asserted claims, against the Discharged Parties. From and after entry of the Final

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Order, the Discharged Party will have no further liability to any Named Plaintiff, Class Member, or alleged Class Member arising out of or relating to any Named Plaintiffs' Claims or Class Claims, whether such liability is asserted directly, by crossclaim, by counterclaim, by third-party claims or otherwise, it being acknowledged that the Discharged Parties are forever purchasing from the Named Plaintiffs and Class Members peace from all matters arising out of or relating to Plaintiffs' Claims and Class Claims regardless of the capacity in which they have been brought or on whose behalf they have been or could have been brought. The Named Plaintiffs, individually and on behalf of the Class Members, will execute or authorize execution of documents or instruments to effect the dismissal of the Action as against CarMax with prejudice and the Named Plaintiff Alison Dannert shall execute the release of Alison Dannert's Claims and the Class Claims.

9.5 No Assignment. The Named Plaintiffs on behalf of themselves and the Class Members, warrant and represent that they have not conveyed, pledged, transferred, hypothecated, or in any manner encumbered or assigned to any other natural person, firm, corporation, partnership, joint venture, trust or estate, business, association or any form of legal entity any of the claims, demands, actions or causes of actions described in this Agreement.

10. **OPINION OF CLASS COUNSEL.** Class Counsel are of the opinion that the settlement embraced in this Agreement is fair and reasonable and in the best interests of the Settlement Class as a whole when all of the circumstances are given due consideration.

11. **DELEGATION TO SETTLEMENT ADMINISTRATOR.** Whenever this Agreement requires CarMax to perform some act or task, CarMax may, in its discretion, delegate responsibility for the same to the Settlement Administrator. Whenever this Agreement states that the Settlement Administrator will perform some act or task, CarMax is responsible for the same.

12. **ACKNOWLEDGEMENT REGARDING APPEAL.** It is expressly acknowledged and

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agreed that the Parties and their counsel will not institute or encourage any appeal from the Final Order; provided, however, any Party has the right to appeal an order declining to approve the Settlement Agreement or approving the Settlement Agreement only on the condition that it be modified, and Named Plaintiffs and Class Counsel shall have the right to appeal the Court's order awarding attorneys' fees and expenses to Class Counsel.

13. **INCOME TAX ADVICE.** The Parties take no position as to the income tax consequences of this settlement, and each Party hereto shall rely solely on its own tax advisor(s) with respect to same, and Class Members shall be advised in the Notice to consult their own tax advisors.

14. **NO ADMISSIONS.** This Agreement, the benefits provided herein (including without limitation the retrospective and prospective relief), and the settlement of the Action do not constitute a concession or admission of wrongdoing or liability by the Discharged Parties, and will not be used or construed as an admission of any fault, omission, liability or wrongdoing on the part of the Discharged Parties in any statement, release or written document or financial report issued, filed or made. Neither this Agreement, nor the benefits provided herein (including without limitation the retrospective and prospective relief), nor the exhibits hereto, nor the fact of settlement, nor any settlement negotiations or discussions, nor the judgments to be entered approving this settlement, nor any related document will be deemed an admission, concession, presumption or inference against the Discharged Parties in a proceeding other than such a proceeding as may be necessary to consummate or enforce this Agreement and the settlement. To the contrary, Plaintiffs, on behalf of themselves and the Class Members, by and through their Class Counsel, acknowledge that CarMax and Discharged Parties specifically disclaim and deny any liability or wrongdoing whatsoever and this Agreement has been entered into solely to avoid future inconvenience and protracted, costly litigation.

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15. **THIRD PARTY BENEFICIARIES.** No third-party beneficiary rights are intended to be created by this Agreement.

16. **BINDING EFFECT OF AGREEMENT.** This Agreement will be binding upon and inure to the benefit of the Parties to this Agreement, the Discharged Parties, the Named Plaintiffs, the Class Members, and Class Counsel, and their respective heirs, predecessors, successors and assigns..

17. **CONTINUING JURISDICTION OF THE COURT.** It is agreed that the Parties do hereby petition the Court to retain jurisdiction over the interpretation, effectuation, implementation and enforcement of this Agreement, and that upon entry of the Final Order the Court will retain jurisdiction for such purposes.

18. **PRESS RELEASES.** The Parties, Class Counsel, and counsel for CarMax agree that they will not issue or cause to be issued any individual press releases, and they will not initiate or cause contact or communications with any person employed by or acting on behalf of any news media or press entities. The Parties, Class Counsel, and counsel for CarMax further agree that, in the event of unsolicited inquiries initiated by representatives of the news media, they will respond with a mutually acceptable joint press release.

19. **SOUTH CAROLINA LAW.**

19.1 This Agreement will be governed by, and construed in accordance with, the laws of the State of South Carolina.

19.2 Where the Agreement calls for action to be taken within a period of time, the computation of time is governed by Rule 6 of the South Carolina Rules of Civil Procedure.

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20. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different Parties hereto on separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts together will constitute one and the same document.

21. **HEADINGS.** The headings used in this Agreement are for the purpose of convenience and do not constitute part of the Agreement and no heading will be used to help construe the meaning of the Agreement or any part thereof.

22. **ENTIRE AGREEMENT.** The foregoing constitutes the entire Agreement between the Parties with respect to the subject matter hereof and may not be modified or amended except in writing and signed by Class Counsel and CarMax. To the extent that this Agreement differs in any manner whatsoever from prior written or oral agreements regarding the subject matter hereof, or from any documents that are attached hereto, the terms and conditions of this Settlement Agreement will control.

This Agreement entered into and made as of the 26 day of June, 2007.

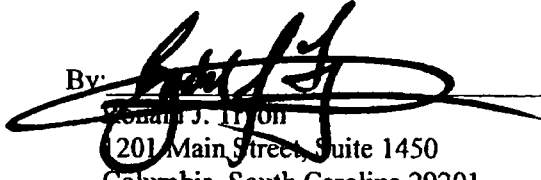
SIGNATURE PAGES ATTACHED

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AGREED TO AND APPROVED

FOR THE DISCHARGED PARTIES:

PARKER POE ADAMS & BERNSTEIN LLP

By: 

Ronald J. Tyson
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Columbia, South Carolina 29201
(803) 255-8000

J.W. Nelson Chandler
200 Meeting Street
Suite 301
Charleston, South Carolina 29401
(843) 727-2650

Attorneys for Defendant CarMax Auto Superstores, Inc.

R.000287

AGREED TO AND APPROVED

BY THE DEFENDANT:

By: 

Keith Brumby

Executive Vice President & CFO

For the Defendant CarMax Auto Superstores, Inc.

R.000288

AGREED TO AND APPROVED
FOR THE PLAINTIFFS:



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Exhibit A

EXHIBIT "A"

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Heather Herron, Natalie Armstrong,	)	
Alison Dannert, Michael Ritz, Julie Freeman,	)	Civil Action No.: 06-CP-02-1230
Christine Watts, Michael Blease, Michael	)	
Watts, Individually And For The Benefit Of All	)	
Car Buyers Whom Paid "Administrative Fees"	)	
As Described Below To Defendants,	)	PLAINTIFFS' MOTION UNOPPOSED
	)	BY CARMAX TO CERTIFY CLASS FOR
Plaintiffs,	)	SETTLEMENT PURPOSES ONLY AND
	)	FOR PRELIMINARY APPROVAL OF
vs.	)	SETTLEMENT AGREEMENT
	)	
Defendant CarMax Auto Superstores, Inc.,	)	
<i>et al.</i>	)	
	)	
Defendants.	)	
	)	
	)	
	)	
	)	

Alison Dannert, Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease and Michael Watts, individually and for the benefit of all car buyers whom paid administrative fees to CarMax Auto Superstore, Inc. ("CarMax") as described in the Complaint and Amended Complaint, by and with the consent of CarMax, hereby move the Court pursuant to Rules 41(a)(2) and 23(c) of the South Carolina Rules of Civil Procedure for an Order preliminarily approving the parties' stipulated Settlement Agreement, attached hereto and incorporated as Exhibit "A," and preliminarily certifying a plaintiff class for settlement purposes only in accordance with the accompanying Order.

Respectfully submitted,



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**ATTORNEYS FOR NAMED PLAINTIFFS
AND SETTLING PLAINTIFFS**

Exhibit B

EXHIBIT "B"

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Heather Herron, Natalie Armstrong,	)	
Alison Dannert, Michael Ritz, Julie Freeman,	)	Civil Action No.: 06-CP-02-1230
Christine Watts, Michael Blease, Michael	)	
Watts, Individually And For The Benefit Of All	)	
Car Buyers Whom Paid "Administrative Fees"	)	
As Described Below To Defendants,	)	PRELIMINARY APPROVAL ORDER
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
CarMax Auto Superstores, Inc., <i>et al.</i>	)	
	)	
Defendants.	)	
	)	

I. INTRODUCTION

This matter is before the Court on motion of Plaintiffs with the consent of Defendant CarMax Auto Superstores, Inc. ("CarMax") (together the "Parties") for preliminary approval of a class action settlement and for approval of the plan for notifying the class of the settlement. The Parties stipulate that the Complaint in this action as between the Parties for settlement purposes only shall be treated as amended to be a Class Action under Rule 23 of the South Carolina Rules of Civil Procedure. The Parties have agreed to settle this case as between them, subject to Court review and approval, notice to absent Class Members, and adherence to procedures designed to protect absent Class Members' rights and to afford due process protection to the Class.

On April 3, 2007, the Parties, through counsel, appeared before the Court, submitted the Class Action Settlement Agreement ("Settlement Agreement" or "Agreement"), and related documents to the Court for its thorough review, and requested that the Court preliminarily approve the Settlement Agreement, the form of notice, and the plan for giving persons within the

Class notice of the settlement and an opportunity to opt out of or object to the class action settlement of this case. Having thoroughly considered the foregoing, the Court preliminarily approves the settlement, the proposed notice to the Class, and the plan for notifying the Class of the settlement; conditionally grants class certification under Rule 23, SCRCP; establishes the procedures outlined below for giving notice, requesting exclusion from the Class, and making objections; and orders that the Parties proceed as directed below.

II. THE ACTION

Plaintiffs, individually and for the benefit of all car buyers who paid “administrative fees,” (as defined in the Settlement Agreement) sued CarMax and other Defendants in the above-captioned action (the “Action”) alleging, among other things, that the manner in which CarMax charged administrative fees in connection with the sale of motor vehicles was unlawful. CarMax denies that it violated the law or acted improperly or wrongfully in any way and denies any and all allegations of wrongdoing, fault, liability, or damage of any kind to Plaintiffs or the putative Class Members. Moreover, CarMax has asserted numerous grounds to dismiss the Action and, if necessary, will assert numerous affirmative defenses. To avoid the uncertainties and risks of trial, further expense, inconvenience, protracted litigation, and for other reasons set forth in the Settlement Agreement, CarMax has reached a settlement with the Plaintiffs, subject to Court approval, which shall fully, finally and forever dismiss it with prejudice from the Action, including any and all claims which were or could have been asserted in the Action.

III. THE CLASS

It is necessary to identify the “Class” and “Class Members” affected by this Action. Eight (8) Named Plaintiffs bring this Action against CarMax and numerous other Defendants on behalf of groups of similarly situated persons. However, only Named Plaintiff Alison Dannert (“Dannert”) purchased a motor vehicle from CarMax and, pursuant to the Settlement Agreement,

the other Named Plaintiffs have agreed to dismiss any alleged claims against CarMax with prejudice. Accordingly, for purposes of this settlement Class, Dannert is the "Named Plaintiff" and proposed class representative. Specifically, the Class to be certified pursuant to the Settlement Agreement with CarMax is as follows:

All persons or entities (1) who purchased a motor vehicle (2) from CarMax's Columbia and/or Greenville, South Carolina store(s), (3) who paid a \$99.00 administrative fee and/or a \$149.00 administrative fee (4) during the Class Period.

The Class Period is defined as August 28, 2002 through March 21, 2007. All persons with the Class who do not properly and timely exclude themselves from ("opt out of") the Class as set forth in the Settlement Agreement are referred to as "Class Members."

IV. CERTIFICATION OF THE CLASS

In connection with the settlement of this case, the Parties have agreed to conditional class certification under Rule 23, SCRPC. Their consent alone is not sufficient. The Court has the duty to make an independent evaluation of class status. Under Rule 23, SCRPC, certain prerequisites must be met for a class to be certified. Specifically, the following elements must be present:

1. The class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. Claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. The representative parties will fairly and adequately protect the interest of the class; and
5. The amount in controversy exceeds \$100.00 for each member of the class.

See Rule 23(a), SCRPC. The Court considers each of the elements of class certification below.

A. IMPRACTICABILITY OF JOINDER: NUMEROSITY

Rule 23(a)(1), SCRPP, requires that the class be "so numerous that joinder of all members is impracticable." Plaintiffs contend that the Class is so numerous (approximately 29,000 members) that joinder of all persons within the Class as Plaintiffs herein is impracticable. CarMax does not dispute this contention and admits that there are numerous customers of CarMax who paid a closing fee involved in the Action. Therefore, the Court finds that the element of numerosity is satisfied.

B. COMMONALITY

Rule 23(a)(2), SCRCP, requires that there be "questions of law or fact common to the class." The South Carolina Court of Appeals has stated:

It is important to note that the subsection does not demand all questions of law and fact to be common, only that there be common issues among the class.

McGann v. Mungo, 287 S.C. 561, 568, 340 S.E.2d 54, 157-58 (Ct. App. 1986). Plaintiffs contend that there is a common issue – whether CarMax charged closing fees in an unlawful manner at its two South Carolina stores during the time period in question. CarMax does not concede that it acted unlawfully, but insofar as the matter has been settled by agreement, subject to Court approval, there are no individual issues to be litigated. Therefore, as the issues are currently framed, and based on the current posture of the case, the Court finds that the element of commonality is satisfied.

C. TYPICALITY

Rule 23(a)(3), SCRCP, requires that the "claims or defenses of the representative parties are typical of the claims or defenses of the class." "Typicality" does not require that the claims be "coextensive, but rather similar to, or shared by most of the members of the class." James Flanagan, South Carolina Civil Procedure at 180 (2d ed. 1996). Here, Plaintiffs contend that

each of the persons within the Class suffered a similar injury to that allegedly sustained by the Named Plaintiff and that all Class Members' claims arise from the same general practices of CarMax that gave rise to this Named Plaintiff's claims. CarMax does not concede that it acted unlawfully, but insofar as the matter has been settled by agreement, subject to court approval, CarMax does not dispute Plaintiffs' contentions as to typicality. Therefore, as the issues are currently framed, and based on the current posture of the litigation, the Court finds that the typicality element is satisfied.

D. ADEQUACY OF REPRESENTATION

Rule 23(a)(4), SCRPC, requires that the Named Plaintiff fairly and adequately protect the interests of the Class. That protection involves two factors: whether the representative has any antagonistic interests to that of the class; and whether the representative will vigorously prosecute the action. Runion v. U.S. Shelter, 98 F.R.D. 313, 317 (D.S.C. 1983); Waller v. Seabrook Island Property Owners Ass'n, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (1990).

1. Class Representatives

The kind of conflict that defeats class certification is that which relates to the subject matter of the controversy, such as when the named plaintiffs' interests conflict with the economic interests of the class. Waller, 300 S.C. at 468, 388 S.E.2d at 801. The Named Plaintiff asserts that her interests do not conflict with those of the Class, as she and the Class Members suffered the same alleged injury. Insofar as the matter has been settled, subject to court approval, CarMax does not dispute this assertion. Further, based on the Court's review, Plaintiffs have vigorously asserted the claims of the Class Members and the current circumstances of the case do not present conflicts of interest among the Named Plaintiff and absent Class Members. Therefore, as the issues are currently framed, and based on the current

posture of the litigation, the Court finds that the Named Plaintiff adequately represents the interests of the Class.

2. Class Attorneys

The adequacy of representation requirement is satisfied if the plaintiffs' counsel is qualified, experienced, and generally able to conduct the proposed litigation. Lerwill v. Inflight Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978). The experience and expertise of Plaintiffs' counsel in class actions will ensure a vigorous prosecution of the rights of the Class Members. This Court has reviewed the qualifications of Class Counsel and finds that the adequacy requirement, as it pertains to Class Counsel, has been satisfied. Therefore, as the issues are currently framed, and based on the current posture of the litigation, the Court finds that the element of adequacy of representation is satisfied.

E. AMOUNT IN CONTROVERSY

Finally, the Court notes that there is no dispute as to whether there is sufficient amount in controversy to satisfy Rule 23(a)(5), SCRCF. Accordingly, the Court finds that this element is also satisfied.

THEREFORE, this Court finds that class certification is appropriate and conditionally certifies the Class, as identified in Section III above. Class certification is conditioned upon the Court's final review of the Settlement Agreement, which will be conducted after notice has been given to the Class and persons within the Class have been given an opportunity to opt out of or object to the settlement. If the Settlement Agreement is not finally approved, this Order shall be vacated.

V. APPROVAL OF SETTLEMENT AGREEMENT AND PLAN OF NOTICE

The Parties have submitted to the Court their Settlement Agreement, with exhibits, including the notice to be mailed to the Class Members and published on a website, and the plan

for providing notice to the Class. The Court will not recite the terms of the Settlement Agreement or plan of notice, but refers to and incorporates them herein. Based upon the Agreement and the record and the proceedings herein, it appears to the Court upon preliminary examination that the Agreement is fair, reasonable, just and adequate; that the notice and plan for giving notice constitute the best practicable means of notifying the Class of the action; that absent Class Members' interests have been adequately represented; that the proceedings to date and as contemplated by the Settlement Agreement have afforded and will afford the absent Class Members all of the requisite protections of due process; and that a final hearing should be held, after notice has been given to the Class, to determine whether the Settlement Agreement is fair, reasonable, and just, and whether Final Judgment should be entered in this Action based upon the Agreement.

The Court further finds that the notice and proceedings contemplated by the Settlement Agreement are fair and reasonable. The notice, in the form to be mailed and published on the website, fairly describes the Action, the terms and conditions of the Settlement Agreement generally, and the absent Class Members' rights and how they are to be exercised.

It is hereby **ORDERED** that:

1. The Complaint in this action between the Parties, for settlement purposes only, shall be treated as amended to be a class action under Rule 23 of the South Carolina Rules of Civil Procedure.
2. The Class defined herein is hereby **CERTIFIED** for the purposes of settlement.
3. The Settlement Agreement and the settlement contained therein are preliminarily **APPROVED** as fair, reasonable, just, and adequate.

4. The Settlement Agreement is **ADOPTED** by the Court and made a part of this Order as if fully set out herein.

5. The proposed plan of providing notice contained in the Settlement Agreement is **APPROVED** and deemed to be the best practicable means of disseminating the Settlement Notice, and it is reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of this Action and their rights therein, including the right to exclude themselves from the settlement and the right to object to it. The Court further finds that this Settlement Notice and plan of notice affords the absent Class Members due process of law insofar as their claims in this action are concerned, in accordance with the Due Process Clause of both the State and Federal Constitutions. Further, both the form of the notice to be mailed to the Class Members (Exhibit "C" to the Settlement Agreement) and the form of the notice to be published on the Settlement Website (Exhibit "C" to the Settlement Agreement) are hereby **APPROVED**, and it is hereby **ORDERED** that, within forty-five (45) days of the entry of the Preliminary Approval Order (the "Date of Notice"), CarMax shall cause notification of the settlement to be mailed to Class Members, in substantially the same form as Exhibit C to the Settlement Agreement. Prior to the mailing of the Notices, the addresses of the Class Members shall be updated using the U.S. Postal Service's National Change of Address database. As provided in the Settlement Agreement, if a Notice is returned as undeliverable within thirty (30) days of the Date of Notice, the Settlement Administrator will update the address using a web-based service, such as LEXIS. CarMax shall also cause notification of the settlement to be given to all Class Members by way of publication on a website to be created pursuant to the terms of the Settlement Agreement. The publication on the website shall be in substantially the same form as Exhibit C to the

Settlement Agreement, and it shall remain on the Internet for the period provided in the Settlement Agreement.

6. Named Plaintiff Alison Dannert is found to be a representative plaintiff who will fairly and adequately protect the interests of the Class. The following attorneys are found to be able to fairly and adequately represent the Class and are designated as Class Counsel: A. Camden Lewis, Gedney M. Howe, III, Richard A. Harpootlian, and Michael E. Spears. The remaining Named Plaintiffs in the Action, Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts and Michael Blease, did not purchase a motor vehicle from CarMax and their claims against CarMax will be dismissed with prejudice at the Final Hearing, as defined below.

7. A hearing (the "Final Hearing") is scheduled for _____, at the _____ County Courthouse, _____, South Carolina _____ to determine finally whether the proposed settlement of this Action, as set forth in the Settlement Agreement, is fair, reasonable, and adequate and should be finally approved. Additional briefs and supporting papers in support of the proposed settlement, if any, application of Class Counsel for an award of fees and expenses, and the Parties' proposals for the distribution of sixty (60%) of the Post-Settlement Distribution Balance as set forth in paragraph 8.6 of the Settlement Agreement shall be filed with the Court within at least five (5) business days prior to the date for Final Hearing. After the Final Hearing, the Court may enter a Final Order in accordance with the Settlement Agreement.

8. Any person within the Class may exclude himself or herself from the Class by mailing a written request to be excluded to the Settlement Administrator on or before the forty-fifth (45th) day after the Date of Notice. Any person within the Class who wishes to

exclude himself or herself from the Class must specifically state the following in the exclusion request: (1) an affirmative representation that the person does not desire to participate in (or "opt out of") the settlement; (2) contact information (*i.e.*, full name, complete mailing address, and telephone number); (3) the make, model and year of the motor vehicle purchased from CarMax and (4) the location of the CarMax store where the motor vehicle was purchased. These requirements shall be described in the Notice.

9. Any Class Member may object to the proposed settlement . An objection must be made in writing, identify the person making it by name, address and telephone number, and state the grounds upon which the objection is based. Any objection must be either mailed or personally delivered to the Clerk of Court for Aiken County on or before the forty-fifth (45th) day after the Date of Notice and must specifically refer to *CarMax Administrative Fee Class Action*, pending in the Court of Common Pleas for Aiken County, South Carolina, Case No. 06-CP-02-1230. Copies of any written objections must also be served on Class Counsel and Counsel for CarMax identified in the Notice. Any Class Member who files an objection must also appear at the Final Hearing in person or through counsel to show why the proposed settlement should not be approved as fair, reasonable, and adequate. These requirements shall be described in the Notice.

10. Any Class Member who does not make his or her objection to the settlement in the manner set forth herein and in the notice shall be deemed to have waived any such objection, including, without limitation, any assertion of objection to the proposed settlement or any provision of the Settlement Agreement, by appeal, collateral attack, or otherwise. Except for good cause shown, any Class Member who has failed to timely file an objection will not be heard at the hearing. Further, any Class Member who does not appear at the hearing may also be deemed to have waived any such objection.

11. Pending final determination of whether the Settlement Agreement should be approved, the Named Plaintiffs and Class Members are hereby enjoined and prohibited from prosecuting in any state or federal court, any pending action or filing any new action, either directly, individually, representatively, or in any capacity, asserting any claims against CarMax arising out of or relating to the subject matter of this Action.

12. As between the Parties to this Settlement Agreement, all discovery and other pretrial proceedings in this Action are stayed and suspended, except such actions as may be necessary to implement the Settlement Agreement and this Order.

13. If the proposed settlement as provided in the Settlement Agreement is not given final approval by the Court, or for any reason the Parties fail to obtain a Final Order as contemplated in the Agreement, or the Agreement is terminated pursuant to the terms of the Agreement or Orders of this Court, the Agreement and all Orders entered in connection with it including, but not limited to, this Preliminary Approval Order, shall become null and void and shall be of no further force and effect. In such event, the Agreement and all negotiations, proceedings and orders relating thereto (a) shall be deemed withdrawn without prejudice as to the rights of any and all parties thereto, who shall be restored to their respective positions as of the date of the execution of the Agreement, and (b) shall not be used or referred to for any purposes whatsoever in this or any other action, case or controversy.

DONE and ORDERED this ____ day of _____ 2007.

The Honorable Doyet A. Early, III
Circuit Court Judge

_____, South Carolina

Exhibit C

EXHIBIT "C"

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Heather Herron, Natalie Armstrong,	)	
Alison Dannert, Michael Ritz, Julie Freeman,	)	Civil Action No.: 06-CP-02-1230
Christine Watts, Michael Blease, Michael	)	
Watts, Individually And For The Benefit Of All	)	
Car Buyers Whom Paid "Administrative Fees"	)	
As Described Below To Defendants,	)	
	)	NOTICE OF PROPOSED CLASS
	)	ACTION SETTLEMENT AND
Plaintiffs,	)	HEARING ON PROPOSED
	)	SETTLEMENT
vs.	)	
	)	
CarMax Auto Superstores, Inc., <i>et al.</i>	)	
	)	
Defendants..	)	
	)	

You are NOT being sued. This Class Notification document merely explains valuable benefits to which you may be entitled. These benefits are available to you because of the settlement of a lawsuit. **This is NOT an advertisement or promotion.** This notice has been sent to you by Order of the Court. You should read it thoroughly.

This Notice is sent to you pursuant to Rule 23 of the South Carolina Rules of Civil Procedure. It informs you about the terms of a proposed settlement that has been reached in this class action lawsuit and advises you of your rights with respect to the settlement, including the right to object to the settlement or exclude yourself from it. This Notice is being sent to you because you have been identified as a member of a class of persons who may be entitled to the benefits provided by the Settlement Agreement.

This Notice affects your legal rights.
Please read it carefully.

This Notice provides a brief description of the benefits of the Settlement Agreement, including the following topics: (1) Description of the Litigation; (2) History of the Litigation; (3) No Opinion Expressed by the Court as to the Merits; (4) Reasons for Settlement; (5) The Class; (6) The Settlement; (7) Attorneys' Fees and Costs; (8) What to do to obtain the benefits of the Settlement; (9) Exclusion Requests; (10) Objections; (11) Hearing on the Settlement; (12) Release and Order of Dismissal; (13) Change of Address; (14) Further Information.

You may review the full contents of the Settlement Agreement on file with the Clerk of Court for the Aiken County Court of Common Pleas.

If you are not satisfied with the settlement, you may object to the settlement. Details on how to object are provided below.

You may also exclude yourself from ("opt out of") the settlement. Details on how to opt out are provided below.

If you have questions about the settlement, you may [consult the Settlement Website at _____] or you may write to Class Counsel at the following address:

Michael E. Spears
Michael E. Spears, P.A.
172 East Main Street, Suite 200, P.O. Box 5806
Spartanburg, South Carolina 29304-5806

1. DESCRIPTION OF THE LITIGATION

The Plaintiffs, individually and for the benefit of all car buyers who paid "administrative fees" (as defined in the Settlement Agreement), sued CarMax Auto Superstores, Inc. ("CarMax") and other Defendants in the above-captioned action alleging, among other things, that the manner in which CarMax charged administrative fees in connection with the sale of motor vehicles was unlawful. CarMax denies that it violated the law or acted improperly or wrongfully in any way and denies any and all allegations of wrongdoing, fault, liability, or damage of any kind to Plaintiffs or other car purchasers.

2. HISTORY OF THE LITIGATION

The lawsuit was filed in the Aiken County, South Carolina, Court of Common Pleas and was designated as complex and assigned to The Honorable Doyet A. Early, III. CarMax has filed and served a motion to dismiss in which it has asserted several grounds for dismissal. All discovery and proceedings as against CarMax have been stayed pending consideration of the proposed settlement.

3. NO OPINION EXPRESSED BY THE COURT AS TO THE MERITS

In ordering that this Notice be sent to you, the Court expresses no opinion as to the validity or truth of any of Plaintiffs' legal or factual allegations or of any of CarMax's grounds for dismissal and defenses.

4. REASONS FOR SETTLEMENT

The settlement is between the Plaintiffs and the Class defined below on the one hand and CarMax on the other, and includes a release and dismissal with prejudice of the claims of the Plaintiffs and the Class against CarMax. Plaintiffs and Class Counsel view this settlement as advantageous to the Class. In addition, the Class faces risks in continuing litigation, with respect to both proof of liability and proof of damages. CarMax, while denying that it is liable to anyone and denying that it has committed any wrongdoing, wishes to avoid further lengthy, costly and time-consuming litigation, to obtain total and final settlement of Plaintiffs' claims and the class claims, and to extinguish any liability of CarMax with respect to claims which were or could have been asserted on behalf of the Plaintiffs or the Class in the lawsuit.

5. THE CLASS

The Class is defined as follows: All persons or entities (1) who purchased a motor vehicle (2) from CarMax's Columbia and/or Greenville, South Carolina store(s), (3) who paid a \$99.00 administrative fee and/or a \$149.00 administrative fee (4) during the Class Period. The Class Period is defined as August 28, 2002 through March 21, 2007. You have received this Notice because, according to CarMax's records, you fall within the definition of the Class.

6. THE SETTLEMENT

The following is a summary of the benefits to the Class contained in the Settlement Agreement. The definitions of certain words and phrases used in this Notice are set forth in the Settlement Agreement, as are the complete terms of the Agreement. Please review the Settlement Agreement for details; the Settlement Agreement is available as described in the last paragraph of this Notice. These benefits are contingent upon Final Approval of the Settlement Agreement by the Court.

Prospective Benefits. CarMax will pay to the South Carolina Department of Consumer Affairs a registration fee as required by law; will list its administrative fee on line two (2) of the Buyer's Order; CarMax will disclose the administrative fee in a statement displayed in a conspicuous location in each CarMax store in South Carolina; and CarMax will include the amount of administrative fee in the advertised price of the vehicle on its website, in any advertisement and on its window stickers. Notwithstanding the foregoing, CarMax reserves the right to change its administrative fee practices to the extent permitted or required by any change in the law, including without limitation the repeal and/or amendment of S.C. Code § 37-2-307. CarMax further and reserves the right to modify the amount of its administrative fee.

Retrospective Benefits.

- Settlement Certificate: If the Court approves the settlement, subject to the terms and conditions in the Settlement Agreement, each Class Member who actually paid a \$99.00 administrative fee at CarMax during the Class Period shall receive a Settlement Certificate in the face amount of \$99.00 and each Class Member who actually paid a \$149.00 administrative fee at CarMax during the Class Period shall receive a Settlement Certificate in the face amount of \$149.00. Each Settlement Certificate shall be freely transferable and may be redeemed at any CarMax location during the Certificate Redemption Period(s) as provided in paragraph 1.8 of the Settlement Agreement for a credit in the amount of the face value shown on the Settlement Certificate to reduce the cost of the purchase of (a) a motor vehicle purchased from any CarMax location; or (b) a 30,000 mile or 60,000 mile service at any CarMax location. Settlement Certificates applied toward a 30,000 mile or 60,000 mile service at CarMax may be used for this purpose regardless of whether the vehicle was purchased at CarMax so long as CarMax provides service for the type of vehicle to be serviced in the regular course of business. Settlement Certificates presented after the expiration of the applicable Certificate Redemption Period(s) shall have no value and be null, void and useless. Settlement Certificates may be "stacked" as that term is defined in paragraph 1.29 of the Settlement Agreement.

- Cash Payment. If the Court approves the settlement, subject to the terms and conditions in the Settlement Agreement, each Class Member who actually paid a \$99.00 administrative fee during the Class Period shall receive a \$50.00 payment upon complying with the Cash Claim Submission procedure set forth in the Settlement Agreement, and each Class Member who actually paid a \$149.00 administrative fee at CarMax during the Class Period shall receive a \$75.00 payment upon complying with the Cash Claim Submission procedure set forth in the Settlement Agreement.

Release & Final Order and Dismissal. In exchange for these benefits, under the Settlement Agreement all Class Members will give a general release in favor of CarMax and no further action will be pursued by any person in the Class. Plaintiffs and CarMax will petition the Court for a Final Order, dismissing this Action as to the Class Members against CarMax with prejudice, and any person in the Class who does not request exclusion ("opt out of") the settlement will be bound by it.

7. ATTORNEYS' FEES AND COSTS

Class Counsel will petition the Court for an award of attorneys' fees, costs and out-of-pocket expenses incurred in prosecution of this litigation... The actual amount of any award of attorneys' fees, costs and expenses will be determined by the Court. CarMax has agreed that it will pay \$1,000.00 to Named Plaintiff Alison Dannert.

8. WHAT TO DO TO OBTAIN THE BENEFITS OF THE SETTLEMENT

If the Court approves the settlement, subject to the terms and conditions in the Settlement Agreement, the Settlement Administrator will mail the Settlement Certificates to all Class Members within forty-five (45) days of the Effective Date. You do not need to take any further action to receive the Settlement Certificate. Cash Claim Forms will accompany the Settlement Certificate. To receive a cash payment, you will need to fully complete the Cash Claim Form, attach the documentation requested in the Cash Claim Form, and mail it to the Settlement Administrator within forty-five (45) days of the Issuance Date. These directions will be stated more fully on the Cash Claim Forms. The Settlement Administrator will review the Cash Claim Form upon receipt and will confirm that you are entitled to the cash payment benefit provided by the Settlement Agreement.

9. EXCLUSION REQUESTS

You have the right to request to be excluded from ("opt out of") this settlement by advising the Settlement Administrator in writing of your decision on or before [forty-five (45) days after the Date of Notice]. Any request for exclusion must be postmarked on or before this deadline. If you elect to opt out, you will not participate in the benefits of the settlement. If you elect to opt out, you must mail a request for exclusion to the following address on or before [forty-five (45) days after the Date of Notice]:

Settlement Administration

[Insert Address]

[Insert Address]

You must specifically state the following in your exclusion request: (1) an affirmative representation that you do not desire to participate in the Settlement; (2) your contact information, including full name, mailing address, and telephone number; and (3) the make, model and year of the motor vehicle purchased from CarMax.

10. OBJECTIONS.

If you are a member of the Class, you have the right to object in writing to the proposed settlement, provided such objections are made in writing by [forty-five (45) days after the Date of Notice] and timely filed with the Court. If you file such written objections, you must also appear in person or through counsel at the hearing to present them.

If you wish to object to any part of the settlement, you must file your objections in writing, referring specifically to the *CarMax Administrative Fee Class Action*, pending in the Court of Common Pleas for Aiken County, South Carolina, Case No. 06-CP-02-1230, by mailing or personally delivering the original thereof by [forty-five (45) days after the Date of Notice] to:

Aiken County Clerk of Court, Common Pleas
109 Park Avenue Southeast
Aiken, South Carolina 29801

With copies to:

Michael E. Spears
Michael E. Spears, P.A.
172 East Main Street, Suite 200, P.O. Box 5806
Spartanburg, South Carolina 29304-5806

and

Ronald J. Tryon, Esq.
Parker Poe Adams & Bernstein LLP
P. O. Box 1509
Columbia, South Carolina 29202

You must include with any objections your name, address, telephone number, and the grounds upon which your objection is based.

11. HEARING ON THE SETTLEMENT

The Court will hold a hearing to consider the fairness and adequacy of this proposed settlement and to consider Class Counsel's petition for fees and costs on _____ at _____, at _____. If approved, the Court will issue a Final Order approving the Settlement following this hearing.

12. RELEASE AND ORDER OF DISMISSAL

The Class Members will release CarMax from liability according to the terms and conditions of the Settlement Agreement. The proposed settlement is intended to resolve and terminate all claims of any kind whatsoever that were or could have been brought by or on behalf of Class Members and their successors, heirs, and assigns or any other persons or entities against CarMax in the lawsuit arising out of or in any way related to Plaintiffs' claims or the Class claims. The proposed settlement will result in the release by Class Member of all such claims against CarMax and Discharged Parties, as more specifically provided in the Settlement Agreement. Further the claims of the Named Plaintiffs and Class Members against CarMax will be dismissed with prejudice.

13. CHANGE OF ADDRESS

If you change your address at any time, please send your name, new address, and telephone number to the address shown above.

Settlement Administration

[Insert Address]

[Insert Address]

14. FURTHER INFORMATION

The descriptions contained in this Notice of the lawsuit and settlement documents in this lawsuit are only summaries. The Settlement Agreement and all papers filed in the Action may be inspected at the Office of the Aiken County Clerk of Court for Common Pleas, Courthouse, 109 Park Avenue Southeast, Aiken, South Carolina 29801. If you have any questions with respect to this Notice or the lawsuit generally, please write to Class Counsel at :

Michael E. Spears

Michael E. Spears P.A.

PO Box 5806

Spartanburg, South Carolina, 29304-5806 _____ [or consult the Settlement Website at _____]. **PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE FOR INFORMATION.**

Date of Notice: _____, 2007

CLERK, COURT OF COMMON PLEAS
AIKEN COUNTY

Exhibit D

EXHIBIT "D"
CASH CLAIM FORM

Heather Herron, et al. v. CarMax, et al.
C.A. No.: 06-CP-02-1230
Court of Common Pleas for the Second Judicial Circuit
Aiken County, South Carolina

You need not complete this form to use your Settlement Certificate at any CarMax store within the applicable redemption period shown on your Settlement Certificate. To receive a cash payment in addition to the Settlement Certificate you have already received, you must complete, sign and submit this Cash Claim Form to the Settlement Administrator along with documentation verifying your identity. Such documentation may include (1) a copy of the first page of your South Carolina CarMax Buyer's Order, (2) the first page of the South Carolina Retail Installment contract that you entered into with CarMax Auto Superstores, Inc. or (3) a copy of your driver's license. This Cash Claim Form must be postmarked between _____ and _____.

Name: _____

Current Address: _____

Telephone Number: _____

Approximate Date of Purchase: _____

Make and Model of Vehicle Purchased (NOTE! If you purchased more than one vehicle from CarMax in South Carolina during the claim period, you will be sent a "Cash Claim Form" for each vehicle. Therefore, DO NOT list multiple vehicles and settlement certificate serial numbers on one of these forms. Just list one vehicle and one settlement certificate serial number per Cash Claim Form.): _____

Store Location: _____

Serial Number of Settlement Certificate received: _____

I hereby certify, under penalty of perjury, that I am the person who paid the administrative fee charged by CarMax at the time of purchase of the above-described vehicle.

SEND TO:

R.000313

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

Case No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiffs,

v.

CarMax Auto Superstores, Inc., et al.,

Defendants.

**SECOND AMENDED MOTION TO DISMISS FOR LACK OF STANDING,
IMPROPER JOINDER, AND OTHER GROUNDS AND FOR OTHER RELIEF
OF DEFENDANTS**

**RICK HENDRICK CHEVROLET, LP,
J.L.H. INVESTMENTS, LP D/B/A HENDRICK HONDA,
HENDRICK HONDA OF CHARLESTON,
HENDRICK HONDA
HONDA CARS OF ROCK HILL,
RICK HENDRICK DODGE,
RICK HENDRICK IMPORT SHOWPLACE,
RICK HENDRICK JEEP-EAGLE, LP,
AND RICK HENDRICK HONDA CARS CO.**

Plaintiffs served their original Complaint on Defendant J.L.H. Investments, LP d/b/a Hendrick Honda on September 1, 2006, and on Defendant Rick Hendrick Chevrolet, LP, on September 6, 2006. These two Hendrick Defendants filed a Motion to Dismiss for Improper Venue and Other Grounds on October 9, 2006.

Plaintiffs filed their First Amended Complaint dated October 28, 2006.¹ The First Amended Complaint named as additional Defendants Hendrick Honda of Charleston, Hendrick

¹ In the original Complaint, four plaintiffs brought actions against fifty-one defendant vehicle dealerships located in thirteen counties. In the First Amended Complaint, eight plaintiffs continued . . .

Honda, Honda Cars of Rock Hill, Rick Hendrick Dodge, Rick Hendrick Import Showplace, and Rick Hendrick Jeep-Eagle, LP, and Rick Hendrick Honda Cars Co. (referred to collectively as "Hendrick").

Hendrick, by and through its undersigned counsel, hereby moves, in the order specified below, before the presiding judge of the Court of Common Pleas for the Second Judicial Circuit, as follows:

FIRST, pursuant to Rule 12(b)(6), SCRCF, all Hendrick Defendants except Rick Hendrick Honda Cars Co. move for an order dismissing the claims of all Plaintiffs (Heather Herron, Alison Dannert, Michael Ritz, Natalie Armstrong, Christine Watts, Julie Freeman, Michael Blease, and Michael Watts) because these Plaintiffs do not have standing to sue these Hendrick Defendants either individually or as purported representatives of a class. The Plaintiffs allege that they purchased motor vehicles from Defendants other than these Hendrick Defendants. (First Amended Complaint ¶¶ 374-377, 380-89.) Because they do not allege that they purchased motor vehicles from these Hendrick Defendants, they do not themselves have claims against these Hendrick Defendants, and they thus do not have standing to assert claims against these Hendrick Defendants on behalf of persons who did purchase motor vehicles from these Hendrick Defendants. Plaintiffs' First Amended Complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted.

bring actions against 324 vehicle dealerships in forty-one counties. The plaintiffs reportedly have voluntarily dismissed claims against 60 or more dealerships.

Hendrick in this second amended motion to dismiss asserts the existence of arbitration agreements which may apply in this case. Plaintiffs have filed a motion to amend the Complaint and a proposed Second Amended Complaint dated June 1, 2007. The court has not yet ruled on Plaintiffs' motion to amend.

SECOND, Hendrick moves for an order pursuant to Rules 12(b)(1), 12(b)(2) and 12(b)(6), SCRPC, dismissing this action because certain customers who financed or leased a vehicle through one of several lending institutions signed a retail installment contract or lease agreement containing an arbitration agreement governed by the Federal Arbitration Act or South Carolina arbitration laws. These agreements allow a party or entity to which the agreement applies to require submission to binding arbitration of all disputes covered by the arbitration agreement, including any claim or dispute arising in contract, tort or otherwise.

THIRD, pursuant to Rule 12(b)(6), SCRPC, Rick Hendrick Honda Cars Co. moves for an order dismissing the claims of Plaintiffs Heather Herron, Alison Dannert, Michael Ritz, Natalie Armstrong, Christine Watts, Michael Blease, and Michael Watts (all Plaintiffs except Julie Freeman) because these Plaintiffs do not have standing to sue Rick Hendrick Honda Cars Co. either individually or as purported representatives of a class. All Plaintiffs, except for Julie Freeman, allege that they purchased motor vehicles from Defendants other than Rick Hendrick Honda Cars Co. (First Amended Complaint ¶¶ 374-377, 380-89.) Because the Plaintiffs do not allege that they purchased motor vehicles from Rick Hendrick Honda Cars Co., they do not themselves have claims against Rick Hendrick Honda Cars Co., and they thus do not have standing to assert claims against Rick Hendrick Honda Cars Co. on behalf of persons who did purchase motor vehicles from Rick Hendrick Honda Cars Co. Plaintiffs' First Amended Complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted.

FOURTH, Hendrick moves for an order, pursuant to Rules 18, 20, and 21, SCRPC, severing this matter into separate actions because Plaintiffs and Defendants are improperly joined as parties. The parties' claims and causes of action do not arise out of the same

transaction, occurrence, or series of transactions or occurrences, and do not involve common questions of law or fact, and thus the claims may not be joined together. The appropriate remedy for improper joinder is to sever the parties and the claims so that they may proceed separately in the county where venue is proper, i.e., in the county where each Defendant has its principal place of business pursuant to S.C. Code § Ann. 15-7-30.

FIFTH, pursuant to Rule 12(b)(3) SCRCP, Hendrick moves to dismiss this action for improper venue or for a change of venue on the ground that the action must be tried in the county where each Defendant has its principal place of business pursuant to S.C. Code § Ann. 15-7-30. In the alternative, Hendrick moves to dismiss this action for improper venue or for a change of venue from Aiken County to Greenville County on the grounds that the convenience of witnesses and the ends of justice would be promoted by the change pursuant to S.C. Code § 15-7-100(3).

SIXTH, pursuant to Rule 12(b)(6) SCRCP, Hendrick moves for an order dismissing this action on behalf of all unnamed Plaintiffs on the grounds that the First Amended Complaint fails to allege that Plaintiffs have met the requirements of Rule 23, SCRCP, pertaining to class action lawsuits. Plaintiffs may not rely solely on S.C. Code Ann. § 56-15-110 in bringing a purported class action, but still must allege and meet the requirements of Rule 23. The Plaintiffs' First Amended Complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted. In the alternative, Hendrick moves for an order requiring Plaintiffs to allege and meet the requirements of Rule 23.

SEVENTH, pursuant to Rules 12(b)(2), 12(b)(4) and 12(b)(5), SCRCP, Hendrick moves for an order dismissing this action against the defendants referred to as "all motor vehicle dealers as defined in S.C. Code Ann. § 56-15-10(h) owned or controlled by Defendants," on the grounds

that the Court lacks personal jurisdiction over such Defendants due to insufficient process and service of process.

EIGHTH, pursuant to Rule 12(b)(6), SCRCPP, Rick Hendrick Honda Cars Co. moves for an order dismissing the second cause of action (civil conspiracy) in the First Amended Complaint because Rick Hendrick Honda Cars Co. is not listed among Defendants identified as co-conspirators in this cause of action. The Plaintiffs' First Amended Complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted.

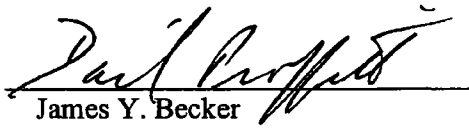
NINTH, pursuant to Rule 12(b)(6) SCRCPP, Hendrick moves for an order to dismiss this action on the grounds that the gravamen of the Plaintiffs' First Amended Complaint, i.e., closing fees charged in motor vehicle sales transactions, are authorized under the provisions of S.C. Code Ann. § 37-2-307 and regulated by the South Carolina Department of Consumer Affairs, and thus the Plaintiffs' First Amended Complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted.

TENTH, pursuant to Rule 26(c), SCRCPP, Hendrick moves for a protective order that discovery be stayed in whole or in part until the Court rules on the above motions on the grounds that the discovery requests of the Plaintiff are unduly burdensome, expensive, not reasonably calculated to lead to the discovery of admissible evidence, and seek the discovery of confidential or proprietary information about Hendrick's customers and its business, or in the alternative, that such confidential or proprietary information be redacted. Hendrick further moves that discovery be stayed in whole or in part until the Court enters a protective order prohibiting the disclosure of confidential or proprietary information about Hendrick's customers and its business to anyone other than counsel or specified persons.

This motion will be based on the pleadings filed with the Court, Plaintiffs' First Set of Interrogatories to Defendants and Plaintiffs' First and Second Sets of Requests for Production to Defendants, the South Carolina Rules of Civil Procedure, and such other and further case and statutory law and supporting affidavits as may be appropriate.

Pursuant to Rule 11(a), SCRPC, the undersigned certifies that consultation with opposing counsel regarding this motion would serve no useful purpose or could not be timely held.

HAYNSWORTH SINKLER BOYD, P.A.

By: 
James Y. Becker
R. David Proffitt

1201 Main Street, Suite 2200
Post Office Drawer 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080 Tel
(803) 765.1243 Fax
Email Address: jbecker@hsblawfirm.com
Email Address: dproffitt@hsblawfirm.com

Attorneys for Rick Hendrick Rick Hendrick Chevrolet, LP; J.L.H. Investments, LP d/b/a Hendrick Honda; Hendrick Honda of Charleston; Hendrick Honda; Honda Cars of Rock Hill; Rick Hendrick Dodge, Rick Hendrick Import Showplace; Rick Hendrick Jeep-Eagle, LP; and Rick Hendrick Honda Cars Co.

June 15, 2007

R.000319

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

Case No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiffs,

v.

CarMax Auto Superstores, Inc., et al.,

Defendants.

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned employee of the law offices of Haynsworth Sinkler Boyd, P.A., attorneys for Defendant, do hereby certify that I have served counsel specified below in this action with a copy of the Pleading specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Pleading:

SECOND AMENDED MOTION TO DISMISS FOR LACK OF STANDING, IMPROPER JOINDER, AND OTHER GROUNDS AND FOR OTHER RELIEF OF DEFENDANTS RICK HENDRICK CHEVROLET, LP, J.L.H. INVESTMENTS, LP D/B/A HENDRICK HONDA, HENDRICK HONDA OF CHARLESTON, HENDRICK HONDA, HONDA CARS OF ROCK HILL, RICK HENDRICK DODGE, RICK HENDRICK IMPORT SHOWPLACE, RICK HENDRICK JEEP-EAGLE, LP, AND RICK HENDRICK HONDA CARS CO.

Counsel Served:

Michael E. Spears, Esq.
Michael Spears, PA
PO Box 5806
Spartanburg, SC 29304

Gedney M. Howe, III, Esquire
Law Office of Gedney M. Howe, III, PA
PO Box 1034
Charleston, SC 29402

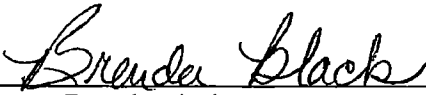
Richard A. Harpootlian, Esq.
Richard A. Harpootlian, P.A.

R.000320

PO Box 1090
Columbia, SC 29202

A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
Lewis & Babcock, LLP
PO Box 11208
Columbia, SC 29211

The pleadings were sent by e-mail only to attorneys for co-defendants as shown in the attached list.


Brenda Black

June 15, 2007

Ronald J. Tryon, Esq. - rontryon@parkerpoe.com
Kevin A. Dunlap, Esq. - kevindunlap@parkerpoe.com
J.W. Nelson Chandler, Esq. - nelsonchandler@parkerpoe.com
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Capers G. Barr, III, Esq. - cgb@barrungermcintosh.com
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BMS, Inc. d/b/a Breakaway Honda;
Bob Richards Automotive, LLC;
Bob Richards Nissan;
Bobby Wood Chevrolet Pontiac;
Boyle Motor Company, Inc.;
Boyle Toyota, Inc.;
Bradshaw Acura;
Bradshaw Automotive Group, Inc.;
Brockman Automotive;
Brunson Automotive Sales, Inc.;
Burns Ford Mercury, Inc.;
Butler Chrysler Dodge Jeep;
C. Thompson Automotive;
Cale Yarborough Honda, Inc. a/k/a Cale Yarborough Motors of SC;
Capitol Chevrolet a/k/a Sonic Newsome Chevrolet World;
Capitol Hyundai a/k/a Sonic Capitol Imports, Inc.;
Carolina Mazda;
Carolina Volvo a/k/a Savannah International Motors, Inc.;
Charleston Mitsubishi;
Clinton Family Ford Lincoln Mercury;
Coastal Nissan Chevrolet Cadillac;
Columbia Freightliner, LLC
Conway Chrysler Dodge Jeep, Inc.;
Conway Ford, Inc.;
Cooper Ford, Inc.;
Crane Chevrolet Cadillac, Inc.;
Crown-Jeep Chrysler;
Crown Nissan Greenville;
D&D Motors, Inc.;
Diamond Automotive Group, Inc.;
Dick Brooks Honda;
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Dick Smith Infiniti, Inc.;
Dick Smith Mitsubishi;
Dick Smith Motors, Inc.;
Dick Smith Nissan, Inc.;
Dick Smith Nissan of Lexington;
Dick Smith Pontiac Chrysler Dodge GMC Jeep;
Dickerson Motor Company;

Dunlap Johnson Chevrolet Co., Inc;
Easley Mitsubishi a/k/a Progressive Investment Concepts, Inc.;
East Coast Honda a/k/a Apex Automotive, LLC;
East Coast Volkswagen a/k/a East Coast Automotive, LLC;
Elrod Pontiac Buick GMC, Inc.;
Fairway Ford, Inc.;
Fairway Ford-Mazda a/k/a Fairway Management of Anderson, LLC;
Fairway Motorcars, LLC d/b/a Fairway Subaru Isuzu Saab
Farrell Automotive, Inc.;
Florence Toyota a/k/a Cloninger, LLC
Floyd Motor Company, Inc.;
Foothills Ford of Chesnee, Inc.;
Fort Mill Ford, Inc.;
Fowler Motors, Inc.;
Fred Caldwell's Clover Chevrolet;
Gene Reed Toyota, Inc. a/k/a Gene Reed Imports;
George Ballentine Ford Lincoln Mercury, Inc.;
Good Motor Company;
Goodwin Buick Jeep;
Goodwin Honda Mitsubishi-VW;
Grand Strand Nissan, Inc.;
Griffin Mitsubishi a/k/a Griffin Imports, LLC;
Griffin Pontiac Buick GMC Truck, Inc.;
H&H Chevrolet, Inc.;
Hadwin White Pontiac Buick GMC Subaru;
Hampton Automotive, Inc.;
Hancock BMW-Volkswagen;
Hancock Motor Company;
Harold Arnold's Sentry Buick, Inc. a/k/a Harold Arnold's Sentry Buick Pontiac GMC;
Harrelson Nissan;
Harrelson Toyota;
Haselden Brothers;
Hemingway Motor Company;
Hendrick Honda of Charleston a/k/a Rick Hendrick Honda Cars
Hilton Head Automotive, LLC;
Hilton Head Chrysler Jeep Dodge Hyundai;
Honda Cars of Aiken;
Honda Cars of Columbia;
Honda Cars of Rock Hill;
Hoover Chrysler Dodge a/k/a Hoover Dodge, Inc.;
Hoover Dodge, Inc.;
Hoover Jeep Chrysler, Inc.;
Hoover Motors, Inc.;

Horne Ford, Inc.;
Hyatt Buick GMC Trucks;
James Ervin Toyota;
Jeffrey Dean Chrysler Dodge Jeep GMC;
Jim Moore Cadillac, Inc.;
Joe Gibson Mitsubishi a/k/a Joe Gibson Automotive;
Joe Gibson Suzuki d/b/a Joe Gibson Auto World;
John Donoghue Ford, Inc.;
John Finger Mazda;
John Finger Motors, Inc.;
John Newsome, Inc.;
Johnny's Buick Pontiac;
Jones Chevrolet Co., Inc.;
Jones Nissan, Inc.;
Jones Pontiac GMC Truck, Inc.;
Jud Kuhn Chevrolet;
Kevin Whitaker Chevrolet, Inc. a/k/a Kevin Whitaker Chevrolet- Cadillac, Inc.;
Key Infiniti, LLC;
Key Mazda;
Key Nissan, LLC;
Kia Country a/k/a SC Automotive Investments, LLC;
Kia of Anderson, LLC;
Kia of Florence;
Kia of Greer;
Kia of Myrtle Beach;
Lake City Ford Mercury, LLC;
Lake Keowee Chrysler Dodge, LLC;
Lancaster Dodge Chrysler Jeep, Inc.;
Lancaster Motor Company;
Lawrence Chevrolet Pontiac;
Lay-Fisher Chevrolet, Inc;
Lexus of Charleston;
Low Country Mazda;
Low Country Volkswagen;
Lynn Cooper, Inc.;
Marathon Chevrolet;
Marathon Chevrolet of North Charleston a/k/a Charleston Auto Partners;
McDaniel's Acura of Charleston;
McDaniel's Acura Porsche;
McElveen Chevrolet, LLC;
McElveen Pontiac Buick GMC, Inc.;
Midlands Honda;
Miller Cadillac, Inc.;

Modern Classic Motors;
Morris Nissan a/k/a Morris Motors, Inc.;
Mullins Motors, Inc.;
Myrtle Beach Chevrolet, Inc.;
Myrtle Beach Chrysler Jeep, Inc.;
Myrtle Beach Hyundai-Isuzu;
Norris Ford, Inc.;
Northside Nissan;
O.C. Welch Ford Lincoln Mercury;
Orangeburg Ford;
Palmetto Ford, Inc.;
Palmetto Nissan, Inc.;
Parks Automotive Group;
Parks Cadillac, Inc.;
Performance Chevrolet Buick GMC a/k/a Performance Motors;
Peterbuilt of Florenc;
Piedmont Chrysler Jeep a/k/a Piedmont Automotive of Anderson;
Piedmont Honda a/k/a Piedmont Automotive of Anderson;
Planet Ford a/k/a Foothills Automotive;
Porsche of Hilton Head;
Prestige Motorcars, LLC d/b/a Hilton Head Jaguar;
Pulliam Motor Company;
Quality Chrysler City;
Raceway Chevrolet Pontiac Buick GMC;
Raceway Chrysler Jeep Dodge, Inc;
Raceway Ford;
Ralph Hayes Toyota, Inc.;
Redfearn Motor Company;
Rick Hendrick Chevrolet, LP;
Rick Hendrick Dodge;
Rick Hendrick Honda Cars Company;
Rick Hendrick Jeep Eagle, L.P.;
Rick Hendrick's Import Showplace;
Sanders Truck Sales, Inc.;
Saturn of Charleston;
Saturn Of Greenville, Inc.;
Saturn of Spartanburg;
Simpsonville Chevrolet, Inc.;
Sitton Buick Pontiac GMC Truck;
Sparks Toyota, Inc. a/k/a Rick Sparks Enterprises, Inc.;
Spartanburg Chrysler Jeep, inc. d/b/a Spartanburg Dodge
Stateline Chrysler Jeep Dodge, Inc.;
Steve White Motors of South Carolina;

Stivers Chrysler Jeep, Inc. a/k/a Stivers Automotive Of Lexington;
Stivers Lincoln Mercury a/k/a Stivers Automotive of Columbia;
Stokes Brown Toyota;
Stokes Craven Automotive, Inc.;
Stokes Craven Chrysler Jeep Dodge;
Stokes Craven Ford;
Stokes Honda North Charleston a/k/a Stokes Automotive;
Stokes Isuzu Kia Subaru;
Stokes Mazda, Inc.;
Stokes Mitsubishi;
Stokes-Craven Automotive, Inc.;
Stokes-Craven Ford;
Stokes Trainor Chevrolet Old Pontiac Cadillac Buick;
Stokes Trainor Ford;
Stokes Volkswagen;
Strom Altman Dodge, Inc.;
Summerville Ford Mercury, Inc.;
Sumter Chrysler Plymouth Dodge;
Superior Honda a/k/a J.M.G. Inc;
Superior Motors, Inc.;
Suzuki Outlet of Myrtle Beach d/b/a Myrtle Beach Mitsubishi;
Tidelands Chrysler Dodge a/k/a Tideland 4, LLC;
Tidelands Ford Lincoln Mercury;
Tison Motor Company;
Tom Hunter Pontiac Buick GMC, LLC;
Toyota Center, LLC;
Toyota of Easley, Inc.;
Toyota of Greer;
Union Chrysler Dodge Jeep, Inc;
Upstate Automotive Chevrolet Cadillac a/k/a Upstate Automotive Group;
Upstate Automotive Isuzu Kia;
Upstate Automotive Mitsubishi;
Upstate Automotive Nissan;
Victory Hyundai of Charleston;
West Ashley Toyota a/k/a Oak Tree, Inc.;
Whittle Motor Company; and
Wray Automotive, Inc.

Such a ruling will allow the Court to address many of the core questions as to the seven remaining Defendants. As such, the dismissal is proper. The following Defendants will remain in this action:

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

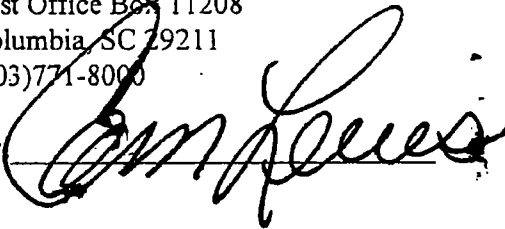
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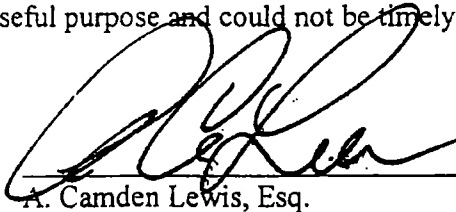
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By



Attorneys for the Plaintiffs
October 4, 2007

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, Plaintiffs' counsel
certifies that consultation would serve no useful purpose and could not be timely held.


A. Camden Lewis, Esq.

CERTIFICATE OF SERVICE

I, Margarita Sosa, secretary for the law firm of Lewis & Babcock, L.L.P., hereby certify that I have served a copy of **Notice of Motion and Motion to Dismiss Without Prejudice** upon opposing counsel and/or their registered agents, by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said parties at the following address:

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MAZDA; PERFORMACE CHEVROLET BUICK GMC; LAKE KEOWEE CHRYSLER DODGE, LLC;
STOKES MAZDA; SUMMERVILLE FORD MERCURY; GRIFFIN MITSUBISHI; O.C. WELCH FORD-
LINCOLN MERCURY; B & B FORD; PALMETTO NISSAN; RALPH HAYES MOTORS; STOKES
BROWN TOYOTA D/B/A STOKES MOTORS, INC.; BURNS FORD MERCURY, INC; BIG COUNTRY
CHEVROLET, INC; FRED CALDWELL'S CLOVER CHEVROLET; MYRTLE BEACH MITSUBISHI
AKA SUZUKI OUTLET OF MYRTLE BEACH; PALMETTO NISSAN; LOW COUNTRY MAZDA; AND
CAROLINA MAZDA; KIA OF MYRTLE BEACH; KIA OF FLORENCE; LOW COUNTRY
VOLKSWAGEN; SVEDLUND AUTOMOTIVE GROUP D/B/A UNION CHRYSLER DODGE JEEP

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SITTON BUICK COMPANY, INC.; HAMPTON AUTOMOTIVE, INC.; MARATHON CHEVROLET OF
NORTH CHARLESTON; GEORGE BALLENTINE FORD-LINCOLN MERCURY, INC.; NORRIS FORD,
INC.; CALE YARBOROUGH HONDA, INC.; FLORENCE MACK, INC.; GOOD MOTOR COMPANY,
INC.; BOYLE MOTOR COMPANY; GOODWIN BUICK, INC; GOODWIN VOLKSWAGEN; LAKE
CITY FORD, LLC; REDFEARN MOTOR COMPANY; JIM MOORE CADILLAC; TOYOTA CENTER,
LLC; CENTURY BMW D/B/A SONIC AUTOMOTIVE; FORTMILL FORD; CAPITOL CHEVROLET
D/B/A SONIC NEWSOME CHEVROLET WORLD, INC.; CAPITOL HYUNDIA D/B/A SONIC CAPITOL
IMPORTS, INC.; KIA COUNTRY D/B/A SC AUTOMOTIVE INVESTMENTS; GRIFFIN PONTIAC
BUICK GMC; REDFERN MOTOR COMPANY; COOPER FORD, INC.; SUPERIOR MOTRS, INC.;
SUPERIOR HONDA D/B/A J.M.G., INC.; LYNN COOPER, INC.; CAROLINA VOLVO D/B/A
SAVANNAH INTERNATIONAL MOTORS; SITTON BUICK PONTIAC GMC TRUCK; JONES
PONTIAC GMC TRUCK; JONES CHEVROLET COMPANY; HADWIN WHITE PONTIAC BUICK;
JONES NISSAN; MULLINS MOTORS; MORRIS NISSAN D/B/A MORRIS MOTORS; MARATHON
CHEVROLET; FOOTHILLS FORD OF CHESNEE; BRUNSON AUTOMOTIVE SALES; KEVIN
WHITAKER CHEVROLET A/K/A KEVIN WHITAKER CHEVROLET CADILLAC; AUDDIE BROWN
MITSUBISHI; EASLEY MITSUBISHI; QUALITY CHRYSLER CITY OF GREENWOOD; FLORENCE
TOYOTA; ALTMAN LINCOLN MERCURY HYUNDAI; TOYOTA OF GREER; KIA OF GREER;
FLORENCE TOYOTA; SIMPSONVILLE CHEVROLET; AND KIA OF ANDERSON

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C. Jo Anne Wessinger Hill, Esquire

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1426 Wilson Road
Newberry, SC 29108

Raceway Chrysler Jeep Dodge, Inc.
900 E. Bobo Newsom Hwy
Hartsville, SC 29550

Raceway Ford
701 South Governor Williams Hwy
Darlington, SC 29532

Raceway Chevrolet Pontiac Buick GMC
410 West Main Street
Lake City, SC 29560

Saturn of Charleston, LP
8261 Rivers Avenue
North Charleston, SC 29406

C. THOMPSON AUTOMOTIVE, INC
A Claude Thompson
1706 Montague Avenue
Greenwood, South Carolina 29649

ATLANTIC FORD, LLC
R Bradley Creger
5 Radcliffe Street
Charleston, South Carolina 29403

DIAMOND AUTOMOTIVE GROUP, INC.
Alvin H. Shuman
2515 Hwy 501
Conway, South Carolina 29526

CRANE CHEVROLET OLDSMOBILE-CADILLAC, INC.

W. C. Crane

1600 East Main Street

Easley, South Carolina 29640

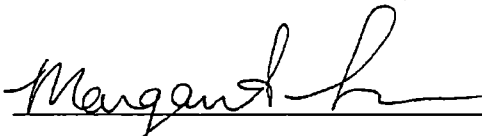
Bobby Wood Chevrolet Pontiac

PO Box 678

West Union, South Carolina 29696

Columbia, South Carolina

October 11, 2007


Margarita Sosa

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	CIVIL ACTION NO.: 06-CP-02-1230
	)	
	)	
Heather Herron, Natalie Armstrong, Michael	)	
Ritz, Julie Freeman, Christine Watts, Alison	)	
Dannert, Michael Blease, Michael Watts,	)	
Individually and for the Benefit of All Car	)	
Buyers Whom Paid "Administrative Fees" as	)	
Described below to Defendants	)	
	)	
Plaintiffs,	)	ORDER FOR DISMISSAL
	)	WITHOUT PREJUDICE
vs.	)	
	)	
Century BMW a/k/a Sonic Automotive; Dick	)	
Dyer & Associates, Inc.; Galeana Chrysler	)	
Plymouth, Inc. a/k/a Galeana Chrysler Jeep,	)	
Inc.; J.L.H. Investments, LP a/k/a Hendricks	)	
Honda; Overland, Inc. d/b/a Land Rover of	)	
Columbia; Taylor Toyota a/k/a Taylor	)	
Investments; and Toyota of Greenville, Inc., et.	)	
al.	)	
	)	
Defendants.	)	

This matter is before the Court by way of a motion to dismiss without prejudice by Plaintiffs. In the motion, Plaintiffs seek to dismiss all of the Defendants except for the seven car dealerships from whom the named Plaintiffs purchased vehicles.

Pursuant to Rule 41, SCRCF, the Court finds that dismissal of the below Defendants without prejudice is appropriate and proper. Based upon the foregoing, it is therefore ordered that the following Defendants are dismissed without prejudice:

Action Ford Mercury, Inc.;
Addy's Harbor Dodge a/k/a MSA of Myrtle Beach;
Altman Lincoln Mercury Hyundai a/k/a Sonic North Charleston, Inc.;
Atlantic Chrysler Jeep Dodge;
Atlantic Ford, Inc.;
B&B Ford, Inc.;
Baker Motor Company of Charleston;
Beach Ford Lincoln Mercury Volvo, Inc.;

Bell & Bell Pontiac GMC Truck, Inc.;
Benson Cadillac Nissan, Inc.;
Benson Chrysler-Plymouth, Inc.;
Benson Ford Mercury, Inc.;
Big Country Chevrolet, Inc.;
Big "O" Dodge of Greenville, Inc.;
BMS, Inc. d/b/a Breakaway Honda;
Bob Richards Automotive, LLC;
Bob Richards Nissan;
Bobby Wood Chevrolet Pontiac;
Boyle Motor Company, Inc.;
Boyle Toyota, Inc.;
Bradshaw Acura;
Bradshaw Automotive Group, Inc.;
Brockman Automotive;
Brunson Automotive Sales, Inc.;
Burns Ford Mercury, Inc.;
Butler Chrysler Dodge Jeep;
C. Thompson Automotive;
Cale Yarborough Honda, Inc. a/k/a Cale Yarborough Motors of SC;
Capitol Chevrolet a/k/a Sonic Newsome Chevrolet World;
Capitol Hyundai a/k/a Sonic Capitol Imports, Inc.;
Carolina Mazda;
Carolina Volvo a/k/a Savannah International Motors, Inc.;
Charleston Mitsubishi;
Clinton Family Ford Lincoln Mercury;
Coastal Nissan Chevrolet Cadillac;
Columbia Freightliner, LLC
Conway Chrysler Dodge Jeep, Inc.;
Conway Ford, Inc.;
Cooper Ford, Inc.;
Crane Chevrolet Cadillac, Inc.;
Crown-Jeep Chrysler;
Crown Nissan Greenville;
D&D Motors, Inc.;
Diamond Automotive Group, Inc.;
Dick Brooks Honda;
Dick Smith Chevrolet, Inc.;
Dick Smith Chrysler, Inc.;
Dick Smith Infiniti, Inc.;
Dick Smith Mitsubishi;
Dick Smith Motors, Inc.;
Dick Smith Nissan, Inc.;

Dick Smith Nissan of Lexington;
Dick Smith Pontiac Chrysler Dodge GMC Jeep;
Dickerson Motor Company;
Dunlap Johnson Chevrolet Co., Inc;
Easley Mitsubishi a/k/a Progressive Investment Concepts, Inc.;
East Coast Honda a/k/a Apex Automotive, LLC;
East Coast Volkswagen a/k/a East Coast Automotive, LLC;
Elrod Pontiac Buick GMC, Inc.;
Fairway Ford, Inc.;
Fairway Ford-Mazda a/k/a Fairway Management of Anderson, LLC;
Fairway Motorcars, LLC d/b/a Fairway Subaru Isuzu Saab
Farrell Automotive, Inc.;
Florence Toyota a/k/a Cloninger, LLC
Floyd Motor Company, Inc.;
Foothills Ford of Chesnee, Inc.;
Fort Mill Ford, Inc.;
Fowler Motors, Inc.;
Fred Caldwell's Clover Chevrolet;
Gene Reed Toyota, Inc. a/k/a Gene Reed Imports;
George Ballentine Ford Lincoln Mercury, Inc.;
Good Motor Company;
Goodwin Buick Jeep;
Goodwin Honda Mitsubishi-VW;
Grand Strand Nissan, Inc.;
Griffin Mitsubishi a/k/a Griffin Imports, LLC;
Griffin Pontiac Buick GMC Truck, Inc.;
H&H Chevrolet, Inc.;
Hadwin White Pontiac Buick GMC Subaru;
Hampton Automotive, Inc.;
Hancock BMW-Volkswagen;
Hancock Motor Company;
Harold Arnold's Sentry Buick, Inc. a/k/a Harold Arnold's Sentry Buick Pontiac GMC;
Harrelson Nissan;
Harrelson Toyota;
Haselden Brothers;
Hemingway Motor Company;
Hendrick Honda of Charleston a/k/a Rick Hendrick Honda Cars
Hilton Head Automotive, LLC;
Hilton Head Chrysler Jeep Dodge Hyundai;
Honda Cars of Aiken;
Honda Cars of Columbia;
Honda Cars of Rock Hill;
Hoover Chrysler Dodge a/k/a Hoover Dodge, Inc.;

Hoover Dodge, Inc.;
Hoover Jeep Chrysler, Inc.;
Hoover Motors, Inc.;
Horne Ford, Inc.;
Hyatt Buick GMC Trucks;
James Ervin Toyota;
Jeffrey Dean Chrysler Dodge Jeep GMC;
Jim Moore Cadillac, Inc.;
Joe Gibson Mitsubishi a/k/a Joe Gibson Automotive;
Joe Gibson Suzuki d/b/a Joe Gibson Auto World;
John Donoghue Ford, Inc.;
John Finger Mazda;
John Finger Motors, Inc.;
John Newsome, Inc.;
Johnny's Buick Pontiac;
Jones Chevrolet Co., Inc;
Jones Nissan, Inc.;
Jones Pontiac GMC Truck, Inc.;
Jud Kuhn Chevrolet;
Kevin Whitaker Chevrolet, Inc. a/k/a Kevin Whitaker Chevrolet- Cadillac, Inc.;
Key Infiniti, LLC;
Key Mazda;
Key Nissan, LLC;
Kia Country a/k/a SC Automotive Investments, LLC;
Kia of Anderson, LLC;
Kia of Florence;
Kia of Greer;
Kia of Myrtle Beach;
Lake City Ford Mercury, LLC;
Lake Keowee Chrysler Dodge, LLC;
Lancaster Dodge Chrysler Jeep, Inc.;
Lancaster Motor Company;
Lawrence Chevrolet Pontiac;
Lay-Fisher Chevrolet, Inc;
Lexus of Charleston;
Low Country Mazda;
Low Country Volkswagen;
Lynn Cooper, Inc.;
Marathon Chevrolet;
Marathon Chevrolet of North Charleston a/k/a Charleston Auto Partners;
McDaniel's Acura of Charleston;
McDaniel's Acura Porsche;
McElveen Chevrolet, LLC;
McElveen Pontiac Buick GMC, Inc.;
Midlands Honda;

Miller Cadillac, Inc.;
Modern Classic Motors;
Morris Nissan a/k/a Morris Motors, Inc.;
Mullins Motors, Inc.;
Myrtle Beach Chevrolet, Inc.;
Myrtle Beach Chrysler Jeep, Inc.;
Myrtle Beach Hyundai-Isuzu;
Norris Ford, Inc.;
Northside Nissan;
O.C. Welch Ford Lincoln Mercury;
Orangeburg Ford;
Palmetto Ford, Inc.;
Palmetto Nissan, Inc.;
Parks Automotive Group;
Parks Cadillac, Inc.;
Performance Chevrolet Buick GMC a/k/a Performance Motors;
Peterbuilt of Florenc;
Piedmont Chrysler Jeep a/k/a Piedmont Automotive of Anderson;
Piedmont Honda a/k/a Piedmont Automotive of Anderson;
Planet Ford a/k/a Foothills Automotive;
Porsche of Hilton Head;
Prestige Motorcars, LLC d/b/a Hilton Head Jaguar;
Pulliam Motor Company;
Quality Chrysler City;
Raceway Chevrolet Pontiac Buick GMC;
Raceway Chrysler Jeep Dodge, Inc;
Raceway Ford;
Ralph Hayes Toyota, Inc.;
Redfearn Motor Company;
Rick Hendrick Chevrolet, LP;
Rick Hendrick Dodge;
Rick Hendrick Honda Cars Company;
Rick Hendrick Jeep Eagle, L.P.;
Rick Hendrick's Import Showplace;
Sanders Truck Sales, Inc.;
Saturn of Charleston;
Saturn Of Greenville, Inc.;
Saturn of Spartanburg;
Simpsonville Chevrolet, Inc.;
Sitton Buick Pontiac GMC Truck;
Sparks Toyota, Inc. a/k/a Rick Sparks Enterprises, Inc.;
Spartanburg Chrysler Jeep, inc. d/b/a Spartanburg Dodge
Stateline Chrysler Jeep Dodge, Inc.;

Steve White Motors of South Carolina;
Stivers Chrysler Jeep, Inc. a/k/a Stivers Automotive Of Lexington;
Stivers Lincoln Mercury a/k/a Stivers Automotive of Columbia;
Stokes Brown Toyota;
Stokes Craven Automotive, Inc.;
Stokes Craven Chrysler Jeep Dodge;
Stokes Craven Ford;
Stokes Honda North Charleston a/k/a Stokes Automotive;
Stokes Isuzu Kia Subaru;
Stokes Mazda, Inc.;
Stokes Mitsubishi;
Stokes-Craven Automotive, Inc.;
Stokes-Craven Ford;
Stokes Trainor Chevrolet Old Pontiac Cadillac Buick;
Stokes Trainor Ford;
Stokes Volkswagen;
Strom Altman Dodge, Inc.;
Summerville Ford Mercury, Inc.;
Sumter Chrysler Plymouth Dodge;
Superior Honda a/k/a J.M.G. Inc;
Superior Motors, Inc.;
Suzuki Outlet of Myrtle Beach d/b/a Myrtle Beach Mitsubishi;
Tidelands Chrysler Dodge a/k/a Tideland 4, LLC;
Tidelands Ford Lincoln Mercury;
Tison Motor Company;
Tom Hunter Pontiac Buick GMC, LLC;
Toyota Center, LLC;
Toyota of Easley, Inc.;
Toyota of Greer;
Union Chrysler Dodge Jeep, Inc;
Upstate Automotive Chevrolet Cadillac a/k/a Upstate Automotive Group;
Upstate Automotive Isuzu Kia;
Upstate Automotive Mitsubishi;
Upstate Automotive Nissan;
Victory Hyundai of Charleston;
West Ashley Toyota a/k/a Oak Tree, Inc.;
Whittle Motor Company; and
Wray Automotive, Inc.

The following Defendants will remain in this action:

Century BMW a/k/a Sonic Automotive;
Dick Dyer & Associates, Inc.;
Galeana Chrysler Plymouth, Inc. a/k/a Galeana Chrysler Jeep, Inc.;
J.L.H. Investments, LP a/k/a Hendricks Honda;

Overland, Inc. d/b/a Land Rover of Columbia;
Taylor Toyota a/k/a Taylor Investments; and
Toyota of Greenville, Inc.

AND IT IS SO ORDERED.

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

_____, South Carolina

October __, 2007

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

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

Plaintiffs,

vs.

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

Defendants.

) IN THE COURT OF COMMON PLEAS
)
) FOR THE
) SECOND JUDICIAL CIRCUIT

) CIVIL ACTION NO.: 06-CP-02-1230

) **PLAINTIFF FREEMAN'S NOTICE**
) **OF MOTION AND MOTION FOR**
) **DECLARATORY JUDGMENT**

COPY
ORIGINAL FILED

JUN - 1 2009
8:30 AM
AIKEN COUNTY
CLERK OF COURT

TO: JAMES BECKER, ESQ. AND R. DAVID PROFFITT, ESQ., ATTORNEYS FOR
DEFENDANT J.L.H. INVESTMENTS, LP D/B/A HENDRICKS HONDA OF
EASLEY:

Plaintiff Julie Freeman hereby moves this Court to issue declaratory judgment as to
Defendant J.L.H. Investments, LP a/k/a Hendricks Honda (hereinafter "Hendricks Honda")
declaring that:

- (1) Defendant Hendricks Honda violated S.C. Code Ann. §37-2-307 by failing to include the charging of closing fees in the advertised price of its motor vehicles;
- (2) Defendant Hendricks Honda S.C. Code Ann. §37-2-307 by charging closing fees that were not for reimbursement of certain overhead costs;
- (3) Unless S.C. Code Ann. §37-2-307 is followed, closing fees are illegal; and
- (4) Defendant Hendricks Honda's charging of illegal closing fees violates the Dealers Act, S.C. Code Ann. §56-15-30(a).

[signature block located on following page]

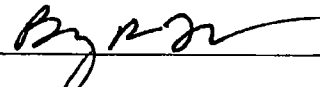
R.000342

MICHAEL E. SPEARS, PA
Michael E. Spears
E. Grey Wicker
Post Office Box 5806
Spartanburg, SC 29304
(864) 583-3535

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

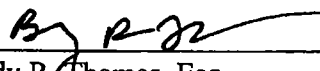
RICHARD A. HARPOOTLIAN, PA
Richard A. Harpootlian
P.O. Box 1090
Columbia, SC 29202
(803) 252-4848

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

By: 
ATTORNEYS FOR THE PLAINTIFFS

May 28, 2009

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, Plaintiff's counsel certifies that consultation would serve no useful purpose.


Brady R. Thomas, Esq.

CERTIFICATE OF SERVICE

I, Margarita Sosa, secretary for the law firm of Lewis & Babcock, L.L.P., hereby certify that I have served a copy of the **Plaintiff Freeman's Notice of Motion and Motion for Declaratory Judgment** upon opposing counsel, by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said opposing counsel at the following addresses:

J. Gregory Studemeyer, Esquire
Attorney at Law
Post Office Box 12201
Columbia, South Carolina 29211

James Y. Becker, Esquire
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Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor
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Steve W. Hamm, Esquire
C. Jo Anne Wessinger Hill, Esquire
Richardson, Plowden, Carpenter &
Robinson, P.A.
Post Office Drawer 7788
Columbia, South Carolina 29202

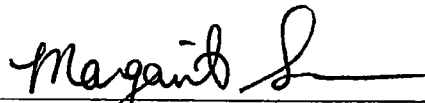
H. Clayton Walker, Jr., Esquire
Walker & Reibold
Post Office Box 61140
Columbia, South Carolina 29260

Bradford N. Martin, Esquire
Bradford, Neal, Martin & Associates, PA
Post Office Box 10410
Greenville, South Carolina 29603-0410

Ryan L. VanGrack, Esquire
Williams & Connolly, LLP
725 Twelfth St., N.W.
Washington, D.C. 20005

Columbia, South Carolina

May 28, 2009



Margarita Sosa

R.000344

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

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AIKEN COUNTY
CLERK OF COURT

Plaintiffs' submit this group memorandum in support of Plaintiffs' motions for declaratory judgment. These motions arise from Defendants' uniform practices which violate S.C. Code Ann. §37-2-307 and the Dealer's Act, S.C. Code Ann. §56-15-10 *et seq.* The issues in these motions are the same as those in Plaintiff Armstrong's Motion as to Defendant Galeana Chrysler Plymouth, Inc. a/k/a Galeana Chrysler Jeep, Inc.² Each Plaintiff, as to the corresponding Defendant, is entitled to a declaratory judgment declaring:

¹Each Plaintiff, as to the Defendant they did business with, is prosecuting this case in a representative capacity on behalf of all purchasers who paid administrative fees to that Defendant.

²Because the issues are the same, the legal arguments and discussion contained in Plaintiff Armstrong's Motion for Declaratory Judgment dated May 6, 2009 are incorporated herein by reference.

- (1) the Defendant Violated S.C. Code Ann. §37-2-307³ By Failing to Include The Charging of Closing Fees in the Advertised Price of Motor Vehicles;
- (2) the Defendant Violated S.C. Code Ann. §37-2-307 by Charging Closing Fees that Were Not for Reimbursement of Certain Overhead Costs;
- (3) Unless S.C. Code Ann. §37-2-307 is followed, Closing Fees Are Illegal; and
- (4) the Defendant's Charging of Illegal Closing Fees Violates the Dealers Act, S.C. Code Ann. §56-15-30(a).⁴

These motions are before the Court pursuant to Rule 57, SCRCP which allows for "a speedy hearing for an action for declaratory judgment." (emphasis added).

DEFENDANTS' UNIFORM CHARGING OF ILLEGAL CLOSING FEES

All Defendants engaged in the common practice of advertising the prices of motor vehicles without including its closing fees. This practice violates S.C. Code Ann. §37-2-307. §37-2-307 provides:

Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

Additionally, the Department of Consumer Affairs, which is charged with implementing and interpreting the Consumer Protection Code (including §37-2-307) has limited the charging of

³S.C. Code Ann. §37-2-307 provides: "Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership."

⁴S.C. Code Ann. §56-15-30(a) provides: "(a) Unfair methods of competition and unfair or deceptive acts or practices as defined in § 56-15-40 are hereby declared to be unlawful."

closing fees to only a "means of reimbursing [the dealer] for certain overhead costs."⁵

As stated, Defendants violated the above provisions by failing to include the charging of closing fees in the advertised price of its motor vehicles and by charging illegal closing fees that were not for reimbursement of certain overhead costs. Defendants charging of closing fees in violation of §37-2-307 renders the fees illegal and in violation of the Dealers Act, §56-15-10 *et seq.*⁶

1. Defendants Violated S.C. Code Ann. §37-2-307 by Failing to Include the Charging of Closing Fees in the Advertised Price of its Vehicles.

S.C. Code Ann. §37-2-307 requires that "the closing fee must be included in the advertised price of the motor vehicle." This provision requires that a dealers' advertisements put consumers on notice that the dealer has tacked on a closing fee to the price of the vehicle.

If a car dealer fails to comply with this requirement it may not charge closing fees.

The Department of Consumer Affairs has stated that this requirement is necessary "so that consumers cannot be unfairly surprised by having the fee added on...."⁷ Importantly, this statute is part of the South Carolina Consumer Protection Code and, thus, should be "liberally construed" to "protect consumer buyers." See Davis v. NationsCredit Financial Services Corp.,

⁵Exhibit 1, Department of Consumer Affairs Disclosure of Closing Fees Notice.

⁶The Motor Vehicle Dealers Act, S.C. Code Ann. §56-15-30(a) provides: "(a) Unfair methods of competition and unfair or deceptive acts or practices as defined in § 56-15-40 are hereby declared to be unlawful." S.C. Code Ann. § 56-15-40(a) lists as a violation of the Dealers Act "any action which is arbitrary, in bad faith, or unconscionable." "Arbitrary conduct includes acts which are unreasonable..." Taylor v. Nix, 307 S.C. 551, 555, 416 S.E.2d 619, 621 (S.C.,1992). Defendants' charging of illegal closing fees is unfair, arbitrary and unreasonable.

⁷Exhibit 2, Consumer Affairs Statement.

326 S.C. 83, 86, 484 S.E.2d 471, 472 (S.C.,1997).⁸

All Defendants uniformly failed to include the charging and amount of closing fees in their on-car advertising (stickers, hang tags, soap, etc.). This includes both new car stickers⁹ and similar advertising of prices on used cars. Included below is a chart with citations showing that no Defendant included the closing fees in their on-car advertising.

DEALER	CITATION
Dick Dyer & Associates, Inc.	Exhibit 3, 30(b)(6) Deposition of Defendant Dick Dyer & Associates, Inc., p. 52, ll. 15-19 (used car stickers or tags do not state closing fee); Exhibit 4, Dick Dyer's Responses to Plaintiffs' Requests to Admit (" Dick Dyer admits Monroney labels affixed by the manufacturer or distributor on new cars and other labels affixed to some used cars by Dick Dyer, some of which included a price, did not include a closing fee. ") (emphasis added).
J.L.H. Investments, LP a/k/a Hendricks Honda	Exhibit 5, 30(b)(6) Deposition of J.L.H. Investments, LP a/k/a Hendricks Honda, p. 321, l. 26 - p. 322, l. 4 (new car stickers do not state closing fees); p. 308, ll. 5-9 and p. 308, l. 22 - p. 309, l. 13 (used car stickers or tags do not state closing fee); Exhibit 6, New Car Stickers without Fee; Exhibit 7, Used Car Sticker without Fee.
Overland, Inc. d/b/a Land Rover of Columbia	Exhibit 8, 30(b)(6) Deposition of Overland, Inc. d/b/a Land Rover of Columbia, p. 129, l. 16 - p. 130, l. 24 (used car stickers or tags do not state closing fee); p. 136, l. 9 - p. 137, l. 20 (new car stickers do not state closing fees).

⁸The Davis case provides in part: "[T]he South Carolina Consumer Protection Code, declares that it shall be liberally construed and applied to promote its underlying purposes and policies. S.C.Code Ann. § 37-1-102(1) (1989). One of the primary purposes of the Consumer Protection Code is to 'protect consumer buyers.'" See Davis v. NationsCredit Financial Services Corp., 326 S.C. 83, 86, 484 S.E.2d 471, 472 (S.C.,1997).

⁹Every car sold by Defendants included a manufacturer provided "Monroney" sticker advertising the vehicle price and features. Defendants added supplemental stickers to new cars when adding items to the price on the Monroney stickers or reduced the advertised price when a feature was removed. As shown in the above chart, it is undisputed that all Defendants added closing fees but failed to include the closing fees on either the advertised price on the Monroney or supplemental stickers on new cars.

Taylor Toyota a/k/a Taylor Investments	Exhibit 9, 30(b)(6) Deposition of Taylor Toyota a/k/a Taylor Investments, p. 31, ll. 4-25 (new car stickers do not state closing fees); p. 26, l. 9 - p. 27, l. 10; p. 50, ll. 4-7 (used car stickers or tags do not state closing fee)
Toyota of Greenville, Inc.	Exhibit 10, 30(b)(6) Deposition of Toyota of Greenville, Inc.; p. 72, l. 23 - p. 74, l. 7 (new car stickers do not state closing fees); Exhibit 11, New Car Window Stickers without Fee; Exhibit 12, Used Car Window Stickers without Fee .

Defendants' failure to include the charging and amount of closing fees in their new and used car advertising violates S.C. Code Ann. §37-2-307, which requires that "the closing fee must be included in the advertised price of the motor vehicle."¹⁰

Defendants attempt to excuse their failing to include the charging of closing fees in their on-car advertising by arguing that on-car advertising is not advertising. Defendants' attempts to classify on-car advertising as anything but advertising flies in the face of the definition of the word "advertise." Black's Law Dictionary 6th Ed. defines the term "advertise" as follows:

¹⁰Defendants also failed to include the charging and amount of closing fees in advertising through other media. These advertisements also fail to comply with S.C. Code Ann. §37-2-307. Exhibit 3, 30(b)(6) Deposition of Dick Dyer & Associates, Inc., p. 63, l. 21 - p. 64, l. 4 (discussing newspaper advertisements (deposition Exhibit 12) "Q: Do any of those mention processing fee or closing fee? A: Not that I see."). Exhibit 5, 30(b)(6) Deposition of J.L.H. Investments, LP a/k/a Hendricks Honda, p. 280, ll. 7-20 (newspaper); p. 303, l. 15 - p. 304, l. 4 (internet). Exhibit 8, 30(b)(6) Deposition of Overland, Inc. d/b/a Land Rover of Columbia, p. 129, ll. 4-12 (does not know of any television, print, radio, direct mail, or internet advertisement that stated a closing fee). Exhibit 9, 30(b)(6) Deposition of Taylor Toyota a/k/a Taylor Investments, p. 41, ll. 8-24 (television and radio advertisements do not state administrative fees); p. 49, l. 24 - p. 50, l. 3 (television, radio, print, internet). Exhibit 10, 30(b)(6) Deposition of Toyota of Greenville, Inc., p. 50, l. 4 - p. 51, l. 23 (discussing Exhibit 6 to the deposition, internet advertisement that does not state closing fee).

To advise, announce, appraise, command, give notice of, inform, make known, publish. To call a matter to the public attention by any means whatsoever. Any oral, written, or graphic statement made by the seller in any manner in connection with the solicitation of business and includes without limitation because of enumeration, statements and representations made in a newspaper or other publication or on radio or television or contained in any notice, handbill, sign, catalog, or letter, or printed on or contained in any tag or label attached to or accompanying any merchandise.

Black's Law Dictionary 6th Ed (emphasis added). Window stickers and hang tags are "tag[s] or label[s] attached to or accompanying merchandise" and are "statement[s] made by the seller . . . in connection with the solicitation of business." Black's Law Dictionary 6th Ed. Therefore, these items fall squarely within Black's definition of the word advertise. Black's Law Dictionary's plain meaning definition of the word "advertise" has been accepted by many courts. See Dorr v. Wyoming Bd. of Certified Public Accountants, 21 P.3d 735, 743 (Wyo. 2001); see also Smith v. Baldwin, 611 S.W.2d 611, 614-15 (Tex.1980); First State Bank v. Keilman, 851 S.W.2d 914, 922 (Tex.App.-Austin, 1993); and General Case. Co. of Illinois v. Four Seasons Greetings, 2002 WL 31939106, 2 (Minn.Dist.Ct). Respectfully, this Court should also adopt this plain meaning definition.

Defendants in their depositions went to bizarre lengths in an attempt to distinguish on-car advertising from other forms of advertising. For example, Land Rover's Rule 30(b)(6) designee deposed that a "for sale" sign in front of a house is advertising but somehow a hang tag on a car is not advertising.

Q. Well, if you've got a for sale sign in front of your house, are you advertising your house for sale?"

....

A. I think it would be an advertising form for a house, yes.

Q. When you put this inside your vehicle, after hours and people wander through the lot looking at it, it's not advertising?

¹¹Exhibit 8, p. 132, l. 23-25.

- A. I've never looked at it that way. It's not my understanding.
Q. Could it be? Would you accept my definition for it?
A. I understand where you're coming from.
Q. Would you accept my definition?
A. No.¹²

Certainly, common sense dictates that both the "for sale" sign and the hang tag are advertising.

There is no logical reason to distinguish between the two. This is simply an attempt by

Defendants to avoid admitting they all violated §37-2-307 by failing to include the closing fees in on-car advertising.

Similarly, Taylor Toyota's and Toyota of Greenville's Rule 30(b)(6) designees tried to draw an illogical distinction between whether an advertisement stating a price of a car is on the dealership premises or down the street. Taylor Toyota's designee deposed:

- Q. If I take a picture of that car with the big sign on it \$10,000 and I take a little poster and I walk down the street and I pin it on a wall, is that an advertisement?
A. Yes, sir.
Q. So the difference is one's on the premise and one's off premise?
A. Yes, sir.¹³

Toyota of Greenville's designee deposed:

- Q. Look at Exhibit No. 13. Here's a newspaper ad. Now if this was on your lot, it wouldn't be an ad, would it? If it was on a little bulletin board on your lot, it wouldn't be an advertisement, would it?
A. No, sir.
Q. But now it's in the newspaper, it's an advertisement, right?
A. Yes, sir.¹⁴

The location of the sign should not determine whether the sign is an advertisement. Both the sign

¹²Exhibit 8, p. 132, l. 23-25.

¹³Exhibit 9, p. 47, l. 23 - p. 48, l. 5.

¹⁴Exhibit 10, p. 81, ll. 18-25.

down the street and at the dealership are meant to inform and entice potential customers to purchase the car. This Court should reject Defendants' twisted attempts to distinguish on-car (on premises) advertising from all other forms of advertising.

Defendants also wrongly argue that S.C. Code Ann. §37-2-307 only prevents Defendants from charging customers a price in excess of the advertised price. For example, Defendants claim that if a car is advertised for \$10,000.00, S.C. Code Ann. §37-2-307 only prevents them from charging the customer \$10,199.00 (\$10,000.00 plus a \$199.00 Closing Fee). This argument should be rejected because it makes no sense in its narrow and limited interpretation. See Davis v. NationsCredit Financial Services Corp., 326 S.C. 83, 86, 484 S.E.2d 471, 472 (S.C.,1997)(“[T]he South Carolina Consumer Protection Code, declares that it shall be liberally construed and applied to promote its underlying purposes and policies. S.C.Code Ann. § 37-1-102(1) (1989). One of the primary purposes of the Consumer Protection Code is to ‘protect consumer buyers.’”). The proffered interpretation only protects the car dealers and would render §37-2-307 close to meaningless because very few customers pay the asking price for a vehicle. Additionally, it would not avoid the “unfair surprise” occurring when a customer agrees to a price and then the dealer sneaks on a new cost in the form of a closing fee. This unfair surprise is cited as the reason for the statute by the Department of Consumer Affairs.¹⁵ Defendants' proffered narrow interpretation of §37-2-307 protects car dealers and not consumers should be rejected. The starting price for negotiations has to include the closing fee otherwise the statute has no real meaning.

Similarly, Defendants' proffered interpretation is contrary to what is shown on Defendants' invoices. Defendants' invoices show a closing fee being added onto the price of the

¹⁵Exhibit 2, Consumer Affairs Statement (stating the requirement is necessary “so that consumers cannot be unfairly surprised by having the fee added on....”).

car after negotiation. For example, Plaintiff Michael Blease's invoice provides:

	15000.00
PROCESSING FEE	199.00
SUB TOTAL	15199.00
SALES TAX	300.00
LICENSE	25.00
	N/A
TOTAL CASH PRICE	15524.00

As shown above, the Defendants add the closing fee after the negotiated price. If the closing fee was already included in the advertised price (as required by §37-2-307), there would be no need to add the closing fee. Thus, the argument that §37-2-307 only prevents Defendants from charging closing fees in excess of the advertised price should be rejected.

2. *Defendants Violated S.C. Code Ann. §37-2-307 by Charging Closing Fees That Were Not for Reimbursement of Certain Overhead Costs.*

Defendants violated S.C. Code Ann. §37-2-307 as implemented by the Department of Consumer Affairs by charging closing fees that were not for reimbursement of certain overhead costs. The Department of Consumer Affairs has the power to adopt rules and regulations implementing and interpreting the consumer protection code. S.C. Code Ann. §37-6-104.

With regard to S.C. Code Ann. §37-2-307, the Department of Consumer Affairs promulgated a disclosure sign that complies with S.C. Code Ann. §37-2-307's requirement that the charging of closing fees be "displayed in a conspicuous location in the motor vehicle dealership." From 2001 through 2008, this disclosure stated:

The dealership charges closing fees as a means of reimbursing it for certain overhead costs such as documents retrieval and document preparation. It is a charge that is permitted but not required by law. The full cash price charged at any dealership depends on many factors, including all products and services bought with the vehicle.¹⁶

As stated in the disclosure, the closing fee can only be charged for "reimbursing [the dealer] for certain overhead costs. . . ."¹⁷ This interpretation and rule by the Department of Consumer Affairs regarding S.C. Code Ann. §37-2-307 is "valid for the enforcement of the law. . . ." See Heyward v. South Carolina Tax Comm'n, 240 S.C. 347, 126 S.E.2d 15, 19-20 (1962)("[T]he legislature. . .in enacting a lawsuit. . .may authorize an administrative agency or board to 'fill up the details' by prescribing rules and regulations for the complete operation of the law within its expressed general purpose."). The Department of Consumer Affairs has "filled up the details" and clarified that S.C. Code Ann. §37-2-307 only allows closing fees to be charged as a means of reimbursement for "certain overhead costs."

Defendants violated S.C. Code Ann. §37-2-307 by charging closing fees that were not for the reimbursement of "certain overhead costs." Defendant Dick Dyer, through a Rule 30(b)(6) deposition, deposed that it had no study or calculation of what the closing fee covers.¹⁸ Dick Dyer also admitted that the general manager who came up with the fee did not know specifically what overhead costs were covered by the fee.¹⁹ Similarly, Defendant Land Rover stated that it simply "guessed at" determining what amount to charge its customers and also admitted that it

¹⁶Exhibit 1, Department of Consumer Affairs Disclosure of Closing Fees Notice (emphasis added).

¹⁷Id.

¹⁸Exhibit 3, p. 13, ll. 1-3.

¹⁹Exhibit 3, p. 15, l. 16 - p. 16, l. 9.

had no study or analysis to determine what amount to charge as a closing fee.²⁰ Defendant Taylor Toyota admitted in its Rule 30(b)(6) deposition that it did not charge closing fees for reimbursement of any certain costs but instead charges the closing fee for a profit.²¹ Additionally, the Taylor Toyota designee deposed that the fee was not tied to any particular or group costs of costs.²² Hendricks Honda's representative also admitted its closing fee did not cover any particular overhead or other costs.²³ Toyota of Greenville's representative deposed that they did not look at overhead to determine closing fees but instead looked at the competition and tried to determine what the market would be.²⁴

As shown by the above, Defendants do not charge a closing fee for reimbursement of any "certain overhead costs," nor did they even attempt to determine what incurred costs they were charging to the consumer through the addition of a closing fee. This is a violation of S.C. Code Ann. §37-2-307 as implemented by the Department of Consumer Affairs. Accordingly, all closing fees charged by Defendants were illegal because Defendants failed to meet the requirements necessary to charge legal closing fees.

3. *Unless S.C. Code Ann. §37-2-307 is followed, Closing Fees Are Illegal.*

S.C. Code Ann. §37-2-307 makes closing fees legal only when the mandates of the statute

²⁰Exhibit 8, p. 17, ll. 7-25 (no study or analysis to determine what the dollar amount was); p. 30, ll. 6-9 (no document exists reflecting the costs of each item); and p. 42, ll. 13-15 ("Q: Did you guess at it? . . . What did you do? A: I think we guessed at it.").

²¹Exhibit 9, p. 17, l. 11 - p. 18, l. 6.

²²Id.

²³Exhibit 5, p. 224, ll. 16-19; p. 241, ll. 3-11; and p. 261, ll. 3-11.

²⁴Exhibit 10, p. 16, l. 25 - p. 17, l. 8.

are followed:

Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

Except for following the mandates of this statute and the rules implementing the statute promulgated by the Department of Consumer Affairs, closing fees are illegal. The following rhetorical question closes the inquiry: why have the statute if the fees were legal?.

Some of the reasons closing fees are illegal in absence of the statute are explained in Former Consumer Advocate, Steve Hamm's Affidavit, attached as Exhibit 13 ("Such fees are a violation of the law.").

As set forth in sections 1 and 2 above, Defendants failed to gain the protection of S.C. Code Ann. §37-2-307. Therefore, the closing fees charged by Defendants were illegal.

4. *Defendants' Charging of Illegal Closing Fees Violates the Dealers Act, S.C. Code Ann. §56-15-30(a).*

The Motor Vehicle Dealers Act, S.C. Code Ann. §56-15-30(a) provides: "(a) Unfair methods of competition and unfair or deceptive acts or practices as defined in § 56-15-40 are hereby declared to be unlawful." S.C. Code Ann. § 56-15-40(a) lists as a violation of the Dealers Act "any action which is arbitrary, in bad faith, or unconscionable." "Arbitrary conduct includes acts which are unreasonable..." Taylor v. Nix, 307 S.C. 551, 555, 416 S.E.2d 619, 621 (S.C.,1992). Defendants' charging of illegal closing fees is unfair, arbitrary and unreasonable.

As discussed in Sections 1, 2, and 3, Defendants failed to fulfill the prerequisites to charging legal closing fees in S.C. Code Ann. §37-2-307 as implemented by the Department of

Consumer Affairs. As such, Defendants cannot avail themselves of the protection afforded by §37-2-307 and all closing fees charged by Defendants are illegal, unfair, unreasonable, and, therefore, in violation of S.C. Code Ann. §56-15-30(a). Accordingly, Plaintiffs respectfully request a declaratory judgment declaring that each Defendant's charging of illegal closing fees in violation of S.C. Code Ann. §37-2-307 is also a violation of the Motor Vehicle Dealers Act, S.C. Code Ann. §56-15-30(a).

CONCLUSION

Plaintiffs respectfully requests that the Court issue a declaratory judgment as to each Defendant declaring that:

- (1) the Defendant Violated S.C. Code Ann. §37-2-307 By Failing to Include The Charging of Closing Fees in the Advertised Price of its Motor Vehicles;
- (2) the Defendant Violated S.C. Code Ann. §37-2-307 by Charging Closing Fees that Were Not for Reimbursement of Certain Overhead Costs;
- (3) Unless S.C. Code Ann. §37-2-307 is followed, Closing Fees Are Illegal; and
- (4) the Defendant's Charging of Illegal Closing Fees Violates the Dealers Act, S.C. Code Ann. §56-15-30(a).

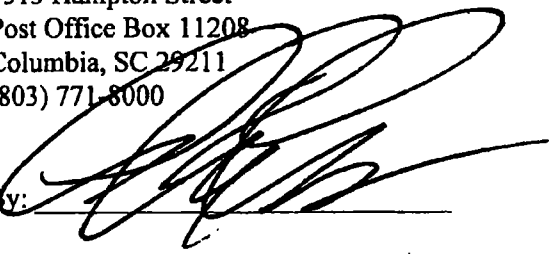
[signature block located on following page]

MICHAEL E. SPEARS, PA
Michael E. Spears
E. Grey Wicker
Post Office Box 5806
Spartanburg, SC 29304
(864) 583-3535

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

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

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

By: 

ATTORNEYS FOR THE PLAINTIFFS

June 2, 2009

EXHIBIT 1

04 04

S.C. Department of Consumer Affairs
Registration Fee and Disclosure for
Motor Vehicle Dealer Closing Fees
(S.C. Code Ann. Section 37-2-307)

CERTIFIED MOTOR VEHICLE
DEALER CLOSING FEE

MAY 29 2003

Note: This original form must accompany a \$10.00 filing fee

SC DEPT. OF CONSUMER
AFFAIRS

MV01 8810211
GALEANA CHRY--PLYMOUTH, INC
180 GREYSTONE BLVD
COLUMBIA SC 29210

Registration No.

Telephone Number

City

State

Zip

Contact Person

INSTRUCTIONS

1. If you wish to charge closing fees on motor vehicle sales, please complete the disclosure below or attach this form to your disclosure of closing fees charged and submit a \$10.00 registration fee payable to the Department of Consumer Affairs at P.O. Box 5246, Columbia, SC 29250-5246. See Administrative Interpretation summary on back of this form.
2. All required registrations and payments must be received by the Department before the closing fee is charged to customers. While filings may be made at any time, the Department urges dealers to file between July 1 and August 31 of each year. The filing lapses automatically if any full State fiscal year (July 1-June 30) elapses without a renewal. If the amount of closing fees are increased during the year, a new disclosure filing is required along with a new registration fee.
3. Listed below on this form is a suggested format for disclosing closing fees. It is not required that dealers use this format and language on this form, but if you do, you will be deemed compliant if the form is properly filled out.
4. If you have questions, please contact the Accounting and Regulatory Filing Division at 734-4283.

Disclosure of Closing Fees Notice

This dealership charges closing fees as a means of reimbursing it for certain overhead costs such as documents retrieval and document preparation. It is a charge that is permitted but not required by law. The full cash price charged at any dealership depends on many factors, including all products and services bought with the vehicle.

The closing fee charged by

Dealer Name

GALEANA CHRYSLER JEEP INC

Dealer Address

180 GREYSTONE BLVD

City, State Zip

COLUMBIA SC 29210

Will not exceed \$ 100.00

Prior to July 1st

5-29-03

Date

Signature

SCOTT C RHODES

Name of Officer (Typed)

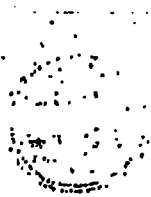
SCOTT C. RHODES

Title

Secretary

FILE BY AUGUST 31 OF EACH YEAR
(Display in a conspicuous location of dealership)

EXHIBIT 2



Philip S. Porter
Administrator
and
Consumer Advocate

The State of South Carolina Department of Consumer Affairs

3500 FOREST DRIVE
P.O. BOX 5757
COLUMBIA, S.C. 29250-5757

June 7, 2001

Commissioners
Barbara B. League
Chairman
Gregory
Lionel Randolph, Jr.
Vice Chairman
Columbia
Jim Miles
Secretary of State
Columbia
Louis Mayrant, Jr.
Proctor
Tony Macomson
Comptroller
W. Chuck Cross
General
Steven M. Calcutt
Treasurer
Samuel E. White
Port M
Virginia A. McGee
Columbia

Administrative Interpretation 2.307-0101

The assessment of a "closing" or "documentation" fee (also occasionally denominated as an "administrative," "processing," or "procurement" fee) in a consumer credit sale of a motor vehicle is dependant on four factors: 1.) The dealer must pay the Department a registration fee each state fiscal year in the amount of ten (\$10.00) dollars prior to the assessment of a closing fee; 2.) The existence of a closing fee must be disclosed on the sales contract; 3.) The closing fee must be disclosed in a statement displayed in a conspicuous location in the motor vehicle dealership; and 4.) If the closing fee is charged, and the vehicle is advertised, the closing fee must be included in the advertised price. A dealership may use the attached form to make its filing with the Department. A closing fee may only be assessed once these factors are met and the dealership has in its possession a date stamped copy of its disclosure stamped by the Department. The charging of a "closing," "documentation," or similar fees in connection with a consumer credit sale of a motor vehicle in the absence of any of these requirements constitutes the charging of an excess charge for Consumer Protection Code purposes.

In Part II, Section 82 of the 2000-2001 General Appropriations Act, the General Assembly passed an amendment to the Consumer Protection Code to add Section 37-2-307 which reads as follows:

Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

Previously, there had been some question concerning the propriety of charging such fees. The Supreme Court, in the case of *Fanning v. Fritz's Pontiac-Cadillac-Buick*, 322 S.C. 399, 472 S.E.2d 242 (1996), clarified the issue somewhat by stating that based on the stipulated facts of that case (that the fees were charged to cash and credit customers alike, and that the fees were disclosed and subject to negotiation prior to the consumer being obligated to the contract), the

1

TELEPHONE (AREA CODE 803)
ADMINISTRATOR
734-4187
ACCOUNTING
734-4283

PUBLIC INFORMATION
734-4191
E-MAIL: SCDOCA@DCA.STATE.SC.US
www.state.sc.us/consumer

CONSUMER ADVOCACY
734-4200
(1) FAX: 734-4287
(2) FAX: 734-4288

INVESTIGATORS
734-4238
ENFORCEMENT
734-4238

CONSUMER COMPLAINTS
734-4200
WATS: 1-800-922-1894
VOICE/TT - 1-800-733-2993

TOG 33

7348

R.000362

dealership did not violate the Consumer Protection Code's provisions concerning excess charges [S.C. Code Ann. § 37-2-201 and -202] or unconscionability [S.C. Code Ann. § 37-5-108].

With Section 37-2-307 the General Assembly provided further clarification concerning whether and under what circumstances such fees may be charged. The section does not give an indication of the meaning of the term "motor vehicle dealer." For purposes of construing this section, the Department will assume the intended meaning of the term "motor vehicle dealer" will be the definition used elsewhere in the Code, at S.C. Code Ann. § 56-15-10(h).

As clearly indicated from the terminology of Section 37-2-307, from the effective date of that section (June 30, 2000), any dealer choosing to assess a closing or documentation fee must: 1.) File a registration fee of ten dollars (\$10.00) with the Department each state fiscal year prior to the assessment of a closing fee; 2.) Disclose the closing fee on its sales contract; 3.) Display in a conspicuous place in the dealership a statement that indicates the closing fee may be charged; and 4.) If the closing fee is charged, and the vehicle is advertised, the closing fee must be included in the advertised price so that consumers cannot be unfairly surprised by having the closing fee added on after the acceptance of an advertisement's terms. In the absence of any of these requirements, the charging of a closing or other similar fee is an excess charge for Consumer Protection Code purposes.

The section clearly contemplates that the registration fee must be charged in future fiscal years but is silent as to what date if any in the fiscal year might be deemed as a due date beyond which the filing is ineffective under the then existing statute. The only analogous statute of which the Department is aware requiring similar filings in a fiscal year are Sections 37-2-305(8) and -3-305(8), concerning the maximum rate schedule filing. Subsection 37-2-305(8) was amended by Section 6 of Act 142 of 1991 to specify that the deadline for filing maximum rate schedules was January 31 of each year, as subsection 37-3-305(8) for consumer loans had been previously amended pursuant to Section 3 of Act 119 of 1989. Previously, the subsection had not affirmatively stated a deadline but simply specified that the filings had to be made once each state fiscal year. The Department construed such filings to have lapsed as of July 1 of any year in which there had been no filing on any day during the previous State fiscal year (July 1 to June 30). The Court of Appeals upheld this construction in *Bell Finance Co., Inc. v. S.C. Department of Consumer Affairs*, 297 S.C. 111, 374 S.E.2d 918 (1988). We construe Section 37-2-307 similarly to the versions of Sections 37-2-305 and -3-305 as they existed prior to the enactment of Act 142 of 1991.

While the section does not directly say so, the registration fee is referred to as a registration fee and not merely as a fee, with the apparent implication that the dealership seeking to charge closing fees should likewise file or register the disclosure it seeks to use. The attached disclosure may be used for this purpose. It is not required that the dealers use the attached form, but if they do, they will be deemed compliant if the form is properly filled out. Forms considered to be deceptive or to misstate the law will be rejected by the Department.

The section does not specify the content of the disclosure other than to indicate that it must be displayed in a conspicuous place. Regarding this conspicuousness requirement, the word "conspicuous" is defined in Section 37-1-301(9) as follows: " 'Conspicuous' means a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term is conspicuous or not is for decision by the Court." Thus, the disclosure should be displayed in order to ensure that the consumer has an opportunity to see it prior to making a purchasing or financing decision.

The Supreme Court specifically indicated in its holding in *Fanning* that it did not imply such fees might not be actionable under other applicable law, 322 S.C. at 404, 472 S.E.2d at 245, N.8. Likewise, the General Assembly did not further clarify the issue other than to indicate the fees might be legally charged for Consumer Protection Code purposes if the requisite filing and disclosures are made. The Department is aware of nothing in the General Assembly's enactment that legitimizes a closing fee or any fee or charge if it is assessed through fraud or misrepresentation.

EXHIBIT 3

Page 1	Page 3
1 STATE OF SOUTH CAROLINA 2 COUNTY OF Aiken 3 4 HEATHER HERRON, NATALIE ARMSTRONG, 5 MICHAEL RITZ, JULIE FREEMAN, CHRISTINE 6 WATTS, MICHAEL BLEASE, MICHAEL WATTS. 7 INDIVIDUALLY AND FOR THE BENEFIT OF 8 ALL CAR BUYERS WHOM PAID "ADMINISTRATIVE 9 FEES" AS DESCRIBED BELOW TO DEFENDANTS, 10 Plaintiff(s), 11 vs. Case No: 06-CP-02-1230 12 CENTURY BMW A/K/A SONIC AUTOMOTIVE; 13 DICK DYER & ASSOCIATES, INC.; 14 GALEANA CHRYSLER PLYMOUTH, INC. 15 A/K/A GALEANA CHRYSLER JEEP, INC; 16 J.L.H. INVESTMENTS, LP A/K/A HENDRICKS 17 HONDA; OVERLAND, INC. D/B/A LAND ROVER OF 18 COLUMBIA; TAYLOR TOYOTA A/K/A TAYLOR 19 INVESTMENTS; AND TOYOTA OF GREENVILLE, INC., 20 Defendant(s). 21 22 DEPOSITION 23 30(b)(6) 24 WITNESS: MELANIE S. OSBORNE 25 DATE: Tuesday, February 10, 2009 TIME: 10:04 a.m. LOCATION: Richardson, Plowden & Robinson, P.A. 1900 Barnwell Street Columbia, South Carolina TAKEN BY: Attorneys for the Plaintiff(s) REPORTED BY: SHERI L. BYERS Registered Professional Reporter ----- COMPUSCRIPTS, INC. A Full-Service Court Reporting Agency Post Office Box 7172 Columbia, South Carolina 29202	1 ATTORNEYS FOR THE DEFENDANT 2 TOYOTA OF GREENVILLE, INC.: 3 4 BRADFORD NEAL MARTIN & ASSOCIATES, P.A. 5 BY: LAURA W. H. TEER, ESQUIRE 6 75 Beattie Place 7 Greenville, South Carolina 29601 8 9 ALSO PRESENT: 10 JOYE HARMON, PARALEGAL 11 MELANIE BLEASE, PARALEGAL 12 JACK FRASHIER 13 14 (INDEX AT REAR OF TRANSCRIPT) 15 16 17 18 19 20 21 22 23 24 25
Page 2	Page 4
1 APPEARANCES: 2 ATTORNEYS FOR THE PLAINTIFF(S): 3 LEWIS & BARCOCK, LLP 4 BY: A. CAMDEN LEWIS, ESQUIRE 5 -and- BRADY R. THOMAS, ESQUIRE 6 1513 Hampton Street 7 Columbia, South Carolina 29201 8 ATTORNEYS FOR THE DEFENDANT 9 DICK DYER & ASSOCIATES, INC.: 10 11 J. GREGORY STUDEMEYER, ESQUIRE 12 1804 Bull Street 13 Columbia, South Carolina 29201 14 15 ATTORNEYS FOR THE DEFENDANT 16 TAYLOR TOYOTA A/K/A TAYLOR INVESTMENTS: 17 18 WALKER REIBOLD 19 BY: H. CLAYTON WALKER, JR., ESQUIRE 20 cwalker@walkerreibold.net 21 3321 Forest Drive, Suite One 22 Columbia, South Carolina 29204 23 24 ATTORNEYS FOR THE DEFENDANTS 25 GALEANA CHRYSLER PLYMOUTH, INC. A/K/A GALEANA CHRYSLER JEEP, INC., and J.L.H. INVESTMENTS, LP A/K/A HENDRICKS HONDA OF EASLEY: HAYNSWORTH SINKLER BOYD, P.A. BY: R. DAVID PROFFITT, ESQUIRE dproffitt@hsblawfirm.com 1201 Main Street, 22nd Floor Columbia, South Carolina 29201 ATTORNEYS FOR THE DEFENDANT OVERLAND, INC. D/B/A LAND ROVER OF COLUMBIA: RICHARDSON, FLOWDEN & ROBINSON, P.A. BY: STEVEN W. HAMM, ESQUIRE -and- C. JO ANNE MESSINGER HILL, ESQUIRE 1900 Barnwell Street Columbia, South Carolina 29201	1 STIPULATION: It is stipulated among counsel 2 that this deposition is being taken in accordance with 3 the South Carolina Rules of Civil Procedure, and that 4 the deponent reserves the right to read and sign the 5 deposition transcript. 6 7 MELANIE S. OSBORNE, being first duly 8 sworn, testified as follows: 9 EXAMINATION 10 BY MR. LEWIS: 11 Q. What is your name? 12 A. Melanie Osborne. 13 Q. This is Melanie Blease. 14 A. Nice to meet you, Melanie. 15 MS. BLEASE: Nice to meet you. 16 BY MR. LEWIS: 17 Q. Ms. Osborne, have you had your deposition 18 taken before? 19 A. No, sir. 20 Q. You were here yesterday? 21 A. Yes, sir. 22 Q. And you sat through the whole deposition? 23 A. Yes, sir. 24 Q. Did you learn anything? 25 A. Yes, sir.

Page 5	Page 7
1 Q. All right. Now, I'm required to tell you a 2 few things for our deposition and that is, one, that 3 when you hear a question and you answer it, it's going 4 to be assumed that you understood it. If I cut you 5 off, you tell me, and I will say, "I'm sorry," and you 6 can continue. And if I'm doing something that 7 irritates you, you tell me, and I'll try, try, to stop. 8 You heard that yesterday, didn't you? 9 A. Yes, sir. 10 Q. Okay. And you've learned some things 11 yesterday, and what did you learn? 12 A. To listen well. 13 Q. To listen well. That is a good lesson. Most 14 everybody ought to learn that one. 15 Anything else? 16 A. Not that I recollect, no, sir. 17 Q. All right. Do you know what this suit is 18 about? 19 A. No, sir. 20 Q. Now, what is your job? 21 A. I'm the controller. 22 Q. Controller. 23 A. Controller. 24 Q. And what does a controller mean? 25 A. It means you're in charge of the accounting	1 Q. A federal tax? 2 A. I believe so, but I'm not positive. 3 Q. The reason I ask, I saw it on an invoice. 4 And I always thought South Carolina charged a \$300 tax 5 no matter whether you bought whatever -- 6 A. A luxury -- 7 MR. STODENEYER: Let him finish before you 8 start. 9 BY MR. LEWIS: 10 Q. No matter what the car cost, I always thought 11 it was \$300 is what they charge. 12 A. The state, yes. 13 Q. Yeah. But you think that maybe in the past 14 there's been a luxury tax? 15 A. There was a luxury tax, yes, sir. 16 Q. Now, on Volvo and Mercedes, are they kept 17 under the same books? 18 A. Yes, sir. 19 Q. Are they kept in -- are there separate 20 buildings? 21 A. No, sir. 22 Q. So it's just a combined operation that sells 23 Volvo and Mercedes? 24 A. We sell Volvo, Mercedes and used cars. 25 Q. Used cars.
Page 6	Page 8
1 functions of the operation. 2 Q. The accounting functions. So you have never 3 looked at the complaint in this case? 4 A. I scanned it, yes. 5 Q. You scanned it? 6 A. (Nods head.) 7 Q. Well, do you understand what it says that -- 8 what is the name of your company? 9 A. Dick Dyer & Associates, Inc. 10 Q. And does it have more than one location? 11 A. No, sir. 12 Q. Does it have more than one line? 13 A. Yes, sir. 14 Q. What lines do you have? 15 A. Volvo and Mercedes. 16 Q. And what's a luxury tax? 17 A. That used to be imposed upon high-priced 18 automobiles, and I'm not really that familiar to give 19 you a definition of it. 20 Q. But it was a tax that South Carolina 21 required? 22 A. A luxury tax? 23 Q. Yeah. 24 A. That was a federal tax, I believe, but I'm 25 not positive.	1 You know you're here as a 30(b)(6)? 2 A. Yes, sir. 3 MR. LEWIS: Would you mark that, please. 4 (PLF. EXH. 1, Amended Notice 30(b)(6) 5 Deposition of Dick Dyer & Associates, Inc., was marked 6 for identification.) 7 BY MR. LEWIS: 8 Q. Looking at Exhibit 1, have you seen that 9 before or any part of it? 10 A. I don't believe I have actually seen the form 11 itself, no, sir. 12 Q. Look to the page that has the word 13 "definitions" on the top. 14 A. Yes, sir. 15 Q. Do you know that you're here to testify on 16 topics A through P? 17 A. Yes, sir. 18 Q. Have you seen those topics before? 19 A. Yes, sir. 20 Q. Have you done anything to make yourself 21 familiar with those topics other than read them? 22 A. Yes, sir. 23 Q. What have you done? 24 A. I sort of brought myself up, and we looked at 25 all my things that might have had something to do with

Page 9

1 like charging the administrative fees, the proper files
2 from the consumer affairs.
3 Q. Okay. So you looked at the files in your
4 company that would have to do with an administrative
5 fee?
6 A. Uh-huh.
7 Q. And what are the file -- how do you keep
8 files, do you have them by topic?
9 A. Yes, sir.
10 Q. What topic files do you have in your company
11 that have anything to do with an administrative fee?
12 A. A file that is called "consumer affairs."
13 Q. Okay. Any other ones?
14 A. That have to do with administrative fees, no.
15 Q. And have you produced the consumer affairs
16 file to us?
17 A. Yes.
18 Q. Everything that's in it?
19 A. Including everything that's in it.
20 Q. And you withheld nothing for privilege or
21 anything?
22 A. No, sir.
23 Q. Okay. Now, you say that's the only file you
24 have with reference to administrative fees; is that
25 right?

Page 10

1 A. Correct.
2 Q. Do you have any accounting files with
3 reference to administrative fees?
4 A. No, sir.
5 Q. When you keep your books and records, do you
6 keep a tally of administrative fees?
7 A. Yes, sir.
8 Q. And do you -- is that a separate line item, I
9 call it, or a separate journal entry or a separate
10 entry for administrative fees?
11 A. Yes, sir. We term it "closing fees."
12 Q. You term it closing fees.
13 And at the end of the year or at any time do
14 you add them up?
15 A. They're totaled out each month.
16 Q. Each month.
17 And is anything subtracted from them?
18 A. Is anything subtracted from them? No, sir.
19 Q. And at the end of the year they're added up?
20 A. Yes, sir.
21 Q. And since nothing is subtracted from them,
22 they would go into your profit?
23 A. They would go into another income account,
24 which is bumped against your expense accounts or your
25 overhead.

Page 11

1 Q. It would bump into that account?
2 A. Yes, sir.
3 Q. And it goes in with all the other fees you
4 get and all the other monies you get?
5 A. All the other monies we get and all the
6 expenses that we spend.
7 Q. Okay.
8 MR. STUDEMEYER: Let me stop here just a
9 second.
10 Let him finish his question before you start
11 your answer, okay?
12 THE WITNESS: Yes, sir.
13 MR. STUDEMEYER: She's trying to record
14 everything.
15 THE WITNESS: Oh, sorry.
16 MR. STUDEMEYER: I know you're not doing it
17 intentionally, but give him a chance to finish.
18 MR. LEWIS: Usually they say that to me.
19 MR. STUDEMEYER: It ain't over.
20 BY MR. LEWIS:
21 Q. All right. Now, the administrative fee, you
22 heard me yesterday ask, what is your administrative
23 fee?
24 A. What is?
25 Q. How much?

Page 12

1 A. Oh, 199.
2 Q. Has it always been 199?
3 A. No, sir.
4 Q. How much was it beginning?
5 A. 90.
6 Q. Were you there when it was made to be 90?
7 A. Yes, sir.
8 Q. Why did you start an administrative fee?
9 A. Because in reality, there is a cost to
10 process a deal. The South Carolina Automobile Dealers
11 informed us that we could now charge a closing fee, so
12 we elected to do so to recover part of our costs
13 involved.
14 Q. I mean, there's all kinds of costs involved
15 in selling a car.
16 A. That's correct.
17 Q. There's commissions, there's the rent,
18 there's electricity, there's everything in the world.
19 Now, you're saying that you decided you needed this to
20 cover what costs?
21 A. I believe --
22 Q. I want you to tell me what cost you covered
23 at your company. What cost did it cover?
24 A. Overhead cost.
25 Q. Overhead.

Page 13	Page 15
1 Did you make any kind of a study or anything 2 to determine what that \$90 would cover? 3 A. No, sir. 4 Q. Who made the decision to -- that it would be 5 \$90? 6 A. I do not remember who was with me or who we 7 made the decision together. 8 Would you repeat your question again? 9 Q. Who made the decision? It's not a big 10 question or a hard question. 11 A. Okay. I was getting carried away, all right? 12 Q. I don't mind that. 13 A. I know you don't, but I do. 14 The decision was, I guess, primarily myself. 15 Q. Okay. Now, primarily yourself when you made 16 that decision, what did you look at to make the 17 decision? 18 A. What did I look at? 19 Q. Yeah. You got any studies, any documents, 20 any projections, any kind of written document? 21 A. No, sir. 22 Q. Did you talk to anybody? 23 A. Yes, sir. 24 Q. Who did you talk to? 25 A. Steve Dyer.	1 use? You said you remember a mental calculation. I 2 want to know what it was. You have a little formula or 3 something? 4 A. It's based upon years of experience. 5 Q. Years of experience. And in the years of 6 experience, you came up and said that \$90 would cover 7 what? 8 A. It was a reasonable figure. 9 Q. For what? 10 A. To cover our document retrievals and document 11 preparations and any other overhead cost at that point 12 in time. 13 Q. So it would cover document retrieval. You 14 just read what's in the statute, right? 15 A. Exactly. 16 Q. So you said document retrieval and what was 17 the other one? Read it right out of the statute. 18 That's what you just did. 19 A. Document preparation. 20 Q. Document preparation. Okay. And? 21 A. And other overhead cost. 22 Q. Other overhead. 23 How much does a document retrieval cost per 24 car? 25 A. I do not know specifically, no.
Page 14	Page 16
1 Q. And who is he? 2 A. He is the dealer and general manager. 3 Q. And what did you and Steve Dyer talk about? 4 A. We basically discussed charging the 5 administrative fee. 6 Q. Then did you see -- talk about any kind of 7 studies or any kind of costs or anything? 8 A. No, sir. 9 Q. And did you identify exactly at that time 10 what it would cover? 11 A. What it would cover? 12 Q. Uh-huh. 13 A. You mean a specific item? 14 Q. Any item. You're looking at the thing. I 15 want to know at that time whether you looked at -- if 16 you had something that was a specific item that it 17 covered. Did you have an item that it would cover or 18 items? 19 A. I don't remember a specific item, no. The 20 cost factor or my basis of my cost was based upon 21 years of experience and basically a mental calculation. 22 Q. Let's go through that mental calculation. 23 Give it to me. 24 A. Sir, that was quite a few years ago. 25 Q. I know. But what mental calculation did you	1 Q. Okay. How much does document preparation 2 cost per car? 3 A. I do not know specifically, no. I have not 4 run an analysis. 5 Q. And what other overhead did you determine 6 would be in this \$90? 7 A. To the best of my recollection, I am not 8 sure. 9 Q. Not sure. 10 And when you brought it up to \$199, would 11 your testimony be exactly the same as what we've just 12 talked about? 13 A. It was, again, based upon years of experience 14 and my calculations. 15 Q. But you can't remember your mental 16 calculation? 17 A. No, sir. 18 Q. And you can't remember what went into the 19 extra \$100? 20 A. No, sir. 21 Q. Okay. Did you ever consider the 22 competition's -- how much they were charging so that 23 you could be within line? 24 A. No, sir. 25 Q. Not at all?

Page 17

1 A. Not at all.
2 Q. So when other companies are charging 199,
3 that's just an accident?
4 A. Yes, sir.
5 MR. LEWIS: Okay. We've got the Answers to
6 Interrogatories like yesterday. They do not have any
7 oath on them, and I'm going to ask her if these are
8 true and correct and she would swear to the
9 truthfulness of them. And that's going to take us, go
10 through each one of them.
11 Is that what you want me to do, or will you
12 agree that they should have an oath?
13 MR. STUDEMEYER: You're welcome to ask her
14 anything you want to about it.
15 MR. LEWIS: Well, you were supposed to put an
16 oath on them. They're not on there. I'm just going to
17 have to try it get it here at deposition, that's all.
18 MR. STUDEMEYER: Do you want to ask her if
19 it's true?
20 MR. LEWIS: Fine. I mean, you were supposed
21 to put them on there when you sent the answers, but you
22 didn't.
23 MR. STUDEMEYER: Well, nobody ever does that
24 in state practice.
25 MR. LEWIS: Yes, you do. That's what it says

Page 19

1 forth the amount for each year that was paid to you for
2 administrative fees," so forth, okay?
3 You see underneath the bottom, it says,
4 "Without a case-by-case review, Dick Dyer cannot
5 determine if any particular customer paid anything
6 extra as a closing fee."
7 Why was the word "extra" inserted there?
8 A. I don't know.
9 Q. Well, isn't it -- doesn't it say that a
10 closing fee would be extra, doesn't it say that?
11 A. No, sir.
12 Q. Well, it says here, "Without a case by case
13 review, Dick Dyer cannot determine if any particular
14 customer paid anything extra as a closing fee."
15 What does it mean "extra as a closing fee"?
16 Are closing fees extra?
17 A. No, sir.
18 Q. Are they sometimes extra?
19 A. No, sir.
20 Q. Well, then, why would you have to do a
21 case-by-case determination as to who paid a closing fee
22 that was an extra? That's what it says. Without
23 customer paying anything extra as a closing fee. Why,
24 if you don't have a closing fee that's an extra fee,
25 would you need a case-by-case analysis to determine if

Page 18

1 in the role. That's okay. I'll take care of it.
2 (PLF. EXH. 2, Answers of Defendant, Dick Dyer
3 & Associates, Inc., to Plaintiff's Revised First Set of
4 Interrogatories, was marked for identification.)
5 MR. LEWIS: Would you give her Exhibit Number
6 2.
7 MR. STUDEMEYER: Let's wait until everybody
8 has one.
9 MR. LEWIS: Greg, I'm sorry. I called you
10 David. Why, I don't know. I'm getting old.
11 BY MR. LEWIS:
12 Q. Those are your answers to our first set of
13 interrogatories, and they're dated on December 18th,
14 2008. And under our rules -- it says that each
15 interrogatory shall be answered separately and fully in
16 writing under oath.
17 And I'm asking you if you agree with those
18 answers and you swear to them here today as a
19 representative of Dick Dyer & Associates? Do you swear
20 to them as being the truth?
21 A. Yes, sir.
22 Q. All right. Let's look at page number 2.
23 A. Page number -- of this?
24 Q. Of Exhibit 2, that you swear to as being the
25 truth. Okay. And it says -- I'm on number 9, "Set

Page 20

1 any particular customer paid anything extra as a
2 closing fee? Can you explain that to me?
3 MR. STUDEMEYER: Object to the form.
4 Compound.
5 BY MR. LEWIS:
6 Q. Can you explain that to me?
7 A. Explain what again?
8 Q. This sentence, explain what it says. It
9 says, "Without a case-by-case review, Dick Dyer cannot
10 determine if any particular customer paid anything
11 extra as a closing fee."
12 It says extra as a closing fee. What do you
13 need to look at to determine if some customer paid
14 extra as a closing fee?
15 MR. STUDEMEYER: Object to the form.
16 Compound question.
17 BY MR. LEWIS:
18 Q. Excuse me. Answer it, please.
19 A. I don't know why I would have put that in
20 there because we do not pay anything extra. The
21 customer does not pay it. It's included in the
22 advertised price of the vehicle.
23 Q. So what you're saying is this is wrong when
24 you swore to the truth of it?
25 A. No, I am not saying it is wrong.

5 (Pages 17 to 20)

Page 21

1 Q. So it is true?
2 A. In this -- I would have to actually look at a
3 deal to see if there was anything paid allegedly extra.
4 Q. No. It says -- is this statement true or
5 not? Never mind. You've already said it's true.
6 Now, this idea that you'd have to look at a
7 case-by-case analysis on whether administrative fee was
8 charged, you have a list of every transaction in which
9 an administrative fee was charged, don't you?
10 A. Repeat your question.
11 Q. Your records show every time an
12 administrative fee was charged.
13 A. Correct.
14 Q. Now, when you look at your records, are there
15 any times that it was not charged?
16 A. Yes, sir.
17 Q. When are those?
18 A. There were at the beginning when we did not
19 charge our employees a closing fee.
20 Q. Okay. Employees. Who else?
21 A. There was an overseas delivery that we did
22 not charge.
23 Q. Okay. Overseas.
24 Okay. What else?
25 A. And I remember a \$500 car that we did not

Page 23

1 Q. You don't get charged unless it was
2 advertised?
3 A. No, sir, that wasn't what I said.
4 Q. You get charged \$199 on all cars whether it
5 was advertised or not?
6 A. Yes, sir.
7 Q. Is there anybody else -- how about when you
8 send it to another company, do they pay \$199 charge?
9 A. No, sir.
10 Q. So that's that cross company -- country?
11 A. Yeah, it's not a sale.
12 Q. It's not?
13 A. It's a dealer transfer.
14 Q. A dealer transfer.
15 Is there any other transfers that don't get
16 charged a fee?
17 A. No, sir.
18 Q. Okay. So other than dealer transfers,
19 employees who used to not, overseas, and \$500 cars who
20 used to not, everybody else pays a closing fee?
21 A. Yes, sir.
22 (PLF. EXH. 3, Responses on Behalf of
23 Defendant, Dick Dyer & Associates, Inc., to Plaintiffs'
24 Revised Second Set of Requests for Production, was
25 marked for identification.)

Page 22

1 charge.
2 Q. \$500 car. Okay.
3 Anything else?
4 A. Not to my recollection.
5 Q. Has there been any changes through history or
6 are those the only ones that don't get charged an
7 administrative fee?
8 A. Our employees are now charged an
9 administrative fee.
10 Q. Now charged. Since when?
11 A. I don't know. I would have to go back and
12 look.
13 Q. How about overseas?
14 A. We never -- no, sir, we probably do not.
15 Q. How about \$500 cars, what's that, cars that
16 costs \$500 or less?
17 A. Every car is now charged.
18 Q. Every car. Okay.
19 So if I have a \$500 car, I get charged \$199?
20 A. Yes, sir.
21 Q. Okay.
22 A. Only you didn't get charged unless it was
23 advertised -- was not advertised. Never mind.
24 Q. What now?
25 A. Nothing.

Page 24

1 BY MR. LEWIS:
2 Q. You can be looking at that. We want you to
3 do the same thing about swearing to it, the
4 truthfulness of it, that you did the last exhibit,
5 Number 2. So you can look at Exhibit number 3 while
6 everybody's getting there.
7 You should have two of them. It should have
8 the sticker on it. Does it? He was holding it. It's
9 his fault today.
10 Are you ready?
11 A. Yes, sir.
12 Q. As long as you took, I take it you've never
13 seen that before?
14 A. Yeah, I've seen it. I might want to amend
15 it.
16 Q. Oh, you want to amend it? I like that. What
17 do you want to amend?
18 A. On page 1.
19 Q. 1. Okay.
20 A. Where the response is advertise on Auto
21 Trader and cars.com.
22 Q. Where now? Show me where it is.
23 A. Down towards the bottom under our response.
24 We have also done some advertising on eBay.
25 Q. Okay. Would the answer be the same for eBay?

6 (Pages 21 to 24)

Page 25

1 You have some eBay -- I guess where some documents of
2 your advertisements on eBay?
3 A. No, I do not have any copies of it, but this
4 is one of the sources we did advertise that was not
5 listed on here.
6 Q. So we add eBay onto Exhibit 3, response to
7 number 1; is that right?
8 A. Correct.
9 Q. Anything else?
10 A. No, sir.
11 Q. So you'll -- it says under the rule that you
12 will swear to it or be under oath, and you now say
13 these answers are given under oath as you being the
14 30(b)(6) representative of the company; is that
15 correct? Is that correct?
16 A. Yes, sir.
17 Q. All right. That's Exhibit Number 3. Now,
18 Exhibit Number 3, I'm interested in your response to
19 the third request for production. It's on page 2. The
20 response at the bottom of the page. It says, "Dick
21 Dyer has no copies of window stickers of vehicles sold
22 between such and such and such and such."
23 We asked for representative examples. Do you
24 not have any examples of supplemental stickers?
25 A. Supplemental stickers?

Page 27

1 A. Yes.
2 Q. And from the Monroney label, you then bargain
3 downward to whatever their purchase price would be?
4 A. Negotiate, yes, sir.
5 Q. And then after you negotiate that price, you
6 add in taxes?
7 A. Yes, sir.
8 Q. Tags?
9 A. Yes, sir.
10 Q. And administrative fee?
11 A. Yes, sir.
12 Q. And that's the way you've done it since when?
13 A. The administrative fee is included in an
14 advertised automobile.
15 Q. I didn't ask you that.
16 A. The manufacturer -- we do not contend that
17 the manufacturer's price on the Monroney label is an
18 advertised price.
19 Q. I understand your position. I appreciate
20 that's the only position you can take, otherwise, you
21 violate the law. And I appreciate that. But I'm
22 asking the questions, and if you've got any speeches
23 you want to give, just tell me, and I'll let you have
24 them. Do you have any more speeches?
25 MR. STUDEMEYER: Object to the form.

Page 26

1 Q. Yeah. When you add something to a car, how
2 do you put it on a window?
3 A. I don't add anything to a car.
4 Q. You never add anything to a car?
5 A. Not that I have in a long, long, long, many
6 years.
7 Q. Okay. Do you ever put anything under the
8 undercarriage, spray it or do anything like that?
9 A. Yes, sir.
10 Q. How do you charge for that?
11 A. Hold on. Normally -- or not normally -- the
12 under spraying is usually added into the cost of the
13 car, so it is not necessary to put it on the label.
14 Q. All right. There's a Monroney label?
15 A. Yes, sir.
16 Q. Do you ever have a car that has a price
17 higher than the Monroney label because of some change
18 or under spraying or anything like that?
19 A. No, sir.
20 Q. So the Monroney label is the most any car
21 will cost?
22 A. That's the manufacturer suggested retail
23 price, not cost.
24 Q. Excuse me. I'm sorry. The Monroney label is
25 the most that any car pricing is?

Page 28

1 BY MR. LEWIS:
2 Q. Do you?
3 A. No, sir.
4 Q. Now, answer my question. Okay. The Monroney
5 label is a price for the car, is it not?
6 A. It's the manufacturer's suggested retail
7 price, correct.
8 Q. And when someone buys a car, they come in and
9 they negotiate off of the Monroney label, correct?
10 A. Correct.
11 Q. And they come up with a selling price?
12 A. Correct.
13 Q. And to that selling price you add taxes?
14 We've already gone over it.
15 A. Yes, sir.
16 Q. Tags and administrative fee.
17 A. Yes, sir.
18 Q. I want to know when you started doing that
19 administrative fee, what year?
20 A. 2001.
21 Q. Okay. And ever since 2001, that's the way it
22 operates on new cars, just the way I've just said it?
23 A. To the best of my knowledge, yes.
24 Q. Okay. Now, when a car is on a lot and it's a
25 new car, do you ever have any pricing on it other than

Page 29

1 the Monroney label?
2 A. No, sir.
3 Q. You never have special or anything like that
4 on the windshield, nothing that's never happened,
5 either Volvo or --
6 A. Mercedes.
7 Q. -- Mercedes? Never does that?
8 A. No, sir, we don't use those practices.
9 Q. Okay. Now, if I go over to the used car lot,
10 okay, what stickers are on the used cars? There's no
11 Monroney label, is there any other kind of label?
12 A. Yes.
13 Q. What is it?
14 A. The federal guide for -- my mind's gone
15 blank. The one the government requires that we put on
16 there. The buyer's warranties.
17 Q. The buyer's warranty.
18 Now, do you have some samples of those?
19 A. No, sir, I do not.
20 Q. You have no samples of buyer's warranty.
21 Where do you get them from?
22 A. I may be using the wrong name, but it is a
23 label that is required to go on all used cars.
24 Q. Well, who puts it on?
25 A. We do.

Page 31

1 A. Yes, sir.
2 Q. Do you have copies of those labels?
3 A. No, sir. They are actually generated from
4 Mercedes or Volvo.
5 Q. Can you -- they're generated so you don't
6 have any copies of any of them. Do you put them on the
7 car?
8 A. Yes, we do.
9 Q. Do you make a copy of them?
10 A. No, sir.
11 Q. Could you make a copy of one that just comes
12 in tomorrow?
13 A. Yes, sir.
14 Q. Why didn't you make us a copy of one?
15 A. I don't know.
16 Q. Okay. So there's these labels that come from
17 Volvo or Mercedes, and they have the price of the car
18 on there?
19 A. Yes, there is a price of the car.
20 Q. Who determines that price?
21 A. I believe it is my used car manager.
22 Q. So the used car manager tells the Volvo
23 people what he wants on the sticker --
24 A. Yes, sir.
25 Q. -- price-wise?

Page 30

1 Q. Where do you get it?
2 A. It's a form, and I do not know right at the
3 moment where we get them from.
4 Q. Well, if it's a form and you put them on
5 there, you must have some copies of them.
6 A. Yes, there are copies in the dealership,
7 that's correct.
8 Q. And why didn't you furnish us a copy of it?
9 A. I did not know that we had not.
10 Q. Okay. Now, these stickers that you put on
11 the car, do they have a price on them?
12 A. No, they do not.
13 Q. So they're some kind of a sticker about the
14 car?
15 A. It's about the warranty --
16 Q. Okay.
17 A. -- that's on a car.
18 Q. How do you know how much a used car cost,
19 does it have a sticker on it or a tag on it or painting
20 on it? How do you know?
21 A. The Mercedes certified and the Volvo
22 certified normally have a price on them.
23 Q. Well, how do they put the price on the car?
24 A. With a label.
25 Q. With a label?

Page 32

1 A. Yes, sir.
2 Q. Okay. And does that sticker say anything
3 about an administrative fee?
4 A. No, sir, it does not.
5 Q. And where does -- does the used car dealer
6 try to -- or what do you call it, manager? What do you
7 call them, used car manager? Is that okay?
8 A. Yeah.
9 Q. The used car manager, does he price the car
10 to entice people to buy it?
11 A. To entice?
12 Q. Isn't that why -- if you want someone to buy
13 something, you put a price on there that might entice
14 them to buy.
15 MR. STUDEMEYER: Object to the form.
16 THE WITNESS: When you put a price on a car,
17 you are putting a beginning negotiating point.
18 BY MR. LEWIS:
19 Q. Okay. Well, and the -- I may be wrong, when
20 I put a price on the car, I have to put a price on
21 there if it's a beginning negotiating point that people
22 will be attracted to to begin negotiations.
23 MR. STUDEMEYER: Object to the form.
24 BY MR. LEWIS:
25 Q. Right?

8 (Pages 29 to 32)

Page 33	Page 35
1 MR. STUDEMEYER: Object to the form of that 2 one, too. 3 THE WITNESS: Repeat your question. 4 BY MR. LEWIS: 5 Q. You got some kind of signal on -- 6 A. I beg your pardon? 7 Q. Are you going to get mad at me? 8 All right. Now, I want to know, and it's a 9 simple question, when you put a price on these used 10 cars, the price put on by your used car dealer, and you 11 say it's a price to start negotiations; is that 12 correct? 13 A. Yes. 14 Q. It must be a price that people will look at 15 and feel comfortable with as a place to start 16 negotiations. 17 MR. STUDEMEYER: Object to the form. 18 BY MR. LEWIS: 19 Q. Is that correct? 20 A. Let's repeat that one more time. 21 Q. I don't know if I can, but I'll try. 22 A. Try. 23 Q. We've established that the price is put on by 24 your used car dealer. 25 A. Used car manager.	1 on the used car, is there anything about an 2 administrative fee? 3 A. On the ones that have a price, no, sir. 4 There are some that have labels on them that do not 5 have a price. 6 Q. And they just -- you have to ask for those? 7 A. Yes, sir. 8 Q. And when they -- when you ask for the price 9 there, you get a negotiating starting price? 10 A. I don't know. I don't know what price they 11 give them at that point. 12 Q. Well, do you have a policy? If there's no 13 price on a car and someone says, "I would like to buy 14 this car," what do they tell them? 15 A. The salesman have a price, yes. 16 Q. Is it one of those prices where you negotiate 17 from? 18 A. Yes, sir. 19 Q. Okay. And when he gives them that price, 20 does he tell them about an administrative fee or a 21 closing fee? 22 A. I don't know. 23 Q. Who would know that? 24 A. The used car manager, the salesman. 25 Q. What's his name?
Page 34	Page 36
1 Q. Your manager. And that it is a price to -- 2 to start negotiations, okay? 3 A. Correct. 4 Q. For anybody, just logically, to start 5 negotiations, and do you think the public knows that 6 that's a number to start negotiations? 7 A. Yes, sir. 8 Q. Okay. The public knows that it's a number to 9 start negotiations. Don't you think before someone 10 starts negotiating from that number that he must be 11 comfortable that it is a fair, starting, negotiated 12 number? 13 A. I don't really know what the customer would 14 think, but I would suppose so, yes. 15 Q. And is that not the number that your used car 16 manager is trying to come up with? He doesn't want an 17 outrageously high number, does he? 18 MR. STUDEMEYER: Object to the form of that 19 question. 20 THE WITNESS: Repeat the question again. 21 BY MR. LEWIS: 22 Q. That's all right. Form of the question calls 23 for a repeat. 24 All right. Let me go to the next question. 25 Do any of those certifications or on anywhere	1 A. Doug Harper. 2 Q. Does the company have any policy that they 3 tell them about the administrative fee? 4 A. Written policy, no, sir. 5 Q. Do you -- 6 A. But it is posted all over the dealership. 7 Q. Now, look at number 5, would you? 8 A. All right. 9 Q. Do you not advertise on radio or television? 10 A. A very rare occasion. 11 Q. But you do? 12 A. (Nods head.) 13 Q. When you do, do you mention the 14 administrative fee? 15 A. No. 16 (PLF. EXH. 4, Responses on Behalf of 17 Defendant, Dick Dyer & Associates, Inc., to Plaintiffs' 18 Requests to Admit, was marked for identification.) 19 MR. LEWIS: This is Exhibit 4. You've 20 already answered these questions, so we'll just make it 21 an exhibit and go to the next one. 22 (PLF. EXH. 5, Plaintiffs' Third Set of 23 Requests for Production of Documents to Defendant Dick 24 Dyer & Associates, Inc., was marked for 25 identification.)

Page 37

1 MR. LEWIS: This is 5A, the answers.
2 (PLF. EXH. 5A, Responses on Behalf of
3 Defendant, Dick Dyer & Associates, Inc., to Plaintiffs'
4 Third Set of Requests for Production, was marked for
5 identification.)
6 BY MR. LEWIS:
7 Q. All right. I'm going to ask you, if you
8 would, look at Exhibit Number 5 and you see that there
9 are five requests for production. Do you see that?
10 A. On page 2?
11 Q. Yes. Do you see that?
12 A. Yes.
13 Q. And you look at your response is 5A, do you
14 see that?
15 Did you give her 5A?
16 Do you see that as your response?
17 A. Yes.
18 Q. Do you swear that that's the truth and under
19 oath, as the we've done in the past, that your answer
20 is 5A?
21 You agree that's your answer?
22 A. Yes, sir.
23 Q. Okay. And you will swear to it under oath
24 like you did before?
25 A. (Nods head.)

Page 38

1 Q. Number 5, the window sticker for the purchase
2 of Plaintiff Michael Blesse. We never got any answer
3 on that. Is that because you don't have it?
4 A. I don't have a window sticker.
5 Q. So we can say because you didn't answer it,
6 means you don't have it?
7 A. Correct.
8 Q. Okay. Now, with the closing fee, did you
9 communicate with anybody about the closing fee at any
10 time from the start forward?
11 A. Did I communicate with anyone?
12 Q. Uh-huh. Like the automobile association,
13 other dealers?
14 A. I communicated with the SCADA but not with
15 any other dealers, no.
16 Q. Who did you communicate with with the
17 automobile association?
18 A. Pat Watson.
19 Q. And when did you communicate with him?
20 A. When the case first came up.
21 Q. When I say "you," I mean you the company
22 because you're speaking for the company, do you
23 understand that?
24 A. Yes, sir.
25 Q. And it's a royal you, not just you-you. It's

Page 39

1 the company.
2 And when did the company talk to Mr. Watson?
3 A. When I say talk with Mr. Watson, there was a
4 meeting held, and don't ask me when because I don't
5 remember, but our dealer went to the meeting and it was
6 after this case came up.
7 Q. Did you go?
8 A. No, sir, I did not.
9 Q. Did you get reported on about the meeting?
10 A. No, sir.
11 Q. You just know there was a meeting?
12 A. Yes, sir, because he said he attended.
13 Q. Who is it?
14 A. Steve Dyer.
15 Q. Okay. Do you know of any other meetings
16 other than that?
17 A. No, sir.
18 Q. Did anything happen as a result of that
19 meeting?
20 A. Not to my knowledge.
21 Q. Do you know of any communications prior to
22 the lawsuit?
23 A. From the SCADA, I received some --
24 Q. Some what?
25 A. I got a copy of it here. The communication

Page 40

1 that I received from the SCADA in reference to the
2 administrative fees dated June 21st.
3 Q. Wait a minute. You've got copies -- what is
4 that copies of? Where did that come from?
5 A. SCADA.
6 Q. That little stack of documents, where did you
7 get that?
8 A. I brought them.
9 Q. Let me see them.
10 MR. STUDEMEYER: No, she'll identify them.
11 MR. LEWIS: No, sir, I get to see them if she
12 brought them.
13 MR. STUDEMEYER: Well, come around here and
14 see them.
15 MR. LEWIS: Why would you make me come over
16 there?
17 MR. STUDEMEYER: No. If you want to ask her
18 what she has, you're welcome to ask her.
19 MR. LEWIS: Would you make that an exhibit --
20 what's the next exhibit?
21 THE COURT REPORTER: Number 6.
22 MR. LEWIS: Would you make that Exhibit
23 Number 6.
24 MR. STUDEMEYER: No.
25 MR. LEWIS: You can't do that, Mister. But

Page 41

1 if you do, that's fine. Is that your position, that I
2 can't make that an exhibit?
3 MR. STUDEMEYER: That's my position.
4 MR. LEWIS: Why?
5 MR. STUDEMEYER: I don't have to give you an
6 answer.
7 If you want to ask her what she has, she'll
8 be happy to tell you what she has.
9 MR. LEWIS: Okay. What do you got?
10 But I want it on the record that you have
11 refused to let me see them and refused to let me mark
12 them as an exhibit. We'll take that up with the court,
13 and that's all I got to say about it.
14 Tell me what it is.
15 MR. STUDEMEYER: Wait a minute. Wait a
16 minute. The record will reflect that I offered for you
17 to come around here and take a look at them.
18 MR. LEWIS: I will if I want to. And that's
19 pretty, pretty sorry.
20 BY MR. LEWIS:
21 Q. Tell me what it is. What's the first
22 document?
23 A. It's C372307.
24 Q. What's the second document?
25 A. It is the filing that I made with the

Page 43

1 Q. And doesn't that fee say that the closing fee
2 shall be included in any advertised price?
3 A. Include the fee in the price of any vehicle
4 that is advertised for sale with a specific price in
5 the advertising.
6 Q. Okay. So it's going to -- any vehicle that
7 is advertised for sale with a specific price must
8 include the advertised fee.
9 A. The closing fee.
10 Q. The closing fee. Okay.
11 Now, does all of your advertising when you
12 put a car up for sale, does it -- does that price
13 include the administrative fee or do you add it on at
14 the end?
15 A. Our policy is on advertised, it is included
16 in the advertised price.
17 Q. So when you look at a invoice from anything
18 that is an advertised vehicle, will there be a specific
19 line item for advertised price -- I mean, excuse me,
20 administrative fee?
21 A. On all of our invoices there is a processing
22 fee.
23 Q. So it's --
24 A. A closing fee.
25 Q. So it's added to after the sales price or

Page 42

1 consumer affairs on the administrative fee on June the
2 25th, 2001.
3 Q. Does it have in there how much your charge?
4 A. Yes.
5 Q. Did you get a certificate back?
6 A. I got a stamped copy back.
7 Q. Does it say on there you'll charge only as
8 reimbursement?
9 A. It's not as -- it says this dealership charge
10 closing fees is a means of reimbursing it for certain
11 overhead costs such as document retrieval and document
12 preparation. It is a charge that is permitted but not
13 required by law.
14 Q. Okay. Thank you.
15 All right. What's the next document?
16 A. It is the letter from the SCADA dated
17 June 21st, 2001, where the closing fee regulation
18 issued by Department of Consumer Affairs.
19 Q. Who's it from?
20 A. It is from the SCADA, South Carolina Auto
21 Dealers Association.
22 Q. And that's a regulation of the consumer
23 affairs?
24 A. It says the closing fee regulation issued by
25 Department of Consumer Affairs.

Page 44

1 before the sales price?
2 A. It is a component of a sales price.
3 Q. Component of the sales price. And so you
4 break -- when you have an advertised vehicle, say it's
5 \$15,000, and the lady comes in and pays \$15,000, what
6 you do is you put the \$199 closing fee and then you
7 subtract that from the 15,000 that you call the sales
8 price and then you add them together to become the
9 total sales price?
10 A. Which equals 15,000.
11 Q. Yes. Is that what you do?
12 A. Yes, sir.
13 Q. Okay. Now, that's for advertised vehicles?
14 A. Yes, sir.
15 Q. Now, what's the next document?
16 A. The State of South Carolina Department of
17 Consumer Affairs Administrative Interpretation.
18 Q. Okay. What's the next one?
19 A. That's it.
20 Q. Okay. Thank you.
21 Any other things you've got from the SCADA?
22 A. Anything else that I had would have been in
23 this folder, and you all would have received a copy.
24 Q. The folder. Okay. Would you make sure you
25 keep that and don't lose it or anything?

Page 45	Page 47
1 A. I'd be happy to. 2 Q. Okay. 3 A. I got it. 4 Q. All right. Now, have you got any letters or 5 e-mails from other dealers? 6 A. No, sir. 7 Q. Have you gotten any legal opinions on the 8 charging of an administrative fee? 9 A. Have I got any legal opinions? 10 Q. Yeah, from a lawyer, whether or not it's 11 legal or not or what to do or not, anything from a 12 lawyer about the administrative fee? 13 MR. STUDEMEYER: You don't have to tell him 14 anything about what you and I have spoken about. 15 THE WITNESS: That's ... 16 BY MR. LEWIS: 17 Q. Excuse me? Have you gotten any opinions 18 about administrative fee from a lawyer? 19 A. Yes. 20 Q. And who was the lawyer? 21 A. Greg Studemeyer. 22 Q. And only after this suit? 23 A. Correct. 24 Q. Had you had any before this suit? 25 A. No.	1 understand that? 2 A. Yes, sir. 3 Q. Okay. And you identified a file that you had 4 that said consumer affairs. 5 A. Correct. 6 Q. And did you then -- are there documents prior 7 to August 29, 2002, in that file other than the 8 documents we have here marked as Exhibit 6? 9 (PLF. EXN. 6, SCADA Documents Dated June 21, 10 2001, was marked for identification.) 11 BY MR. LEWIS: 12 Q. Other than Exhibit 6 that you have, are there 13 other documents in that file with reference to the 14 administrative fee dated prior to August 29th, 2002? 15 A. I don't know without looking. 16 Q. So but if -- 17 A. But everything that was in that file, I'm 18 pretty sure that we produced or it was sent to you. 19 Q. And he rightly so did not give us anything 20 prior to this date. 21 A. But you asked if he gave you everything on 22 that file. 23 Q. You got that, you brought it with you and I 24 appreciate that. 25 What is this file? Is it a big file?
Page 46	Page 48
1 Q. Have you had any from any other lawyers? 2 A. No, sir. 3 Q. Is this in writing, this opinion? 4 A. Is what in writing? 5 Q. The opinion from Mr. Studemeyer in writing? 6 A. No, sir. 7 Q. It's just verbal, verbal opinion? 8 A. Yes, sir. 9 Q. And I would assume it would be opinions that 10 were given throughout the litigation rather than any 11 specific meeting? 12 A. Correct. 13 Do you mind if I take a bathroom break? 14 MR. LEWIS: No, no. 15 (A recess transpired.) 16 BY MR. LEWIS: 17 Q. Ms. Osborne, we had a fuss over this document 18 which is a packet of documents that says on it 19 June 21st, 2001. 20 A. Correct. 21 Q. Do you see that? 22 A. Yes, sir. 23 Q. And the lawyer correctly said that this was 24 before the agreed upon early date from which production 25 would come so they did not produce this. Do you	1 A. No, sir. 2 Q. How big is it? 3 A. Maybe that big. 4 Q. An inch? 5 A. It keeps all of the filings primarily in it. 6 Q. And then it would have in it correspondence? 7 A. Copies of the checks. 8 Q. Any correspondence? 9 A. Any correspondence? You mean like the letter 10 there? Yes, any of that. But there's very little that 11 I kept unless it was pertaining to a specific thing. 12 Q. All right. Now, with reference to this suit, 13 you had the one meeting with -- that you mentioned with 14 the automobile dealers association that somebody else 15 went to. Do you remember that? 16 A. The dealer -- 17 Q. Have there been any other meetings with 18 anybody other than your attorney? 19 A. No, sir. 20 Q. Have you -- has anybody met with other 21 dealers, talked to other dealers about them? 22 A. Not to my knowledge, no, sir. 23 Q. Did you check with your people in your 24 business to see if anybody had done that? 25 A. I checked with the dealer, the general

Page 49	Page 51
1 manager. 2 Q. Okay. And no one knew of any? 3 A. No one knew of any other than the one 4 mentioned. 5 MR. LEWIS: That's right. 6 (PLF. EXH. 7, Buyers Order and Invoice, Bates 7 00004, was marked for identification.) 8 BY MR. LEWIS: 9 Q. Are you ready? 10 A. Yes, sir. 11 Q. All right. This has been given to us as a 12 representative sample of your buyer's order and invoice 13 from 2002 to 2008. Is that correct? 14 A. Yes, sir. 15 Q. And it would mean that we look onto the 16 right-hand side, \$48,800, what would that be? What do 17 you call that? 18 A. That would be the sales price along with the 19 component would be the subtotal to give you your total 20 sales price. 21 Q. That's total sales price -- 22 A. The total sale price is 48,999. 23 Q. 48,999? 24 A. Yes, sir. 25 Q. Okay. It says subtotal and then it says	1 Q. Was this a new car? 2 A. No, sir, this was a demo. 3 Q. A demo? 4 A. Yes, sir. 5 Q. A demo is kind of between a used car and a 6 new car? 7 A. Correct. 8 Q. And so somewhere there was a negotiation to 9 come to the price of 48,800; is that right? 10 A. Yes. 11 Q. And after they came to that negotiated price, 12 the processing fee would be added to it? 13 A. No, sir, it was included in the -- your total 14 price -- 15 Q. I'm asking about the 48,800. 16 MR. STUDEMEYER: Let her answer the question. 17 MR. LEWIS: She's not answering the question. 18 MR. STUDEMEYER: She was trying to answer the 19 question. You interrupted her. 20 BY MR. LEWIS: 21 Q. Go ahead. Say whatever you want to say. 22 MR. STUDEMEYER: You can answer the question. 23 THE WITNESS: I don't want to answer the 24 question. 25 BY MR. LEWIS:
Page 50	Page 52
1 total cash price of 49,376. 2 A. Which includes your sales tax, your license. 3 Q. Yeah. 4 A. Luxury tax. 5 Q. I see. So when I'm -- when I'm getting this 6 \$48,800 car, does this \$199 fee appear on any paperwork 7 up to this time? 8 A. There could possibly be a worksheet in there 9 that they started the deal with. 10 Q. The worksheet would be after you have gone to 11 the car and seen what it's suggested retail price was 12 and you come back and you start negotiating; is that 13 right? 14 A. This one doesn't say anything about a 15 manufacturer's suggested retail price. 16 Q. Well, what was the starting price of the car? 17 How do I know what the starting price was and where it 18 came from? 19 A. I would have to see if there was a worksheet 20 involved in this. 21 Q. So for all you know, the suggested retail 22 price was \$48,800? 23 A. No. 24 Q. How do you know it wasn't that? 25 A. I don't know.	1 Q. Thank you. I want to know, the 48,800, do 2 you see that on there? 3 A. Yes, sir. 4 Q. That was negotiated in some manner, correct? 5 A. Yes, sir. 6 Q. And after negotiations, the 199 was added to 7 it to get the sales price, you say, of 48,999? 8 A. I don't know that the 48,8- was negotiated 9 and the 199 added to it or whether it was the 48,999 10 negotiated and then broken down into the components 11 because we have to spell out our processing fee as a 12 separate item. 13 Q. I see. So on your -- this is a used car? 14 A. (Nods head.) 15 Q. Okay. On used cars, is it anywhere on the 16 used car when you're on the lot, on the sticker or on 17 whatever you have on it where the processing fee is 18 mentioned? 19 A. No, sir. 20 Q. Now, if it's a new car, is it any different? 21 A. What do you mean different? 22 Q. Is the form any different. 23 A. The form -- the form itself is the same. 24 Q. Well, how would you know it was a new car? 25 A. Well, if you look up at the top below Social

1 Security number, you see four boxes. It says new, used
2 and demo.
3 Q. Okay. Has it been your experience that the
4 salesmen negotiate a price that includes the 1,999 and
5 then break it out on the sheet like this or do they
6 negotiate the price and then add the processing fee
7 after that? What has been your experience?
8 A. I don't sell the cars. I really am not
9 familiar with exactly the process they go through.
10 Q. Well, who would do that?
11 A. Your sales managers.
12 Q. And what are their names?
13 A. Richard Dyer and Doug Harper.
14 Q. So those would be the people to know how the
15 negotiations go, whether the 199 is tacked on at the
16 end or whether it's included from the beginning?
17 A. It is our policy to include it from the
18 beginning.
19 Q. It is your policy. So when I go in and I see
20 a vehicle for sale for \$50,000 and it has 50,000, do I
21 then say you tell me it's really \$50,199 because we
22 have a processing fee; is that your testimony?
23 A. No, sir.
24 Q. You say that the \$50,000 includes the \$199 --
25 A. Yeah.

1 Q. -- but you don't tell anybody?
2 A. If it was a car that was advertised at a
3 specific price, then it would include.
4 Q. Okay. Now, you keep saying that. Let's just
5 say it's a car on your lot. Okay. It's a brand-new
6 car. And it has a manufacturer's suggested retail
7 price of \$60,000. And when I ask -- when I say, okay,
8 we start negotiating, does your -- and we come to a
9 number of \$50,000, does that include the processing
10 fee?
11 A. No, sir. It has not been advertised as
12 including the processing fee.
13 Q. So to make sure I understand, so if it's
14 advertised, that is what you claim to be advertising in
15 a newspaper or something with a price, and it says
16 includes the processing fee, then it includes the
17 processing fee?
18 A. Correct.
19 Q. If it doesn't do that, it doesn't include the
20 processing fee?
21 A. Correct.
22 Q. That's good. Okay. I got it.
23 Why did you change the name from processing
24 fee to closing fee?
25 A. At the advice of my attorney.

1 MR. LEWIS: Slipped that one out on you, boy.
2 (PLF. EXH. 8, Buyers Order and Invoice, Bates
3 00027, was marked for identification.)
4 BY MR. LEWIS:
5 Q. And this would be the same document but has
6 the little used mark. Do you see that?
7 A. Yes, sir.
8 Q. So it's the same form as you said, used for
9 all three type cars?
10 A. Yes, sir.
11 MR. LEWIS: Okay.
12 (PLF. EXH. 9A, Buyers Order and Invoice,
13 Bates 00070, was marked for identification.)
14 BY MR. LEWIS:
15 Q. This looks like it's a buyer's order and
16 installment contract. Do you see that?
17 A. Yes, sir.
18 Q. Now, an installment contract, is that
19 something filled out by your people?
20 A. Yes, sir.
21 Q. And that's with -- do you do the financing or
22 do you have different people that do the financing?
23 A. Different people that do financing.
24 Q. But you all act as their representative in
25 getting the documents filled out?

1 A. Yes, sir.
2 Q. And I don't understand something. You have
3 the invoice and it has all the numbers on it, and then
4 when I go to the installment contract, it doesn't have
5 any of the numbers on there. Is there some reason for
6 that?
7 A. I don't know.
8 Q. Well, we know it's the same car because it
9 has the description, used, year and make and model.
10 And they were -- you don't know why the dollars weren't
11 given to us on the installment contract?
12 A. No, sir.
13 Q. Well, then, what I'm really interested in, I
14 don't see any place where the processing fee is shown
15 on the installment contract. Is it or not, or do you
16 know?
17 A. It would be, yes.
18 Q. It would be, so it's under one of those
19 blanked-out numbers?
20 A. Yes, sir.
21 Q. And where would it say process fee, do you
22 know?
23 A. No, sir, not without being able to read it.
24 Q. Well, if you were looking at this, would it
25 say processing fee under one of those blanked-out

Page 57	Page 59
1 spaces? 2 A. Yes, sir. 3 Q. And then it would have a number? 4 A. Yes, sir. 5 MR. STUDEMEYER: Let me ask you, is this the 6 best copy you have? 7 MR. LEWIS: Yeah. 8 MR. STUDEMEYER: Because the one I produced 9 would not have had that blacked out. 10 MR. LEWIS: The one you've just -- all these 11 blacked out? 12 MR. STUDEMEYER: Anything regarding the 13 administrative fee would not have been blanked out. 14 MR. LEWIS: I agree with you. 15 MR. STUDEMEYER: Okay. 16 MR. LEWIS: You blanked out all the numbers, 17 but she said what she said and I don't appreciate you 18 giving her an answer, but that's okay. 19 MR. STUDEMEYER: That was not my intention at 20 all. 21 MR. LEWIS: You just did, but that's okay. I 22 understand. 23 MR. STUDEMEYER: I'll be happy to furnish you 24 with another copy of the installment contract. 25 MR. LEWIS: I would like to have another copy	1 BY MR. LEWIS: 2 Q. Do you have co--- what do they call it, co-op 3 advertising? 4 A. Do we have co-op advertising? Yes. 5 Q. On co-op advertising, do you advertise the 6 price of vehicles? 7 A. In co-op advertising, yes. 8 Q. Does it always include the -- does it show on 9 there the administrative fee and show that it -- what 10 it is and that it's included? 11 A. Yes. 12 Q. So if I look at all our ads, co-op ads, it 13 will say \$16,000, which includes \$199 processing fee? 14 A. No, sir. 15 Q. Huh? 16 A. No, sir. 17 Q. What will it say? 18 A. It will probably advertise a price. But on 19 that particular car, it probably would not say that the 20 199 administrative fee or closing fee is included. 21 Q. How do you know that? 22 A. I don't know it. 23 Q. How does a -- someone looking at the ad know 24 whether it's in there or not? 25 A. There should be a disclaimer down at the
Page 58	Page 60
1 because I have a good reason for that now. Okay. 2 Where's 9B? 3 MR. HAMM: Mr. Lewis, you're referring to 4 what as Exhibit Number 9? 5 MR. LEWIS: 9A. 6 MR. HAMM: I'm sorry to ask again, Cam. The 7 blank document, that's 9A and the buyer's order is 9? 8 MR. THOMAS: 9A is the buyer's order starts 9 at 4794 is the pocket document. The installment 10 contract is 4801. 11 MR. HAMM: So 4801 is 9A? 12 MR. THOMAS: The whole packet is 9A. The 13 invoice and the installment contract together. I don't 14 think we've passed out 9B. 15 MR. LEWIS: No, we don't have a 9B. That's 16 right. There is no such thing as a 9B, so it's just 9. 17 MR. STUDEMEYER: Well, is it 9 or is it 9A? 18 MR. LEWIS: 9A will be fine. 9A is fine. 19 That's what I called it, and that's what it was. But 20 there's no 9B. 21 MR. HAMM: I'm not trying to be difficult. 22 Just so I'm clear, both of those documents are now part 23 of 9? 24 MR. LEWIS: Yes. 25 MR. HAMM: Thank you very much. I apologize.	1 bottom left-hand side of the advertising, which we 2 do co-op ads or any other kind of newspaper ads, it's 3 all on one. 4 Q. And what does the disclaimer say? 5 A. That it includes -- all prices include the 6 199. 7 Q. Okay. So somewhere on this ad it says that 8 this dollar amount includes a 199 processing fee? 9 A. Yes, sir. 10 MR. THOMAS: Okay. 11 (PLF. EXH. 10, Website Document, was marked 12 for identification.) 13 BY MR. LEWIS: 14 Q. Do you see number 10? That looks like a -- 15 from your Web site and does it show a price for a 16 vehicle? 17 A. It's blocked out. 18 Q. All right. Would that price that's blocked 19 out include the processing fee? 20 A. No, it would not. It says MSRP. 21 Q. Excuse me? 22 A. It says the MSRP, so it would not. 23 MR. LEWIS: Okay. 24 (PLF. EXH. 11, Website Document, was marked 25 for identification.)

15 (Pages 57 to 60)

1 BY MR. LEWIS:
2 Q. You see on there, Ms. Osborne, it says right
3 at the top, "All prices include a 199 closing fee."
4 Do you see that?
5 A. Yes, sir.
6 Q. When did you start putting that on your ads
7 such as these, do you know?
8 A. No, sir, I do not know.
9 Q. How would we find that out?
10 A. My advertising agency, Marion Waltz, should
11 be able to supply that information.
12 Q. Marion Waltz?
13 A. Uh-huh.
14 Q. When you say advertising agency, that's the
15 agency that you always use?
16 A. Does all of our -- yes.
17 Q. Advertising?
18 A. Yes.
19 Q. And no one else does your advertising?
20 A. Marion Waltz handles the bulk, that I am
21 aware of.
22 Q. And they would do your co-op, too?
23 A. Yes.
24 Q. Would they know which ones are co-op and
25 which ones are not?

1 A. No, I do not.
2 Q. Your company doesn't keep those?
3 A. Well, no, sir, they would be can kept with
4 him.
5 Q. With him?
6 A. Marion would know the guidelines.
7 Q. And did you all give him the guidelines or
8 did they get them from Mercedes and Volvo?
9 A. We get them from Mercedes, and they are
10 passed on to him.
11 Q. And are they guidelines for each co-op or are
12 they just general guidelines, or do you know?
13 A. I don't know.
14 Q. But in any event you all pass them on to --
15 A. Marion.
16 Q. -- Marion and they've got them?
17 A. Yes. I assume he has them. And I assume,
18 you know --
19 Q. Well, if anybody has them, he has them?
20 A. He's supposed to have them.
21 (PLF. EXH. 12, Advertisements, was marked for
22 identification.)
23 BY MR. LEWIS:
24 Q. Have you looked at them now? Have you seen
25 them?

1 A. I would imagine he would have some kind of
2 documentation, yes.
3 Q. Do you have any file called co-op
4 advertising?
5 A. No, sir.
6 Q. Do you have anything that would be able to
7 show us the co-op advertising in your office?
8 A. What I have applied for or what I have set up
9 to be a receivable, yes.
10 Q. Okay. And would -- who would have copies of
11 the ads when it's a co-op advertising, this advertising
12 agency?
13 A. Marion Waltz, correct.
14 Q. And then when you have a co-op advertising,
15 does Mercedes or Volvo, do they approve the ads?
16 A. No, sir. There are certain guidelines that
17 they do have to meet, though.
18 Q. And where are these guidelines?
19 A. Marion Waltz would have them.
20 Q. So there are some guidelines --
21 A. Passed on to them.
22 Q. -- there are Mercedes or Volvo guidelines?
23 A. Yes.
24 Q. Do you have copies of advertising guidelines
25 in your --

1 A. Yes, sir.
2 Q. Do any of those mention processing fee or
3 closing fee?
4 A. Not that I see.
5 Q. Where is the sign that you put up? Where is
6 it located?
7 A. Sign?
8 Q. That says that you charge a processing fee.
9 A. I believe we sent you all photos of all the
10 places they are displayed in the dealership.
11 Q. Have you seen those photos?
12 A. Have I seen the photos? Personally, no, sir,
13 I have not. But where the signs displayed, in various
14 places of the dealership.
15 Q. Let me just show it to you. This is what we
16 got and we can't tell -- excuse me. Just look at it
17 and see if you've seen those before. We can't tell --
18 A. These signs, yes, I have.
19 Q. We can't tell heads nor tails from that.
20 They're a little dark.
21 A. They're a little dark, but that's the signs.
22 Q. Huh?
23 A. Those are the signs that are displayed.
24 Q. Okay.
25 A. And they are displayed in all finance

Page 65	Page 67
1 offices. 2 Q. Finance office. 3 MR. LEWIS: Would you mark that Exhibit 4 Number 13? 5 THE WITNESS: And there are several in sales, 6 and they also in sales offices. 7 (PLF. EXH. 13, Photographs, was marked for 8 identification.) 9 THE WITNESS: They are conspicuously placed. 10 BY MR. LEWIS: 11 Q. Conspicuously? 12 A. Uh-huh. 13 Q. Look at Exhibit Number 13. 14 Which one of those signs on the first page is 15 the sign? 16 A. There is a sign sitting on the desk. 17 Q. Okay. Is that the sign that says the amount 18 of the money, the desk sign? 19 A. That says \$199. 20 Q. Can you read that? 21 A. No, sir, I can't read it. 22 Q. Okay. 23 A. But it's very clear. 24 Q. Okay. On the next page, 6,827, is that the 25 same sign?	1 hundred feet from each other. 2 Q. Is the used car dealership a separate 3 dealership? 4 A. No, sir. 5 Q. Is it a separate dealer? 6 A. No, sir. 7 Q. Do you know anything about the Michael Blesse 8 transaction? 9 A. A little. 10 Q. What do you know about it? 11 A. I've reviewed the documents. 12 Q. And what documents do you have? 13 A. That pertains to the transaction? 14 Q. Uh-huh. 15 A. I don't know each specific document that's in 16 there. But there would be definitely a bill of sale. 17 And if he financed it, there would be some credit 18 information. There would also be a contract, finance 19 contract if he financed it, which he did. 20 Q. And -- 21 A. Probably a worksheet. 22 Q. Do you know, was it 2'02 Volvo S60? 23 A. Yes, sir, I believe that was the correct car. 24 Q. Now, do you know whether you advertised 2'02 25 Volvo S60s?
Page 66	Page 68
1 A. Yes, sir. 2 Q. Can you read it any better? 3 A. No, sir. 4 Q. Then we go to the next page, which is 6,828, 5 where is the sign there? 6 A. I don't know. I don't see it. 7 Q. Let's go to the next page. That's 6,829. 8 Are there any signs there? 9 A. I see the one sitting on the desk and there 10 are some on the walls. 11 Q. Which ones are on the walls? Which ones are 12 the ones? Can you see them? 13 A. I cannot specifically tell you which one is 14 which, no, sir. 15 Q. Okay. 16 A. But they are very clear on the walls. 17 Q. The next one, 6,830, can you tell me if there 18 are any signs there? 19 A. I can see a sign, but I can't tell you what 20 it is. But I promise you what it is. 21 Q. You just got one location, right? 22 A. One location but we have two buildings. 23 Q. Two buildings. 24 A. The used car office is in one building and 25 the new cars. But we sell out of both. It's about a	1 A. If we advertise S60s? Yes, we advertise 2 S60s. It doesn't necessarily mean that we advertised 3 that particular one. 4 Q. Oh, so it's your position that any 5 advertisement that would include the processing fee 6 must be the exact car when it's bought? 7 A. If it has a stock number on it. 8 Q. If it has a stock number. Well, let's look 9 at that advertisement there that we looked at not too 10 long ago. There was a whole bunch of them. 11 A. Okay. 12 Q. I want to know this. The first one I see 13 there is an '01 Volvo S40 auto, leather, sunroof, 14 loaded sedan, 10,995. 15 A. Which exhibit are you looking at? 16 Q. The Exhibit Number 12. 17 A. Okay. 18 Q. Okay. The first one. 19 A. All right. 20 Q. That 10,995, according to you, would include 21 the processing fee? 22 A. Correct. 23 Q. It doesn't say so on here or mention it? 24 A. No, but that's the policy. 25 Q. That's your policy.

Page 69	Page 71
1 Now, it would only be that particular 2 vehicle? 3 A. We are specifying that particular vehicle. 4 Q. So it wouldn't be if you had two of them or 5 three of them, it would be which one? How do you 6 determine it? 7 A. Well, from the description. 8 Q. From the description. 9 A. Right. 10 Q. So it would be that one vehicle? 11 A. Yes, sir. 12 Q. Okay. How about -- it says on the next page, 13 new 2'05 Volvo S40 sedans? 14 A. Then that would be more than one. 15 Q. That would be all 240 -- S40 sedans? 16 A. 2005s. 17 Q. So that one -- all of those, the processing 18 fee would be included in there? 19 A. That's the policy. 20 Q. But it isn't shown on here? 21 A. No, sir. 22 Q. All right. So if it says "sedans," it's all 23 of them -- or S, but it if it's just specific, it's not 24 on here? 25 A. It's probably only the one car.	1 Exhibit 15 is not one of the cars listed on 14? 2 Specifically under Volvo listings, it has a '02 Volvo 3 S60, platinum green with leather -- taupe leather for 4 18,995. Do you know whether or not that's the car that 5 Mr. Blease purchased or not? 6 A. No, sir, I do not. And it's got stock number 7 P, and I cannot make out the stock number. I would 8 have to see it clearer. 9 Q. I can make it out. It's P2827. 10 A. Okay. 11 Q. Does that give you -- is there a stock number 12 on his buyer's order? 13 A. Yes, it's P2832. 14 Q. P2832. So we know that that's a different 15 car by that? 16 A. It's a different car. 17 Q. So the only car that gets the processing fee 18 included in the price is the one that has the right 19 stock number? 20 A. That was advertised. 21 Q. Yeah, okay. Was the one that Mr. Blease 22 bought a certified used car that had a window sticker? 23 A. No, sir, it was not a certified used car. 24 Q. So what would have been on it to show the 25 price?
Page 70	Page 72
1 Q. If it doesn't have an advertised, then it 2 does not include the processing fee? 3 A. Repeat the question. 4 Q. Never mind. You've answered it six times. 5 Okay. Now, you have Mr. Blease's car and was 6 it advertised? 7 A. According to my advertising agency, no, it 8 was not advertised that he could find anywhere. We 9 only had the car approximately one or two days. 10 (PLF. EXH. 14, Advertisement, was marked for 11 identification.) 12 MR. LEWIS: Okay. Mark this one as 15. 13 (PLF. EXH. 15, Buyers Order and Invoice, 14 Bates C0826, was marked for identification.) 15 BY MR. LEWIS: 16 Q. Do you have the two documents, 15 and 16? 17 A. Yes, sir. 18 Q. And -- 19 MR. STUDEMMEYER: I don't have 16. 20 THE WITNESS: No, I don't have 16 either. 21 I've got 15 and 14. 22 MR. LEWIS: 14 and 15, not 16. 23 BY MR. LEWIS: 24 Q. Looking at -- I don't know, is there any way 25 for you to tell whether or not the car sold as shown on	1 A. There would have been nothing on it to show 2 the price. 3 Q. So you would have had to ask the -- 4 A. Salesperson. 5 Q. Salesperson. 6 A. Yes, sir. 7 Q. And he would have given him a price? 8 A. Yes, sir. 9 Q. And that price would not have included the 10 processing fee? 11 A. No, sir. 12 Q. Thank you. 13 A. You're welcome. 14 Q. Now, we didn't get a installment contract and 15 he has an installment thing. Where is it? Is there 16 some reason you all haven't? 17 A. None that I know of. 18 Q. You should have it, but sometimes you don't? 19 A. But sometimes I don't? 20 Q. I don't know. Why don't we -- why didn't we 21 get his installment contract? 22 A. I don't know. 23 Q. Now, do you have any approvals or discussions 24 with the Volvo people concerning the charging of 25 administrative fees?

Page 73	Page 75
1 A. No, sir. 2 Q. Do you report to them the charging of 3 administrative fees? 4 A. Not to my knowledge, no, sir. 5 Q. Do you report to them the sales price of your 6 vehicles? 7 A. No, sir. 8 Q. Do you report to them any financial 9 information? 10 A. Financial statement, yes, each month. 11 Q. Just a financial statement? 12 A. Yes, sir. 13 Q. Nothing on the activities of sales and so 14 forth? 15 A. Other than the number of cars sold. 16 Q. Okay. Now, do you have -- have you ever 17 talked to anybody from Volvo about the administrative 18 fee? 19 A. Not to my knowledge. 20 Q. Have you talked to them about this lawsuit? 21 A. Not to my knowledge. 22 Q. And would that be the same with reference to 23 Mercedes? 24 A. Correct. 25 Q. Are they familiar with this lawsuit?	1 Q. Which one were you talking? 2 A. I was talking about Mercedes. 3 Q. Are they still -- is the older one still with 4 Mercedes? 5 A. Yes. 6 Q. Both of them still with Mercedes? 7 A. Yes. 8 Q. Who is the Volvo people? 9 A. I do not know her name. She's fairly new, 10 and I don't know her name. 11 Q. How about the one before her? 12 A. Wait a minute. Kara King. 13 Q. Kara? 14 A. Kara King, she is our sales rep. 15 Q. Where does she live? 16 A. I don't know. 17 Q. Well, who was the one before her? 18 A. I don't remember. 19 Q. If your company is found violating the 20 consumer laws, how does that affect your contract with 21 Mercedes? 22 A. If we violate the consumer laws, we'd be in 23 trouble. 24 Q. What kind of trouble? 25 A. Probably up to or even losing our franchise.
Page 74	Page 76
1 A. I don't know. 2 Q. Isn't there a district manager or something 3 comes around from each of those companies? 4 A. That's correct. 5 Q. Do you deal with them? 6 A. On a rare occasion. 7 Q. Who deals with them? 8 A. Primarily the sales manager and the dealer. 9 Q. And who are -- what's their names? 10 A. Steve Dyer is the dealer and Richard Dyer is 11 the sales manager. 12 Q. For both Volvo and Mercedes? 13 A. Correct. 14 Q. And who was the representative Volvo? 15 A. Michael Dowling. 16 Q. And how long has he been that? 17 A. Probably four years prior to that. It was 18 Barry Downing. 19 Q. Where does the first one live, Dowling? 20 A. Charlotte, I believe. 21 Q. And where does the other one live, the 22 earlier one? 23 A. I don't know. 24 Q. Is he still with Volvo? 25 A. Are we talking Volvo or Mercedes, I'm sorry?	1 Q. Would that be the same with Volvo? 2 A. I would imagine. I don't know. I don't 3 know. 4 MR. LEWIS: Okay. Thank you. 5 MR. STUDEMEYER: No questions. 6 (The deposition concluded at 12:16 p.m.) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

EXHIBIT 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	Civil Action No.: 06-CP-02-1230
	)	
Heather Herron, et al.,	)	
	)	
Plaintiffs,	)	RESPONSES ON BEHALF OF
	)	DEFENDANT, DICK DYER &
v.	)	ASSOCIATES, INC., TO PLAINTIFFS'
	)	REQUESTS TO ADMIT
Dick Dyer & Associates, Inc., et al.,	)	
	)	
Defendants.	)	

TO: BRADY R. THOMAS, ESQ., ATTORNEY FOR THE PLAINTIFFS:

Defendant, Dick Dyer & Associates, Inc. ("Dick Dyer"), hereby responds to Plaintiffs' Requests To Admit as follows:

1. Admit that you engaged in window sticker advertising during the relevant time period.

RESPONSE:

Dick Dyer admits that during the relevant time period, Monroney labels were affixed to new cars and other labels were affixed to some used cars, some of which included a price, but denies that any such labels constitute advertising.

2. Admit that you engaged in window sticker advertising during the relevant time period which disclosed the price of the vehicle but did not mention the charging of an administrative fees.

RESPONSE:

Dick Dyer admits that during the relevant time period, Monroney labels were affixed to new cars and other labels were affixed to some used cars, some of which included a price, but denies that any such labels constitute advertising. Dick Dyer admits that Monroney labels

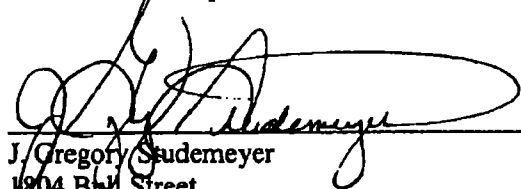
affixed by the manufacturer or distributor on new cars and other labels affixed to some used cars by Dick Dyer, some of which included a price, did not include closing fees.

3. Admit that you engaged in window sticker advertising during the relevant time period which listed the price of the vehicle but did not separately disclose the amount to be charged as an administrative fee.

RESPONSE:

Dick Dyer admits that during the relevant time period, Monroney labels were affixed to new cars and other labels were affixed to some used cars, some of which included a price, but denies that any such labels constitute advertising. Dick Dyer admits that Monroney labels affixed by the manufacturer or distributor on new cars and other labels affixed to some used cars by Dick Dyer, some of which included a price, did not include closing fees.

J. GREGORY STUDEMAYER
Professional Corporation



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Attorney for Defendant, Dick Dyer &
Associates, Inc.

Columbia, South Carolina

January 16, 2009

EXHIBIT 5

Page 1

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF AIKEN C.A. No. 2006-CP-02-1230

3
4 Heather Herron, Natalis Armstrong,
Michael Ritz, Julie Freeman,
5 Christine Watts, Michael Blease,
Michael Watts, individually and
6 for the Benefit of All Car Buyers
Whom Paid "Administrative Fees"
7 as Described below to Defendants,
8 Plaintiffs,
9

10 vs.

11 Century 21 BMW, s/k/a Sonic
Automotive; Dick Dyer & Associates,
Inc.; Galeana Chrysler Jeep, Inc.,
J.L.M. Investments, LP, s/k/a
12 Hendricks Honda; Overland, Inc.,
d/b/a Land Rover of Columbia;
13 Taylor Toyota, s/k/a Taylor
Investments; and Toyota of
14 Greenville, Inc.,
15 Defendants.
16

17 DEPOSITION

18 WITNESS: DON LEE PENDLETON
19 DATE: Monday, February 16, 2009
20 TIME: 10:09 a.m.
21 LOCATION: Haynsworth Sinkler & Boyd
22 75 Beattie Place, Two Liberty Square
Greenville, South Carolina
23 TAKEN BY: Counsel for the Plaintiffs
24 REPORTED BY: Karen A. Belanger, CVR

25 COMPUSCRIPTS, INC.
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Page 3

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8 C. JO ANNE WESSINGER HILL, Esquire
9 Richard, Plowden & Robinson, P.A.
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11 P. O. Drawer 7788
12 Columbia, South Carolina 29202

13 On behalf of the Defendant, Land Rover/Columbia

14 ALSO ATTENDING: Melanie Blease
15 Alison A. Dannert
16 Timothy E. Brewer

17 STIPULATIONS: The within deposition was taken pursuant to
18 the South Carolina Rules of Civil Procedure.

19 WAIVER: Examination and reading of the deposition are
20 reserved by the witness and by the parties.

21 INDEX

22 Examination by Mr. Spears 5
23
24 Errata 359
25
26 Certificate 360
27
28
29

Page 2

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27 Greenville
28
29

Page 4

1 EXHIBITS

2 Plaintiff's Exhibits
3
4 Exhibit No. 1
5 Amended Notice of Deposition 9
6 Exhibit No. 2
7 Key Elements of Compliance Policy ... 85
8
9 Exhibit No. 3
10 Hendrick Automotive Group Policy 90
11 Exhibit No. 4
12 Closing Fee Regulations 127
13
14 Exhibit No. 5
15 9/6/07 Letter 129
16 Exhibit No. 6
17 Interrogatories 198
18
19 Exhibit No. 7
20 Freeman Deal Packet 202
21 Exhibit No. 8
22 '02 Buyer's Order with Redactions ... 218
23
24 Exhibit No. 9
25 Monroni Label 237
26 Exhibit No. 10
27 Notice of Closing Fees 246
28
29 Exhibit No. 11
30 Contract 258
31 Exhibit No. 12
32 Accessories Addendum Sticker 307
33
34 Exhibit No. 13
35 Window Sticker 308
36 Exhibit No. 14
37 Supplemental Sticker 311
38
39 Exhibit No. 15
40 Clearance Sign 345
41
42
43
44
45
46
47
48
49

Page 5	Page 7
1 2 3 The witness was duly sworn to tell the truth, the 4 whole truth, and nothing but the truth concerning the 5 matter herein; 6 DON LEE PENDLETON, 7 being duly sworn, testified as follows: 8 EXAMINATION BY MR. SPEARS: 9 Q. Don, will you state your name for the record, 10 please? 11 A. Don Lee Pendleton. 12 Q. And where do you reside? 13 A. In Greenville. 14 Q. Where? 15 A. 22 Rivoli Lane, about two miles from here. 16 Q. Have you ever given a deposition before? 17 A. Never. 18 Q. But you had an opportunity to watch one on Friday, 19 did you not? 20 A. Yes. 21 Q. Were you there the entire time? 22 A. Yes. 23 Q. Was that instructive in any way? 24 A. I'm sorry? 25 Q. Was that instructive for you in any way as to how 26 a deposition works? 27 A. Yes. 28 29	1 2 3 golf or football or anything you want to, but if 4 you talk about anything surrounding the 5 deposition, I'm entitled to know what you're 6 talking about. Okay? 7 A. Okay. 8 Q. It is sometimes more provident to just avoid 9 conversations. If you need a break because of any 10 physical condition or anything, will you let me 11 know? 12 A. I'll let you know, yeah. 13 Q. You can take a break for any reason or no reason 14 should you need to. Do you understand? 15 A. Uh-huh (affirmative). 16 Q. Are you on any pain medications right now? 17 A. Not -- well, Celebrex is kind of inflammation. 18 Q. Right. It's an anti-inflammatory? 19 A. Yeah. 20 Q. Does it in any way impair your ability to 21 understand and answer my questions? 22 A. Absolutely not, no. 23 Q. Are you under the influence of any legal or 24 illegal drug that may impair your ability to 25 understand and answer my questions? 26 A. Not that I'm aware of. 27 Q. Do you have any medical condition that impairs 28 29
Page 6	Page 8
1 2 3 Q. Let me give you some initial comments about a 4 deposition so that you'll know kind of the format 5 and rules under which we go under. 6 A. Okay. 7 Q. First, as you know, you're under oath. Okay? 8 A. Right. 9 Q. Since you're under oath, the rules of perjury 10 apply. Do you know what perjury is? 11 A. Yes. 12 Q. I have the right to your fullest and best answers. 13 Okay? Purportedly this is the only chance I'm 14 going to have to take your deposition, so I need 15 your fullest and best answers. If, during the 16 deposition you have any questions, the rules 17 require me to tell you that you're to address your 18 questions about my questions to me. Okay? 19 A. Okay. 20 Q. If you need to confer with your attorney for any 21 reason during the time, you're to tell me that and 22 then we'll confer before you all confer. 23 A. Okay. 24 Q. If you have any conversations during the breaks 25 with anyone, I'm entitled to know the contents of 26 those conversations. So I'd just admonish you 27 during the breaks to -- and you can talk about 28 29	1 2 3 your ability to understand and answer my 4 questions? 5 A. No. 6 Q. Now, as we go through this deposition and I ask 7 you questions, I have a tendency at times to ask 8 questions that may be unclear. I want you to ask 9 me for clarification or to rephrase or restate the 10 question if you don't understand the question. 11 Okay? 12 A. Okay. 13 Q. Is that agreeable to you? 14 A. Uh-huh (affirmative). 15 Q. If you do not ask me to restate or rephrase the 16 question, I'm going to assume that you understood 17 the question and you did your best to answer it 18 truthfully. Is that fair? 19 A. Yes. Yes. 20 Q. I should also tell you that all of your responses 21 to my questions need to be verbal. Do you 22 understand? 23 A. I understand. 24 Q. Although the court reporter can note in the record 25 shakes or nods of the head, it doesn't make for a 26 good written record. 27 A. Yes. 28 29

Page 9	Page 11
1 2 3 Q. So please let your responses be verbal. Okay? 4 A. Okay. 5 Q. How are you employed? 6 A. How am I employed or -- 7 Q. In what capacity? 8 A. I'm the general manager. 9 Q. Of anything in particular? 10 A. Hendrick Honda of -- in Easley, South Carolina. 11 Q. Hendrick Honda in Easley? 12 A. Uh-huh (affirmative). 13 Q. Did you have any direct -- anything directly to do 14 with Julie Freeman's purchase of a vehicle there? 15 A. No. 16 Q. This is a 30(b)(6) deposition and I show you this 17 document. Let's mark this as Plaintiffs' 1. 18 (EXHIBIT NUMBER 1 MARKED) 19 EXAMINATION RESUMED BY MR. SPEARS: 20 Q. Let me ask you to look over it carefully and tell 21 me if you are, in fact, the person most 22 knowledgeable about the topics we intend to 23 discuss today in that 30(b)(6) deposition. 24 A. Yes. I'm familiar with it and I am knowledgeable 25 about it. 26 Q. So you have seen the document labeled as 27 Plaintiffs' 1 before? 28 29	1 2 3 Q. Well, the specific questions about the -- what 4 happened with Julie Freeman, you were not a 5 witness to that, right? 6 A. That's correct, yesh. 7 Q. So you may not know those? 8 A. Right. 9 Q. But you would know the broad topics listed here 10 better than anyone else at Hendrick's? 11 A. Yes. But I think you had another question in 12 there somewhere that was -- 13 Q. Well, if I did, ignore it. 14 A. Ignore it? Okay. All right. Yeah, I -- I'm -- 15 overall -- I'd be the best person to talk to 16 overall. 17 Q. For how long have you been employed as general 18 manager of Hendrick Honda? 19 A. Since 2000. 20 Q. And your employment prior to that? 21 A. Was Hendrick Motors in Hickory. 22 Q. For how long? 23 A. 1994 I went there, and then in 2000, I went to 24 Hendrick Honda. 25 Q. Where is Hendrick Honda located? 26 A. In Easley. 27 Q. Have you been general manager for the entire time 28 29
Page 10	Page 12
1 2 3 A. This document? 4 Q. Yes. 5 A. Yes. 6 Q. And you have reviewed all the topics listed 7 therein? 8 A. Yes. 9 Q. And are you the person most knowledgeable about 10 each and every one of those topics? 11 A. Absolutely. 12 Q. If you reach a point in the deposition where you 13 do not know the answer to some question that I ask 14 you concerning these topics may I assume that no 15 one else would either? 16 A. I don't know. 17 Q. Well, obviously if it's a minute factual question 18 about direct contact with Julie and you weren't 19 there, then there'd be someone else who knew it. 20 A. Uh-huh (affirmative). 21 Q. But as to the broad policies and procedures of 22 Hendrick Honda, you would be the person who would 23 know more than anyone else? 24 A. Yeah. Is that the same as the first question? 25 The first question was like -- 26 Q. Do you know these topics better than anybody else? 27 A. I -- yes, but the question after that. 28 29	1 2 3 you've been there, since 2000? 4 A. Yes. 5 Q. What was your position at Hendrick Motors in 6 Hickory? 7 A. General sales manager. 8 Q. Is there a difference between a general sales 9 manager and a general manager? 10 A. Yes. 11 Q. What is the difference? 12 A. Oh, general sales manager focuses mainly on the 13 sales department and the general manager focuses 14 on all departments. 15 Q. Including sales, parts, et cetera? 16 A. Right. 17 Q. Tell me if you would your knowledge about J.L.H. 18 Investments. How many dealerships do they own? 19 When did they come into existence? Where all are 20 they located, et cetera, et cetera, et cetera, an 21 overall corporate -- 22 MR. BECKER: 23 Object to the form. You can answer. 24 WITNESS ANSWERS: 25 A. Generally I -- I'm not -- I know the -- to my 26 knowledge, they have four dealerships, including 27 Hendrick Honda. 28 29

Page 13	Page 15
1 2 3 EXAMINATION RESUMED BY MR. SPEARS: 4 Q. Where are they located? 5 A. 6 Hendrick Honda is in Easley; Honda Cars of Bradenton is 7 -- 8 Q. Florida? 9 A. Florida, uh-huh (affirmative). Honda Cars of 10 Hickory; and Hendrick Honda, Charlotte. 11 Q. Who is the president of the company? 12 A. Charles Ricks. 13 Q. R-E-X? 14 A. R-I-C-K-S. 15 Q. Charles Ricks. Do you know where he's located? 16 A. As far as where he lives or where he works? 17 Q. Both. 18 A. Both. Office, I think at the Hendrick Automotive 19 Group; and he lives in Charlotte. I don't know 20 his address or anything like that. 21 Q. Where is the -- 22 A. And he -- you know, that's about all I'm sure I -- 23 Q. Charles Ricks? 24 A. Uh-huh (affirmative). 25 Q. R-I-C-K-S? 26 A. Uh-huh (affirmative). 27 Q. Lives in Charlotte? 28 29	1 2 3 Q. How about Florida? 4 A. Florida is the J.L.H. store. 5 Q. Tell me the interrelationship, if any, between 6 J.L.H. Investment and the Hendrick Automotive 7 Group. Does Hendrick Automotive Group own J.L.H. 8 or does J.L.H. own Hendrick? 9 A. Not to my knowledge that -- I don't really know 10 who has parts in what. I just don't -- I don't 11 know. 12 Q. Well, who is the president of J.L.H.? 13 A. Rick -- Charles Ricks. 14 Q. Who is the president of Hendrick Automotive Group? 15 A. I'm not sure if the title's president, but the -- 16 the head person would be Jim Huzell. 17 Q. Spell Huzell for me, please. 18 A. H-U-L -- 19 Q. H-U-L? 20 A. Huzell, H -- I'm not sure. H-U-L-U-L-Z. I don't 21 know. I don't know how to spell his last name. 22 Q. Do you know where he's located? 23 A. Charlotte. 24 Q. Merely size wise, it appears that Hendrick 25 Automotive Group has more companies or stores, as 26 you would say, than J.L.H. Investments; is that 27 fair? 28 29
Page 14	Page 16
1 2 3 A. Right. 4 Q. And his office is at the Hendrick Automotive 5 Group. Where is that located? 6 A. That's in Charlotte. 7 Q. Is the Hendrick Automotive Group comprised of the 8 four dealerships you've listed? 9 A. I'm sorry; what now? 10 Q. Is the Hendrick Automotive Group comprised 11 exclusively of the four dealerships you have 12 listed? 13 A. It's a separate -- Hendrick Automotive Group is 14 separate from J.L.H., to my knowledge. 15 Q. What does Hendrick Automotive Group own? 16 A. Hendrick Automotive Group owns a lot of stores. 17 I'd say 50 plus. 18 Q. Now by stores, do you mean car dealerships? 19 A. Yes. 20 Q. And tell me the states that they would be located 21 in. 22 A. North Carolina, South Carolina, Virginia. Kansas 23 City is the city. I'm not sure if they're in 24 Missouri or if they're in Kansas; California. And 25 there may be something else that I'm missing. I 26 just -- Texas -- Texas, and past that, there may 27 be something else, but that's all I can recall. 28 29	1 2 3 A. That's fair to say. 4 Q. If Charles Ricks is the president of J.L.H. 5 Investments, does Hendrick Automotive Group run by 6 Jim Huzell have any ownership capacity in J.L.H. 7 Investments? 8 A. I don't know that -- I don't know the answer to 9 that. 10 Q. So you do not know the corporate organization of 11 either J.L.H. or Hendrick Automotive? 12 A. Or -- or the owners or who owns what or what 13 percentages or any of the above. I don't -- 14 Q. You don't know any of that? 15 A. Huh-uh (negative). 16 Q. Who would be the person most knowledgeable in that 17 regard? 18 A. Charles Ricks. 19 Q. Who would know the most about Hendrick Automotive 20 Group? 21 A. Jim Huzell would -- would -- you know, could tell 22 you that. 23 Q. You pronounce it Huzell. Do you believe it to be 24 H-U-Z-E-L-L? 25 A. I don't know. 26 Q. How would we find that out? 27 A. Probably ask Tim Brewer. He probably could spell 28 29

Page 17	Page 19
1 2 3 it. 4 Q. Who is Tim Brewer? 5 A. Tim's right here. 6 Q. And what does Tim do? 7 A. He works with the Automotive Group. 8 Q. In what capacity? 9 A. Risk management. 10 Q. Is he an attorney? 11 A. I don't -- I don't know. 12 Q. You don't know what he does? 13 A. I don't know if he's an attorney. 14 Q. Do you know if he's like an insurance adjuster or 15 -- 16 A. He's employed with Hendrick Automotive Group. 17 Q. And he is here today at a deposition involving 18 J.L.H. Investments, correct? 19 A. Yes. 20 Q. Do you know any relationship between J.L.H. 21 Investments and Hendrick Automotive Group? 22 A. Any relationship? What do you mean? 23 Q. Any corporate relationship, ownership 24 relationship, co-op agreement, mutual advertising 25 agreement, financing jointly, anything. 26 A. All right, one at a time. Ask me the -- ask me 27 about one of those things -- you know, I've lost 28 29	1 2 3 MR. SPEARS: 4 Sure. 5 (BREAK; OFF THE RECORD) 6 MR. SPEARS: 7 If this is satisfactory, I will put on the record 8 that I will send you an interrogatory, an RFP, at 9 a later time in regards to corporate structure and 10 governance and that we will desist from asking 11 this witness further about corporate structure and 12 governance. 13 MR. BECKER: 14 That's fine. 15 EXAMINATION RESUMED BY MR. SPEARS: 16 Q. So far as you are aware, does J.L.H. Investments 17 come underneath the general corporate umbrella of 18 Hendrick Automotive Group? 19 A. And what -- what would you mean by coming 20 underneath? 21 Q. For ultimate management, corporate governance, or 22 do you have any idea? 23 A. Far as I know, J.L.H. makes their decisions on 24 their own. 25 Q. Do you have any -- as general manager of Easley 26 Honda -- 27 A. Uh-huh (affirmative). 28 29
Page 18	Page 20
1 2 3 track of them already. 4 Q. Do any of the officers of Hendrick Automotive 5 Group serve as officers of J.L.H. Investments? 6 A. Not to my knowledge. 7 Q. Do you know who the board of directors -- or is 8 there a board of directors of Hendrick Automotive 9 Group? 10 A. I'm not -- I'm not sure even if there is one. And 11 -- or if there is one, I don't know the -- who's 12 on it. 13 Q. Do you know who the CFO of Hendrick Automotive 14 Group is -- or do you know what a CFO is? 15 A. Chief financial officer? 16 Q. Yeah. 17 A. Yeah. I know people from Hendrick Automotive 18 Group, but I just -- I don't know all their 19 titles. I don't know -- I couldn't answer that, 20 you know, as far as if I know who it is. 21 Q. Do you know who the CFO of J.L.H. Investments is? 22 A. To my knowledge, there's nobody with a title with 23 CFO in J.L.H. Investments. 24 Q. Tell me the titled officers that you are aware of 25 that exist in J.L.H. Investments. 26 MR. BECKER: 27 Can we take a break a minute? 28 29	1 2 3 Q. -- do you file any documents with, get any 4 documents from, or have any contact with any 5 people from Hendrick Automotive Group? 6 A. Have I had contact with any people in -- in filing 7 of documents? 8 Q. Or conversations with. 9 A. Well, what do you mean by filing of documents? 10 Q. The receipt of or sending documents to or from you 11 and Hendrick Automotive Group. 12 A. Give me an example of something you're -- 13 Q. Any phone call, letter, communication, any report. 14 A. Have I ever had a phone call with somebody at 15 Hendrick Automotive Group? Sure. 16 Q. Do you do it on a regular basis? 17 A. We have a conference call. 18 Q. How often? 19 A. Every Monday. 20 Q. With Hendrick Automotive Group? 21 A. And J.L.H. 22 Q. And J.L.H. Are you a party to that conference 23 call? 24 A. Yes. 25 Q. Tell me some of the things that go on in that 26 conference call. What is discussed? 27 A. A general -- it's everybody having a chance to 28 29

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3 talk about their store.
4 Q. And this is 50 plus stores?
5 A. Well, there's -- the conference call is broken up
6 into segments. We're on the Honda-Toyota calls,
7 so there's more like a ballpark of 12.
8 Q. So you, Hendrick of Easley, Hendrick Honda of
9 Easley --
10 A. Uh-huh (affirmative).
11 Q. -- are in a portion of the conference call that
12 has to do with Honda-Toyota dealerships owned by
13 Hendrick Automotive Group?
14 A. Say -- say that one more time.
15 Q. As the GM for Hendrick Honda of Easley, you're
16 only on the portion of the conference call that is
17 broken up to comprise merely the 12 or so
18 dealerships that relate to Honda or Toyotas?
19 A. Yes, only Honda or Toyotas.
20 Q. So the other 38 some odd dealers may be on
21 different conference calls, but you're on the
22 conference call every Monday for the Honda-Toyota
23 dealers owned by Hendrick Automotive Group?
24 A. And J.L.H.
25 Q. And J.L.H.?
26 A. Uh-huh (affirmative).
27 Q. Did you say, or did I misunderstand earlier, that
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3 A. Vlocker? I'm the worst speller in the world.
4 Q. I'm starting to learn that.
5 A. Okay.
6 Q. V-L-O-C-K-E-R?
7 A. That sounds close enough to me. I guarantee you
8 can get it better than me.
9 Q. And who is Tommy Vlocker? What position does he
10 hold with who?
11 A. He's one of the -- again, I don't know like if
12 you're quoting exact position, is this guy
13 executive, vice president, or he's a -- you know,
14 these kind of things. But he's -- in some
15 capacity, he has -- they divide into two groups at
16 Hendrick Automotive Group, maybe the east and the
17 west, and he's kind of like the guy that handles
18 the west -- I mean excuse me; the east I believe
19 it is, yeah. Yeah, and whatever they call him.
20 Q. So he's kind of the guy in charge of the eastern
21 segment --
22 A. Eastern side, yeah.
23 Q. -- of Hendrick Automotive Group?
24 A. There you go.
25 Q. And he's the guy who chairs every Monday morning
26 calls?
27 A. That's right.
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3 out of the 50 or so dealerships owned by Hendrick
4 Automotive Group, you only know of four that
5 J.L.H. Investments owns?
6 A. Yes.
7 Q. Now, when you have your conversations on Monday,
8 are you speaking on behalf of all four of the
9 dealerships owned by Hendrick -- I mean by J.L.H.
10 Investments?
11 A. No.
12 Q. You're just speaking on behalf of the Easley
13 store?
14 A. Yes.
15 Q. What conversations are had on Monday morning in
16 the conference calls that you have? What topics
17 are discussed?
18 A. We're -- it's like basically they ask you how
19 you're store's doing and you talk about your store
20 and everybody's listening. And then they go to
21 the next person and they talk about their store.
22 I think the idea behind it is just to get
23 everybody together and see how everybody's doing.
24 Q. And who chairs the call?
25 A. Normally the person probably that chairs it the
26 most would be Tommy Vlocker.
27 Q. How do you spell that last name?
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3 Q. And you report to him about how your Easley store
4 is doing on the phone?
5 A. Well, yeah. Yeah, we -- I don't know if we'd look
6 at it like we're reporting to somebody. We look
7 at it like we're sharing information, so to speak,
8 just hey, we're doing good down here, not so good
9 over here, that kind of stuff.
10 Q. Is there ever any conversation or have you
11 participated in conversation about any litigation
12 that Hendrick Honda of Easley may be undergoing in
13 these conference calls?
14 A. No.
15 Q. So that question has never been asked and you've
16 never brought it up?
17 A. Not -- not on a conference call.
18 Q. On a conference call, has administrative or
19 procurement fees, dealer acquisition fees, or
20 processing fees, has that ever been discussed?
21 A. I never remember that being brought up in a
22 conference call.
23 Q. How long have you been participating in these
24 conference calls?
25 A. Since 1994 I used to sit in on them.
26 Q. When you were up in Hickory?
27 A. Yes.
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6 (Pages 21 to 24)

Page 25	Page 27
1 2 3 Q. When you were just a sales manager? 4 A. Yes. 5 Q. Now, do you actively speak in these conference 6 calls or do you just listen now? 7 A. No, I speak. 8 Q. And do you speak about things that exclusively 9 concern Hendrick Honda of Easley? 10 A. Yes. 11 Q. Do you ask questions of other dealers in any 12 regard about their dealerships? 13 A. I don't do the question asking. I don't remember 14 ever -- I could if I wanted to, like if somebody, 15 you know, said something I was interested in, I 16 could ask a question about it. I'm not a real big 17 question asker. I kind of get on there and do my 18 thing and just go, yeah. 19 Q. Well, if you had the right, would you ask other 20 dealerships throughout the eastern division of 21 Hendrick Automotive Group how they're doing in 22 regards to administrative fees or how much they 23 charge? 24 A. Yeah. We've never done that on a conference call. 25 That's not the kind of subject matter that we 26 bring up on conference calls. 27 Q. I guess my question was, could you if you wanted 28 29	1 2 3 know, so -- you know, that's pretty much typical 4 of the typical topics, each state dealership going 5 through and just talking about how they did or if 6 they're struggling, "Hey, we're struggling," you 7 know. 8 Q. Well, I'm a little confused. 9 A. Uh-huh. 10 Q. And it's my problem because I'm not in the car 11 business. Okay? 12 A. Okay. Okay. 13 Q. But I assume that when you sell a car, and you 14 complete the sale, that somehow or another by 15 computer, Hendrick Automotive Group knows about 16 it, that they get a report as the car is sold. 17 You don't have to tell them on Monday morning that 18 you sold ten cars, do you? Don't they already 19 know that by looking at their printout? 20 A. To tell you the truth, I don't what they look like 21 -- at on Monday mornings. All I know, that they 22 got a conference call and I'm on it, and this is 23 what they want me to do. I don't -- I don't know. 24 Q. Well, my question is, do you report to them on a 25 regular basis your car sales in a written fashion 26 that are electronically transmitted to Hendrick 27 Automotive Group? Do you know what I mean by 28 29
Page 26	Page 28
1 2 3 to or is that forbidden? 4 A. It's not forbidden, it's just -- to me it would be 5 inappropriate to talk about something like that 6 with -- I don't know. 7 Q. Could you tell me why you think it would be 8 inappropriate? 9 A. It -- I don't know. I wouldn't want to talk about 10 anything that has to do with litigation, you know, 11 except for with attorneys or somebody like that. 12 Q. Well, certainly, but I'm not talking about 13 litigation. I'm just talking about, "How are you 14 guys doing on collecting your administrative 15 fees," or "How much are you guys charging?" 16 A. Uh-huh (affirmative). That's just never happened, 17 so to me, it's not relevant. 18 Q. So the sum and substance of what every Monday 19 morning's phone calls consist of is what? Tell me 20 the topics generally discussed. 21 A. Tommy might say, "Hey, Don, how's it going down in 22 Easley?" "Had a good weekend, sold ten cars 23 Saturday, you know, service has picked up. Looks 24 like we're going to have a good month, had a, you 25 know, good day Sunday," you know, that kind of 26 general things. At the same time, they're looking 27 at numbers that we punched in earlier where -- you 28 29	1 2 3 electronic? 4 A. Yes. It is just -- it just -- I think it just 5 don't happen the way you're thinking it happens. 6 Q. Well, tell me how it happens. 7 A. It -- you go in on Monday. And we pull our sales 8 out of the computer and we punch them into a 9 computer. And we get on a conference call and 10 they look at them in a form that -- that they like 11 and you talk about it. 12 Q. They being Hendrick Automotive Group? 13 A. Yeah. And J.L.H. is on the calls, yeah. 14 Q. So you pull your sales out of your on-site 15 computer, the one on site at the Easley store that 16 you are the GM for, right? 17 A. Well, we keep a -- a daily tab on everything, yes. 18 Q. Of course. Now, you have to retrieve that 19 information out of your on-site computer and put 20 it in the format that they like and send it to 21 them electronically so that they have it at the 22 Hendrick Automotive Group? 23 A. Yes. 24 Q. Do you do that prior to the beginning of the call 25 on Monday? 26 A. It needs to be in there so by the time your call 27 starts, everybody can look at all the numbers. 28 29

Page 29	Page 31
1 2 3 Q. So do you do it on Sunday or do you do it on 4 Monday morning? 5 A. Typically Monday. 6 Q. Are you confident, as we stand here today, so far 7 as your knowledge of the situation, that the 8 Hendrick Automotive Group does not instantaneously 9 know by computer when you sell a car out of 10 inventory at your Easley lot? 11 A. So we sell a car? 12 Q. That's right. 13 A. And it's eight o'clock at night and we close the 14 deal. Do they instantaneously know that; is that 15 what you're asking? 16 Q. Could they pull up on their computers if they were 17 there at eight o'clock at night that one car is 18 missing from their inventory at their Easley lot 19 because it's been sold? 20 A. You know, I don't -- I don't know. 21 Q. You don't know? 22 A. It just -- if they can, I don't know why they 23 would want to, you know, fifty some dealerships 24 and thousands of cars, you know. 25 Q. And we're going to get into later whether those 26 cars are floor-planned, et cetera, et cetera. 27 A. Okay. All right. 28 29	1 2 3 Investments? 4 A. No. It was Hendrick Automotive Group. 5 Q. That was Hendrick Automotive Group; okay. Were 6 closing fees charged when you were there at 7 Hendrick Motors in Hickory? 8 A. Yes. 9 Q. Were they there when you began in 1994? 10 A. Best of my recollection, I -- they were there, 11 yeah. 12 Q. And the first time you became aware of them at the 13 Easley store, Easley Honda, is when you became GM 14 there in 2000? 15 A. Uh-huh (affirmative). 16 Q. Is that right? 17 A. Uh-huh (affirmative). Yeah, I moved up there. 18 Q. Moved up there? 19 A. Or moved up here or -- from Hickory to here and 20 went in the store I guess, yeah. 21 Q. Oh, okay. And do you know how long -- have you 22 learned since you've been there as general manager 23 how long Hendrick Honda of Easley has been 24 charging these fees? 25 A. I'm not sure. I just know they were charging them 26 when I got there. 27 Q. And you never inquired, "How long have you been 28 29
Page 30	Page 32
1 2 3 Q. But do you know if the cars at Easley are floor- 4 planned? 5 A. New cars. 6 Q. And who are they floor-planned with? 7 A. With American Honda. 8 Q. Now, what is your understanding about what this 9 case that we're here today concerning is about? 10 A. It's focusing strictly on doc fees. 11 Q. You're using the term, "doc fees"? 12 A. Or doc fees, administrative -- closing fee, I 13 think is what it says. 14 Q. And I believe you said administrative fees, 15 closing fees. What do you guys around Easley 16 Honda call this fee? 17 A. Closing fee. 18 Q. Tell me, if you know, when is the first time that 19 you became aware that closing fees were being 20 charged by Hendrick -- J. L. Hendrick Investments 21 or whatever? 22 A. Well, I came to work in 2000, so that would be the 23 first time I came to work for J.L.H. as far as 24 closing fees go. Is that what you're asking me? 25 Q. Well, perhaps I misunderstand. 26 A. Okay. 27 Q. Did you not work in Hickory for J.L.H. 28 29	1 2 3 doing this?" 4 A. No. 5 Q. What was the fee when you went there in 2000? 6 A. One hundred and ninety-nine dollars. 7 Q. And you all referred to it as a closing fee then? 8 A. No; could have been one of those administrative or 9 procurement fee or something like that. It was -- 10 back in those days. 11 Q. What do you call it now? 12 A. Huh? 13 Q. What do you -- 14 A. Closing fees. 15 Q. Now you call it a closing fee? 16 A. Uh-huh (affirmative). 17 Q. In the year 2000 when you went there, you believe 18 it was called something else? 19 A. Something else, yeah. 20 Q. Although you call it a closing fee now and it 21 might have been called something different in 22 2000 -- 23 A. Uh-huh (affirmative). 24 Q. -- is it for the same purpose? 25 A. It -- it's all the same. It's -- 26 Q. Now, has the manner in which you charge the 27 closing fee in any way been altered or changed 28 29

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3 after the commencement of this lawsuit?
4 A. And when you say manner, what do you mean by
5 manner?
6 Q. The way you put it on the buyer's order form or
7 the amount that you charge or the warnings or
8 admonitions you give to the purchaser or the sign
9 that you may have posted. Just in any fashion,
10 what have you changed, if anything, after this
11 lawsuit began?
12 A. Well, it's on the forms, so it's always been on
13 the form and it's always been on the wall. What
14 was the third thing you were saying as far --
15 Q. I want to know anything.
16 A. Oh, okay.
17 Q. It's always been on the form. You've told me
18 that.
19 A. Right. And it's always been on the walls.
20 Q. On the walls?
21 A. On the showroom walls and our finance walls and
22 things like that.
23 Q. Have your words or information that you imparted
24 to a purchaser who might be buying a car, have
25 they changed since the beginning of this lawsuit?
26 A. And what would you mean by that?
27 Q. Anything that you tell the people about the
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3 closing fee.
4 A. I can't -- I don't -- we've never -- far as I
5 know, there's nothing different than -- then when
6 I first got there.
7 Q. Let's just go to your buyer's order form.
8 A. Okay.
9 Q. Is your buyer's order form what you consider to be
10 your sales contract between you and the purchaser?
11 A. For your sales contract -- in the car business,
12 some people call buyer's order forms bill of
13 sales. It's sort of like -- it's all the same,
14 just people have different wordings for it. But
15 I personally look at a sales contract as a bank
16 statement, or a Honda Finance contract. And our
17 buyer's order is -- but we do disclose on both, if
18 that's where you're -- what you want to know here.
19 Q. I hadn't gotten there yet.
20 A. Oh, okay; sorry.
21 Q. I want to know -- and just correct me if I'm
22 wrong. Okay?
23 A. Yeah; okay.
24 Q. As GM, or general manager for Hendrick Honda of
25 Easley, it is your opinion that both the
26 installment sales contract and the buyer's order
27 form, or bill of sale, are both the bills of sale?
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3 Both of those comprise the document which is the
4 sales contract between you and the purchaser?
5 A. I just don't know where you're going. I just --
6 I'm not -- I can't understand what you're saying.
7 I don't -- I'm just -- we have --
8 Q. Well, that's two different things.
9 A. I can tell you we have a sales contract and we
10 have a buyer's order, and they both have -- those
11 both have to be signed to complete a deal, if that
12 helps.
13 Q. In a minute we're going to go over a sales
14 contract.
15 A. Okay.
16 Q. Do you believe that the sales contract is what
17 others have been calling a buyer's order form, or
18 to you is the sales contract the installment
19 agreement where the client agrees to finance and
20 pay for the car under certain terms with Honda
21 Finance, or what to you -- and I don't want to
22 limit you in any way, Don.
23 A. Uh-huh (affirmative). Right.
24 Q. What to you is a sales contract, something you
25 feel that's enforceable where you've got a deal?
26 A. Well, I guess that would start at the buyer's
27 order where they sign -- because it could be a
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3 cash deal where they sign.
4 Q. That's correct.
5 A. Yeah.
6 Q. That's one sales contract?
7 A. Right.
8 Q. Now, for those people who aren't doing a cash
9 deal, but need to borrow money to buy one of your
10 cars --
11 A. Uh-huh (affirmative). Right.
12 Q. -- wouldn't another document be necessary to have
13 a sales contract?
14 A. You need a -- if you're financing through American
15 Honda, you need a American Honda contract.
16 Q. What if you're financing through a bank?
17 A. Then if it was Bank of America, you'd need a
18 contract for them.
19 Q. And by contract, aren't we talking about an
20 installment sales --
21 A. Yes, a period -- installment meaning 60 payments
22 at. Okay?
23 Q. Or 40 payments at, whatever?
24 A. Right.
25 Q. Now, correct me if I'm in any way wrong here.
26 Okay? Would it be fair to say that Hendrick Honda
27 of Easley treats the buyer's order form as the
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Page 37	Page 39
1 2 3 sales contract and just the buyer's order form as 4 the sales contract in the event of a cash purchase 5 by a purchaser of a car? 6 A. And define your -- as far as when you're saying 7 sales contract, the -- are you talking about that 8 it's official they bought the car? 9 Q. Correct. 10 A. When they sign it? 11 Q. Correct. 12 A. Or what the official thing would be. You know, 13 the official piece of paper would be a buyer's 14 order. 15 Q. A buyer's order? 16 A. Yeah. 17 Q. And in the event of a cash sale where a person 18 didn't need to finance it when they bought your 19 car, they just brought cash with them -- 20 A. Right. 21 Q. -- the buyer's order form is the sales contract? 22 A. Never heard it called that before, so -- all I 23 know, a buyer's order is what we need to complete 24 a cash deal. 25 Q. And that is what, in your opinion, binds you to 26 give them the car and binds them to give you the 27 money? 28 29	1 2 3 there is another document needed and that is 4 either the American Honda contract or whatever 5 installment agreement there may be, providing for 6 the payment for you of the car? 7 A. Uh-huh (affirmative). 8 Q. And the encumbrance of debt assumed by the 9 purchaser, right? 10 A. Yeah. The buyer's -- or the American Honda 11 Finance contract is needed for us, yes. 12 Q. And if it's not an American Honda Finance 13 contract, it's whatever lender is floating a loan 14 on the car? 15 A. Right. 16 Q. So if you had a buyer's order form -- follow me 17 now. Okay? 18 A. Uh-huh (affirmative). 19 Q. If you had a buyer's order form on a car that's to 20 be financed and you never got a sales contract 21 signed, would you have a complete deal? 22 A. And you're defining sales contract as what, again? 23 Q. Buyer's order form. 24 A. So you're saying if I had a buyer's order form -- 25 Q. All signed by you and them and then you got to the 26 financing agreement and the potential purchaser 27 says, "I ain't signing that," do you believe you 28 29
Page 38	Page 40
1 2 3 A. When they leave there, they've got a buyer's 4 order. 5 Q. Yes, I know when they leave there they have that. 6 A. Yeah. 7 Q. But please answer my question. 8 A. Okay. 9 Q. Do you remember it? 10 A. No. 11 Q. When they sign your buyer's order form and you 12 sign your buyer's order form -- 13 A. Right. 14 Q. -- do you believe that that completes the deal 15 where they're obligated to pay you and you're 16 obligated to give them the car? 17 A. When they sign the buyer's order? 18 Q. If it's a cash deal. 19 A. Yeah. And they've paid all the cash. 20 Q. Yes. 21 A. Yeah. Then they -- they own the car. 22 Q. So that completes the deal? 23 A. Well, there's more than one piece of paper, but 24 yeah, that's the deal. 25 Q. That's the contract between the parties? 26 A. Right. 27 Q. In the event of an installment sales agreement, 28 29	1 2 3 have officially sold and he has officially bought 4 a car merely through the sales contract without 5 signing the installment sales agreement? 6 A. Well, yeah. You couldn't get paid on a car if you 7 don't have a sales contract signed. So -- 8 Q. So you sell cars for free? 9 A. No. 10 Q. Don't you require payment for every car? 11 A. Yes, yes, yes. 12 Q. And if a person doesn't have the cash money to 13 give you, don't you require a financial -- or 14 financing contract? 15 A. If -- yeah, if somebody doesn't pay cash, they 16 sign a financial contract, and that's -- that's 17 required. 18 Q. Are you going to let them leave that lot with 19 your keys and your car if they didn't sign the 20 financing contract and didn't pay cash? 21 A. Well, if you did, you wouldn't have a completed 22 transaction. 23 Q. That was where I was headed. 24 A. Yeah. 25 Q. To complete the transaction, you need two 26 documents on a finance, right? 27 A. Right. 28 29

Page 41	Page 43
1 2 3 Q. The first document you need is a buyer's order 4 form? 5 A. Yeah. 6 Q. The second thing you need is a financing contract 7 from whatever source? 8 A. Right. 9 Q. And you disclose the closing fee on both of those 10 two documents in a financed case, correct? 11 A. Yes. Both the fees are disclosed on both. 12 Q. And you believe that they need to be disclosed on 13 both forms or do you think it's unnecessary to 14 disclose them on both forms? 15 A. No. I think -- I believe we should. 16 Q. To not do so, in your opinion, would that be 17 wrong? 18 A. Well, it wouldn't be wrong by any South Carolina 19 statute. 20 Q. You don't think so? 21 A. Yeah. It only requires one to be in one place, 22 the sales contract. 23 Q. So you think it'd be perfectly within your legal 24 rights not to put -- 25 A. It would be legal. 26 Q. So why do you disclose it on the installment 27 contract? 28 29	1 2 3 worksheet and the buyer's guide and the sales 4 contract, and we have it on all those. 5 Q. In order to be ethical? 6 A. In order to be ethical and in order to -- yeah. 7 Q. I asked you before what have you changed, if 8 anything, since the commencement of this lawsuit. 9 Have you changed in any way your buyer's order 10 form or the position in which you put the closing 11 fee on the buyer's order form? 12 A. We -- we've made some changes over the years on 13 the buyer's order form. 14 Q. I know you have, but as a result of this lawsuit, 15 did you make any changes? 16 A. And when you say me, what do you mean or -- did I 17 make changes; is that what you're saying? 18 Q. I mean Hendrick Honda ofasley. 19 A. On our -- 20 Q. Buyer's order form. 21 A. Buyer's order form that we currently use is 22 different. 23 Q. Than it was before the litigation? 24 A. Than it was before. 25 Q. Before the litigation? 26 A. Yes. 27 Q. What difference is there? We're going to get to 28 29
Page 42	Page 44
1 2 3 A. Why do we disclose it? 4 Q. Yes. 5 A. Because -- 6 Q. If you're not required to, why do you do it? 7 A. We -- we've always done that. We've always 8 disclosed it on -- I think there's three forms we 9 disclose it on. It makes it clear, understandable 10 for people to know that it's there. 11 Q. I understand how long you've done it. Why do you 12 do it on documents that you don't feel would be 13 necessary? 14 A. Well, why do we disclose it on forms? 15 Q. On forms that you don't think are required. 16 A. I think it's friendly for the customers. 17 Q. It's something for the customers? 18 A. It's friendly for them to know everything up 19 front. 20 Q. By friendly, what do you mean? 21 A. It means it's ethical. 22 Q. To not disclose it, would that be unethical? 23 A. You know, in some people's opinion, maybe. I -- 24 I'm not -- I'm just saying how we do it and how we 25 feel about it. 26 Q. Right. How about your opinion? 27 A. Yeah. My opinion, I think it should be on the 28 29	1 2 3 it in a minute. 4 A. Yeah. 5 Q. I'm going to show you specifically. 6 A. I would have to look at it to give you -- but 7 there's -- it's a different looking form. 8 Q. And do you know who mandated or made that change 9 after the commencement of this litigation? It 10 wasn't Don, was it? 11 A. No. 12 Q. Who did it? 13 A. It was down at Hendrick Automotive Group, and I -- 14 I don't know -- or either J.L.B., but I don't know 15 who was involved. 16 Q. What information or notice did you have that you 17 were getting new forms as buyer's order forms and 18 that they had to be used from henceforth? 19 A. And when you say by what information, what do you 20 mean -- 21 Q. Well, you had one -- 22 A. -- like a phone call or, "They're coming," or 23 something like that? 24 Q. Let me just say this. 25 A. Okay. 26 Q. For the court reporter -- 27 A. Okay. 28 29

Page 45	Page 47
1 2 3 Q. -- it's important that I allow you to finish your 4 answers before I begin the next question. 5 A. Okay. 6 Q. And I'm going to try to do that. I apologize if 7 I've talked over you at all, but by the same 8 token, please let me finish my question before you 9 commence your answer. 10 A. Oh, okay. I didn't realize -- okay. Go ahead. 11 Q. It's for a clearer record. 12 A. Okay. 13 Q. Let's go back to the current buyer's order form, 14 which has I believe you told me been changed from 15 the form it was in prior to the litigation. It's 16 now different? 17 A. Yes. 18 Q. And I asked you, who did that change, and you told 19 me either Hendrick Automotive or J.L.H. . 20 Investments? 21 A. Uh-huh (affirmative). 22 Q. Did I adequately repeat that? 23 A. Best I can remember. 24 Q. Now, I wanted to know thereafter how you were 25 notified of the change. And I was starting to 26 give you the example. 27 A. Okay. 28 29	1 2 3 A. No. I'm -- I'm sure I was notified. 4 Q. Do you know who notified you? 5 A. No, I don't. 6 Q. Do you know when they notified you? 7 A. No. 8 Q. Do you know how they notified you? 9 A. Not a hundred percent, so to say right here, I 10 couldn't say. 11 Q. I'd like for you to tell me more likely than not. 12 I don't insist on a hundred percent of anything. 13 Okay? 14 A. Uh-huh (affirmative). 15 Q. Do you have a more likely than not feeling as to 16 in which manner you were notified? 17 A. I would more likely think maybe e-mail. 18 Q. And as best you can remember, if it came by e-mail 19 or by any other source, do you know what you were 20 told about these new forms? 21 A. Other than to put them in place, I don't -- yeah, 22 I don't know anything else besides that. 23 Q. And what do you mean by the term, "put them in 24 place"? 25 A. Well, start using the new forms. 26 Q. Now, were you given no instructions or directions 27 as to how to use the new forms? 28 29
Page 46	Page 48
1 2 3 Q. For years, you all have had one buyer's order 4 form, and all of a sudden somehow or another you 5 are instructed to use a different buyer's order 6 form after this litigation got started. I want to 7 know, did you just find a box in the corner one 8 morning and go, well, I guess we ought to be using 9 these, or were you notified in some way that "From 10 now on, we want all sales at Hendrick of Essley to 11 use this form"? 12 A. So your question is was I notified we're getting a 13 new form? 14 Q. And how, in what manner. 15 A. Yeah, I feel sure I was. Now exactly, whether it 16 was -- you know, they sent us a letter or e-mailed 17 or called us, I don't know. I don't really 18 remember that, but I know we were notified we're 19 getting a new form. And the forms came in and we 20 put them into place. 21 Q. And am I correct in saying that you don't remember 22 how you were notified -- 23 A. Huh-uh (negative). 24 Q. -- but you were notified? 25 A. Yeah. I feel like I was, yes. Yes. 26 Q. Well, are you not even sure that you were 27 notified? You just have a feeling you were -- 28 29	1 2 3 A. Don't remember anything like that. 4 Q. You don't? Are you sure? 5 A. I'm sure about that as far as -- sure about not 6 remembering it, yeah. 7 Q. Did you provide any training to your employees as 8 to how they were to implement the new forms or 9 fill them out? 10 A. Well, we were going to have to get them set up, 11 you know, through Reynolds and Reynolds so when 12 they printed, they would work, you know, as far as 13 that goes. 14 Q. You've used a terminology I don't understand. You 15 said you would have to get them set up through 16 Reynolds and Reynolds. Who is Reynolds and 17 Reynolds and what do they do? 18 A. Reynolds and Reynolds is -- when you're a finance 19 manager, basically you pull out a form. You put 20 it in a printer and -- and it automatically fills 21 in the blanks in the form based on what you've got 22 punched in as far -- punched into the screen and 23 it prints all the numbers out in the right exact 24 places so they'll be lined up on the correct 25 lines, so that would be I guess what I mean by set 26 up. So we get a new form in, you got to get it 27 set up, and it prints things out as -- 28 29

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3 Q. Does Reynolds and Reynolds do something for you in
4 that?
5 A. As far as they make -- make sure everything prints
6 where it's supposed to print. Like if you change
7 one line on a form, if you -- if the form's one
8 line difference, then the printer's going to print
9 it in the wrong place.
10 Q. Who is Reynolds and Reynolds?
11 A. Reynolds and Reynolds is a company that deals in
12 -- that we use in our dealership as far as
13 financing. We use them in the service department
14 and they have a -- you know, documents, you know,
15 that print all over the dealership. When a
16 service advisor writes up an RO, they print out.
17 You know, they're --
18 Q. Reynolds and Reynolds manages your forms and the
19 completion of your forms, your printers that fill
20 in your forms, et cetera, right?
21 A. That sounds about right.
22 Q. So they're kind of a printing assistance company
23 to make sure that --
24 A. In this particular case, that's -- that would be
25 a --
26 Q. Well, I accept without question that you had to
27 get your printer to realign your typeset so that
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3 it filled in numbers at the right location on a
4 brand new contract.
5 A. Right.
6 Q. That's what we're talking about?
7 A. Yes.
8 Q. I want to know what instruction, if any, had to be
9 given to your sales employees or any other
10 employees about what the new form consisted of and
11 how to utilize it.
12 A. I don't -- I don't really remember having any --
13 you're talking about meetings about how to read
14 the form or anything like that? There's, you
15 know --
16 Q. How about your F&I guy on site in Easley? This is
17 a new form for him, right?
18 A. Uh-huh (affirmative).
19 Q. This is a form -- please answer yes or no. Uh-huh
20 doesn't help her.
21 A. Oh. What were --
22 Q. This is a new form for your F&I guy?
23 A. It was a new version of the form.
24 Q. It had different blocks than the prior form?
25 A. Right.
26 Q. It asks different questions and had more warnings
27 on it than the prior form?
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3 MR. BECKER:
4 Object to form. Go ahead and answer.
5 WITNESS:
6 All right. Say that again.
7 EXAMINATION RESUMED BY MR. SPEARS:
8 Q. Did it have more information on it about the
9 closing fee than the prior form?
10 A. Yes.
11 Q. Did your F&I guy have to go through any training
12 on how to use the new form and explain the form to
13 potential car buyers? It's okay if he didn't.
14 A. Yeah. I'm -- I can't think of anything that I --
15 I can't think of anything I got it or they got on
16 it. They may have done -- I'm sure they read the
17 forms.
18 Q. Do you know who your F&I guys are?
19 A. Uh-huh (affirmative).
20 Q. Who are they?
21 A. David McGlothlin and Connie Boyd.
22 Q. Those are your two F&I people?
23 A. Uh-huh (affirmative).
24 Q. Now, am I correct in saying that everybody that
25 buys a car through Honda of Easley has to go
26 through one of those two F&I people?
27 A. Sometimes if we get them backed up, there's some
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3 sales managers capable of doing F&I.
4 Q. In the situations where you're not backed up and
5 people aren't just lined up to buy cars, in the
6 normal set of circumstances, would people have to
7 go through one of those two people to complete the
8 purchase of a car?
9 A. Yes.
10 Q. Is your normal practice that a salesman will deal
11 with someone, get them to a certain level, and if
12 that person seems committed to buy a particular
13 car, that person is then sent to the F&I person to
14 complete the deal?
15 A. All right. Rerod that again. Is your normal --
16 Q. Your normal practice, custom, and habit --
17 A. Right.
18 Q. -- at Honda of Easley is to have the first contact
19 with a potential buyer on the lot be a salesman?
20 A. Yes.
21 Q. When the salesman gets the potential buyer to a
22 certain point, he then transfers those potential
23 buyers to the desk of one of the F&I people for
24 completion of the deal?
25 A. The way you're phrasing and wording it, it's not
26 normal for us.
27 Q. Tell me the normal way.
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Page 53

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3 A. Okay. The normal thing that a salesperson would
4 do, because of course people come on the lot.
5 They go through picking out a vehicle. And then
6 once they come inside, they'll have a worksheet
7 and then they'll -- of course, you know, people
8 are, "Hey, give me some money off. What kind of
9 deal are you going to give me? See what you can
10 get me." They sit down and they fill out some
11 general information, names and addresses.
12 Q. They who?
13 A. They, the salespeople. And then the salesperson
14 goes to the manager's office and basically walks
15 up -- like I'd walk up to you and just say, "I got
16 a guy out there. He wants to see what's the best
17 deal he can get." And then the manager works up
18 some numbers for him and then they'll go back and
19 they'll negotiate. And when the -- everybody's
20 agreed on everything, you know, and it's shake
21 hands, we've got a deal, then at that time,
22 they'll gather information to take into the FBI
23 office that might be needed for the transaction,
24 like driver's license and different things like
25 that, restoration cards. And they'll put it in a
26 secure deal folder and take it to the finance
27 office and they'll key it into the system where
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Page 55

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3 any conversations during the break?
4 A. Nothing to do with this. Everybody was asking me
5 how my back was doing, a few things like that.
6 Q. How is your back?
7 A. It's not bad.
8 Q. Hanging in there; good. Are you unable to travel
9 to Columbia for a deposition?
10 A. Well, it's hard on me to do that. I'm not
11 supposed to sit at any one time -- actually for 20
12 minutes. You know, to travel to Columbia, I would
13 have to stop four or five times on the way.
14 Q. Is that what you did on Friday?
15 A. Yes. Uh-huh (affirmative).
16 Q. In Plaintiffs' Exhibit 1, the first topic that I
17 was told that you were the most knowledgeable on
18 was A, the time line in history for Honda of
19 Easley's charging of administrative fees. May I
20 assume that you don't know when Honda of Easley
21 began charging administrative fees?
22 A. No, not exact -- I don't know the exact time.
23 Q. No, I'm not correct, or yes, I am correct in that
24 you do not know when the charging began?
25 A. Yes. Well, I do not know the -- all I know is
26 when I got there, they were charging them. I
27 don't know when it began.
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Page 54

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3 they can print everything.
4 Q. The Reynolds and Reynolds system?
5 A. Reynolds and Reynolds system. And then they'll --
6 then that's when the customers will go in.
7 Q. Thank you for the additional information. I
8 appreciate you telling me about how the sales
9 manager is brought in to the deal, and it doesn't
10 go straight from the salesman to FBI.
11 A. Right.
12 Q. And with that additional information, then I think
13 I understand how customarily you sell cars at
14 Easley Honda. Have you told me the customary way
15 that --
16 A. That's -- that's one -- that's the normal -- yeah.
17 Yes.
18 Q. And I recognize there may be a deal where a guy
19 comes in with a suitcase full of money, dumps it
20 on the floor and goes, "Give me a car." But
21 you've told me the customary way, right?
22 A. That's right.
23 MR. SPEARS:
24 Let's take a little break.
25 (BREAK; OFF THE RECORD)
26 EXAMINATION RESUMED BY MR. SPEARS:
27 Q. We're going back on the record now. Did you have
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Page 56

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3 Q. So you don't know the history of it?
4 A. No.
5 Q. Prior to 2000?
6 A. Uh-huh (negative).
7 Q. So you don't know the time line of what went on
8 prior to 2000?
9 A. Don't know the time line.
10 Q. Tell me, if you would, what regular communications
11 you either receive from or send to Hendrick
12 Automotive Group. We talked about the Monday
13 meetings.
14 A. The Monday meeting. Me personally?
15 Q. The business, the dealership.
16 A. Well, I know we send a copy of the financial
17 statement at the end of the month.
18 Q. The financial statement of the dealership?
19 A. Yes.
20 Q. So may I assume you do a monthly financial
21 statement at the dealership?
22 A. Yes.
23 Q. Does that financial statement reflect your costs
24 and income?
25 A. As -- costs referring to what?
26 Q. Your expenses.
27 A. Expenses, yes.
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14 (Pages 53 to 56)

Page 57	Page 59
1 2 3 Q. Does it also reflect your income? 4 A. Yes. 5 Q. Does it reflect your either net profit or break- 6 even status or loss of profit? 7 A. Yes. 8 Q. And do you set out in that monthly report that you 9 send to Hendrick Automotive all of your costs 10 incurred and all of your income received? 11 A. Yes. 12 Q. Now, you get paid by a paycheck -- 13 A. Yes. 14 Q. -- or do you get it paid in cash? 15 A. No; paycheck. 16 Q. Does the paycheck have at the -- who does the 17 paycheck come from? What is the name printed on 18 it? 19 A. Hendrick Honda. 20 Q. Hendrick Honda. Is that Hendrick Automotive 21 Group? 22 A. That's J.L.H. 23 Q. That's J.L.H. J.L.H. Investments stands for what? 24 A. It's John Hendrick Investments. 25 Q. John L. Hendrick Investments? 26 A. John L. Hendrick Investments. 27 Q. What is Hendrick Honda, the printed thing on your 28 29	1 2 3 Q. Three that you know of? 4 A. Yeah. 5 Q. So when you get a check that says Hendrick Honda, 6 does it say Hendrick Honda in Easley? 7 A. I don't think so. 8 Q. It just says Hendrick Honda? 9 A. Yeah. It just says Hendrick Honda, yeah. 10 Q. So let me go back to my question. 11 A. Okay. 12 Q. What is the entity that writes your check known as 13 Hendrick Honda? 14 A. Define entity. 15 Q. The corporate structure or the business group or 16 per chance within Hendrick Automotive Group there 17 is a subdivision that only deals with the Honda 18 dealerships, and maybe that's why they call it 19 Hendrick Honda, it has to do with all Honda 20 dealerships within Hendrick? I don't know. I'm 21 asking you. 22 A. Get a paycheck every month, whether I deserve one 23 or not and far as I know, it says Hendrick Honda 24 on it. It comes out of Hendrick Honda's bank 25 account. 26 Q. And where is Hendrick Honda located? 27 A. In Easley, the one that I work for. 28 29
Page 58	Page 60
1 2 3 check? What entity is that? 4 A. I should know that, shouldn't I. I'm thinking 5 it's Hendrick Honda. I'm a little -- I'm a little 6 fuzzy about it, yeah, but I think it's Hendrick 7 Honda. 8 Q. Could it be Hendrick Automotive Group? 9 A. No. 10 Q. Well, what is Hendrick Honda? 11 A. Hendrick Honda is the name of the dealership that 12 I work for. 13 Q. You work for Hendrick Honda of Easley, don't you? 14 A. Well, I said Hendrick Honda in Easley, not of 15 Easley. 16 Q. Is there not another Hendrick Honda in another 17 state? 18 A. There's -- yes, there is. 19 Q. Well, what is the entity that is purely known as 20 Hendrick Honda, not Hendrick Honda of Easley or 21 Hendrick Honda of Bradenton or Hendrick Honda of 22 Kansas City? What is Hendrick Honda? 23 A. The title of our dealership is Hendrick Honda. 24 Q. Well, isn't there another Hendrick Honda? 25 A. Yes, there is. 26 Q. How many Hendrick Hondas are there, roughly? 27 A. Three that I know of. 28 29	1 2 3 Q. Do you think your paycheck comes out of your bank 4 account or Hendrick Honda of Easley? 5 A. Yes. 6 Q. Oh, you think it does? 7 A. Uh-huh (affirmative). 8 Q. Do you see on the financial statements that you 9 send out each month to Hendrick Automotive a line 10 item there for your salary being shown as a cost? 11 A. My salary's -- yes, in the costs of the -- of the 12 expenses you mean? 13 Q. Yes. 14 A. Yes. 15 Q. And you see that check that's been written to you 16 being charged off against your dealership as an 17 expense line item wise? You recognize it? 18 A. It's -- I'm grouped in -- no, there's not one 19 general manager line, but there is supervisory 20 compensation. 21 Q. And your check is included within that group of 22 supervisory -- 23 A. My salary is in that -- is on the financial 24 statement mixed among the other supervisors. 25 Q. And you know that to be true? 26 A. Yes. 27 Q. And you see that charged off against your 28 29

Page 61

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3 dealership?
4 A. Yes. Well, I sign the check that -- when we take
5 payroll to the bank.
6 Q. I'm sorry?
7 A. You know, we have a payroll. Yeah, and we -- it's
8 -- what I'm confused about here is are you asking
9 me that -- do I get a check from Hendrick
10 Automotive Group or do I get a check from Hendrick
11 Honda-Easley. That -- that's where I'm confused
12 between what you're trying to ask me.
13 Q. I'm sorry. I'm not limiting it to those two
14 choices. Okay?
15 A. Okay.
16 Q. You told me your check had preprinted on it
17 Hendrick Honda?
18 A. Yeah.
19 Q. I think you're now telling me that your check
20 comes from Hendrick Honda of Easley, but I'm not
21 sure that that's what you're telling me. Do you
22 know if the Hendrick Honda name on the check
23 refers only to Hendrick Honda of Easley, or could
24 it be several Hendrick Hondas grouped together in
25 a group known as Hendrick Honda?
26 A. Hendrick Honda of Easley would be my -- you know,
27 I don't have the check stubs in here, or checks in
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Page 62

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3 here. But, you know, that would -- if I had to
4 make my best judgment, it comes from Hendrick
5 Honda of Easley.
6 Q. What bank is it drawn on?
7 A. BB&T is our bank.
8 Q. And does it say which BB&T? BB&T of --
9 A. We -- it's in Easley.
10 Q. Is that where that check comes from, BB&T of
11 Easley?
12 A. Yeah.
13 Q. If you wanted to call BB&T and find out whether
14 or not your check had been credited to your
15 account --
16 A. Right.
17 Q. -- which BB&T would you call?
18 A. I would assume the one in Easley.
19 Q. But you don't know?
20 A. Yeah. I don't know.
21 Q. Who signs the check?
22 A. I sign checks and the office manager signs checks.
23 Q. Well, who signs your check?
24 A. I sign once and she signs once.
25 Q. So you sign your own check, along with someone
26 else?
27 A. With someone else, right.
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Page 63

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3 Q. Who is the office manager?
4 A. Vickie Edgerton.
5 Q. Vickie who?
6 A. Edgerton.
7 Q. Spell that for me, please.
8 A. Now, you're getting -- you know what I think it's
9 E-D-E-R-T-I-O-N (as spelled by the witness.)
10 Q. That's good enough. That's probably it.
11 A. Yeah.
12 Q. Tell me why -- and I understand you don't know the
13 complete time line on when Easley began to charge
14 -- you know what I mean when I say Easley?
15 A. Right.
16 Q. I'm talking about your dealership.
17 A. Right.
18 Q. You don't know when Easley began charging the
19 closing fee?
20 A. I do not.
21 Q. And you don't know the history of how or why the
22 closing fee began in Easley?
23 A. I do not.
24 Q. Do you know who mandates or decides what the
25 closing fee is going to be that you charge in
26 Easley?
27 A. Well, like I said earlier, when I got there, it
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Page 64

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3 was one ninety-nine. I don't know how that was
4 decided, but if it's raised, that would be my
5 decision.
6 Q. Is that the end of your answer?
7 A. Uh-huh (affirmative).
8 Q. Do you have to check with anybody on raising it?
9 A. I let somebody know. I'll make the decision,
10 maybe give a call, and just let them know that I
11 did it. And --
12 Q. But you're just informing them?
13 A. Informing them unless they have some kind of
14 objection to it.
15 Q. Well, who would have veto power over your
16 decision?
17 A. Normally the person I would call on something like
18 that would be Chuck Colson.
19 Q. Chuck who?
20 A. Chuck Colson. Chuck -- it's C-O-L-S-O-N.
21 Q. Chuck Colson. Where is he located?
22 A. He's located in Charlotte.
23 Q. And who does he work for?
24 A. J.L.H.
25 Q. What is his title?
26 A. He's the vice president, executive vice president
27 I think.
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16 (Pages 61 to 64)

Page 65	Page 67
1 2 3 Q. Of J.L.H.? 4 A. Yes. 5 Q. Does he serve any capacity with Hendrick Honda or 6 Hendrick Automotive Group, or do you know? 7 A. I don't know. 8 Q. Do you have the obligation to inform Chuck that 9 you're getting ready to go up on the closing fee? 10 A. If -- I would just do that naturally, like if I 11 did anything, I always let him know. If I did 12 anything like raising a closing fee or anything 13 like that, I would call somebody and say, "Hey, 14 I'm raising the closing fee." They say, "Yes, 15 it's done," or they say, "No, it's not." 16 Q. If Chuck says no, you don't do it? 17 A. That's right. 18 Q. Do you consider Chuck your boss? 19 A. Yes. 20 Q. Is he, in fact, your boss? 21 A. Yes. My direct, you know -- 22 Q. And who is Chuck's boss? 23 A. Charles Ricks. 24 Q. And Charles Ricks is the president or head -- 25 A. Right. 26 Q. -- or whatever you call it of J.L.H.? 27 A. Right. Yeah. 28 29	1 2 3 not answering to that. 4 Q. If you wanted to raise it or lower it, would you 5 have to call Chuck? 6 A. Yes. 7 Q. If you wanted to change the buyer's order form, 8 would you have to call Chuck? 9 A. I would think so, yeah. 10 Q. The buyer's order forms came to you from Hendrick 11 Automotive? 12 A. Uh-huh (affirmative). 13 Q. You accepted those new buyer's order forms and 14 began using them at the instruction of Hendrick 15 Automotive Group? 16 A. Uh-huh (affirmative). 17 Q. You don't remember doing any training for your F&I 18 people or your salespeople, nor receiving any 19 training yourself about how to use the new form, 20 correct? 21 A. Correct. 22 Q. You just figured it out on your own? 23 A. We read it. 24 Q. You read the form and that was the total 25 instruction and direction that you had, correct? 26 A. Well, I mean that's what I did. 27 Q. Did you get any other direction or instruction 28 29
Page 66	Page 68
1 2 3 Q. And who is Ricks' boss, Charles Ricks? 4 A. I'm not sure. 5 Q. Does he have a boss? 6 A. I'm not sure. 7 Q. Have you ever asked him? 8 A. No, I have not. 9 Q. So you don't know if Chuck has a boss -- I mean if 10 Charles has a boss? 11 A. Uh-huh (affirmative). 12 Q. You know Chuck's boss is Charles? 13 A. Uh-huh (affirmative). 14 Q. And you know that Chuck Colson is executive vice 15 president of J.L.H. Investments? 16 A. Yes. 17 Q. And Chuck has veto power over you if you want to 18 do something with the closing fee? 19 A. Uh-huh (affirmative). 20 Q. Correct? 21 A. Correct. 22 Q. If you wanted to lower the closing fee to get a 23 competitive advantage over local dealers, would 24 you have to check with Chuck? 25 A. Well, if I wanted a lower closing fee, I would -- 26 I would call Chuck. I don't consider, you know, 27 the competitive advantage thing. I don't -- I'm 28 29	1 2 3 from any other party on how to implement and 4 utilize the new form? 5 A. I just don't recall that. I don't recall any 6 instruction or direction that I got. 7 Q. Do you mean by your answer that you may have 8 received some and you don't remember it, or are 9 you saying, as far as I know, I got no 10 instruction? 11 A. May have received some and don't remember it, 12 yeah. 13 Q. You're not denying that it might have happened? 14 A. I'm not denying that. 15 Q. But as we sit here today with you under oath -- 16 A. Uh-huh (affirmative). Yeah. 17 Q. -- you don't remember getting any instruction on 18 it? 19 A. No. 20 Q. Now, the new order form that you currently use 21 today has been in use for how long? 22 A. Roughly -- I would say less -- in trying to -- 23 best guess, less than two years. 24 Q. Would it be fair to say that it was implemented on 25 or about November of '06 or after that? 26 A. Well, November. That's about two years ago. It 27 -- that could be close. 28 29

Page 69	Page 71
1 2 3 Q. Pretty close? 4 A. Yeah. 5 Q. Do you know, as the person most knowledgeable 6 under section B the reasons why Hendrick Honda of 7 Easley charges administrative fees? And I'll be 8 happy to call them closing fees if you want to 9 call them -- 10 A. It's -- I know what you mean; because we can. 11 It's legal. It's allowed. 12 Q. Because you can? 13 A. Yeah. 14 Q. Because it's legal, because it's allowed? 15 A. Uh-huh (affirmative). It's allowed. 16 Q. Any other reasons you can think of? 17 A. That would be my main -- main thing here. 18 Q. If tomorrow they were to pass a law saying that 19 you can charge a window washing fee of \$200, would 20 you charge it, assuming it was legal and allowed? 21 A. I mean I'm not going to speculate on what I would 22 do if somebody had a \$200 window washing fee. 23 Q. That was permitted. You don't know if you'd do 24 that or not? 25 A. It sounds, you know -- 26 Q. Is a delivery fee permissible for you to charge to 27 your customers under the law? 28 29	1 2 3 builds the car invoices American Honda Financial 4 and they, being American Honda Financial, pays the 5 invoice. It's one lump sum. It's not broke down 6 in separations. 7 Q. And does that one lump sum include the charge for 8 the delivery fee? 9 A. Yes. 10 Q. And Honda -- 11 A. Or transportation I think is -- 12 Q. Transportation, delivery, whatever. 13 A. Yeah. 14 Q. American Honda Financial; is that what you called 15 it? 16 A. Uh-huh (affirmative). 17 Q. Is that your floor planner? 18 A. Uh-huh (affirmative). 19 Q. So Honda Corporation bills the company that 20 finances your floor plan, American Honda 21 Financial, for the car, plus the transportation 22 or delivery fee? 23 A. Uh-huh (affirmative). 24 Q. And then that goes on your account as being a debt 25 owed from you to American Honda Financial? 26 A. Yeah. They -- yeah. We owe -- when we sell the 27 car, we have to pay off American Honda. We owe 28 29
Page 70	Page 72
1 2 3 A. A delivery fee? 4 Q. Yes, for you to get it delivered to the 5 dealership. 6 A. Give me an example of that. 7 Q. A \$675 fee to get the car shipped from wherever it 8 comes from to the dealership. 9 A. You're talking about a new car? 10 Q. Yes. 11 A. Yeah. They're -- you know, it's on the Monroni 12 label. 13 Q. Of course it is. 14 A. Yeah. And we -- we pay the fee. 15 Q. You pay the fee to who? 16 A. Well, we buy the car from American Honda. 17 Q. And you pay the delivery fee to who? 18 A. Well, it's all one thing. It's an invoice. They 19 send you a invoice and it -- you're talking about 20 the fee that's on the Monroni label? 21 Q. I am. 22 A. Okay. It's -- they send a invoice to American 23 Honda and American Honda sends them a check. And 24 it's all paid in one lump -- 25 Q. I'm having trouble with the pronouns. You said 26 they send an invoice to American Honda. 27 A. American Honda -- or the Honda Motor Company that 28 29	1 2 3 them the money. 4 Q. And you have to pay off the delivery fee, which is 5 part and parcel of the charge that they paid on 6 your behalf, correct? 7 A. Yeah. I just don't separate it out. 8 Q. I know you don't. 9 A. Okay. 10 Q. But is it added to the charge? 11 A. Of -- it's all inclusive of the charge. 12 Q. So when you get a car, if it's 15,000 and it's a 13 \$600 delivery fee, Honda -- American Honda 14 Financial would pay \$15,600 to Honda Corporation 15 and charge that much to you as something that they 16 floor-planned; is that correct? 17 A. Say it again. 18 Q. If you got a car for \$15,000, a new car -- 19 A. Okay. 20 Q. -- and it got delivered to you -- 21 A. Right. 22 Q. -- you would expect Honda Corporation to bill 23 Honda American Financial, your floor planner, for 24 the delivery fee, plus the cost of the car 25 totaling \$15,600? 26 A. Yeah. I think we're talking about the same thing. 27 I just don't see it the way you see it. It's one 28 29

Page 73	Page 75
1 2 3 deal that they send us and we pay it. Here's a 4 hubcap and here's a delivery fee. It's all paid 5 in the same bill. 6 Q. Do you not list on your buyer's -- excuse me; on 7 your Monroni sticker a transportation or delivery 8 fee? 9 A. When you say you, who are you referring to? 10 Q. Honda of Easley. 11 A. No, we do not. 12 Q. You don't prepare the Monroni? 13 A. That's correct. 14 Q. Who prepares the Monroni? 15 A. American Honda. 16 Q. Does American Honda -- and is it American Honda 17 Financial? 18 A. It's American Honda and the Financial is separate. 19 Q. Does American Honda put on the Monroni a delivery 20 fee? 21 A. They have a transportation fee on it, yes. 22 Q. And it generally is in the neighborhood of how 23 much? 24 A. In the \$600 range, like you were saying. 25 Q. Is that number on the Monroni added to the other 26 MSRP of the car to come up with the total on a 27 Monroni? 28 29	1 2 3 Q. I asked you if it was the same. You've answered 4 it isn't. 5 A. Yeah. Okay. 6 Q. I'm just saying, doesn't the Monroni set off in 7 addition -- and I've got it right here and we'll 8 go over it in a minute. 9 A. Okay. 10 Q. But doesn't it set off the transportation fee 11 that's over and above what it shows on the sticker 12 as MSRP? You want to wait until we go over it? 13 A. Say it -- huh? 14 Q. We'll come back to it. 15 A. Okay. All right. 16 Q. Now, I don't want to know you pay for a car. 17 A. Okay. 18 Q. You, the dealership, when you get it from American 19 Honda. Okay? To a degree, I think that's 20 protected information. I wouldn't do it in front 21 of all these other lawyers, so that's not the 22 topic I'm covering. But I've asked you the 23 reasons why you charge an administration fee or a 24 closing fee, and you've already told me why, 25 right? 26 A. Yeah. 27 Q. Now I want to ask you how you, as the general 28 29
Page 74	Page 76
1 2 3 A. Yes. 4 Q. Is that number, the MSRP, what you paid or what 5 you got financed from American Honda Financial? 6 A. The Monroni is not what we pay, no. 7 Q. How is it ascertained as to what you pay? 8 A. Is -- would be the actual cost of the vehicle. 9 Q. And that's shown on a different form? 10 A. The Monroni is the suggested retail price of the 11 vehicle. 12 Q. Right. And it reflects an additional charge for 13 transportation, the Monroni? Have you not seen 14 your own Monroni? 15 A. Yeah. Yeah. I think I'm -- we're on the same 16 page. 17 Q. Doesn't the Monroni have the -- 18 A. Is -- there's one right there (indicating). 19 Q. Got it. 20 A. Yeah. 21 Q. And doesn't the Monroni itself have MSRP of the 22 car and then adds to it a transportation fee? 23 A. We might have to agree to disagree with this. The 24 Monroni has got nothing to do with what we pay 25 American Honda. 26 Q. Believe me, I know that. 27 A. Okay. 28 29	1 2 3 manager, determine how much your fee is going to 4 be. And by fee, I mean closing fee. 5 A. I'm sorry; I missed that. 6 Q. What did you say? 7 A. No. It's just that of all things, I had to have a 8 cold today. 9 Q. Is your mouth getting dry? 10 A. Yes. 11 Q. Do you remember my question? 12 A. You said you wanted to ask me something. What was 13 it? 14 Q. How do you decide how much you're going to charge? 15 A. Well, when I got there it was one ninety-nine, so 16 I didn't have anything to do with that decision. 17 Now, a couple years later, ballpark, I did make a 18 decision to raise it \$50. 19 Q. So now it's two forty-nine? 20 A. Yes. And when I decided that, a lot of things, 21 but basically the store -- expenses are going up, 22 and you're looking, you know, at all that. And, 23 of course, you know, '01 is 9-11 and all that 24 stuff so, you know, it's tough times. And you're 25 looking how to -- as you could control your 26 expenses and do what you can do. And then, of 27 course, South Carolina allows you to -- to have a 28 29

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3 closing fee to offset some of that. So, you know,
4 I made a decision to raise the fee 50 bucks.
5 Q. You and you alone?
6 A. Me and me alone.
7 Q. Did you call Chuck and ask him if you could do it?
8 A. Probably once I decided to do it, probably called
9 Chuck and said, "Hey look, you know, we're
10 overwhelmed. You've got this, you've looked at
11 this, looked at that. What do you think?" And he
12 probably said go do it.
13 Q. Did it serve in any way to increase your
14 profitability?
15 A. We don't look at it like increasing our
16 profitability.
17 Q. You don't?
18 A. We look at it like offsetting expenses. For
19 example, last year, the used car departments lost
20 money, so it's hard to think about something that
21 increases possibility -- profitability when
22 there's no profitability.
23 Q. You checked with Chuck and he let you to go two
24 forty-nine?
25 A. Yes.
26 Q. If you've got ten dollars in income and four
27 dollars in cost and you increase your income to
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3 eleven dollars instead of ten, haven't you offset
4 one dollar in costs?
5 A. You might have to write that one down for me.
6 Q. You've got ten dollars in profitability.
7 A. Okay. Uh-huh (affirmative).
8 Q. This is a hypothetical.
9 A. Okay.
10 Q. You've got four dollars in costs. That's a net
11 profit of six. This is your income and this is
12 your cost. That would leave you a profit of six
13 dollars, would it not?
14 A. That's not the way that I do it. I mean that's
15 not the thought process that goes through it.
16 Q. I'm not saying it is. I'm not saying it is.
17 A. Yeah.
18 Q. If you still have four dollars in costs and you
19 now have eleven dollars of income, do you have
20 seven dollars profit?
21 A. Well, four from eleven is seven, but when you
22 increase your doc or your closing fee, you know,
23 we're not -- you know, in some cases we don't have
24 anymore profit, we're just covering expenses.
25 Q. Well, if you increase the costs that you incur in
26 your parts department, you may not have any
27 profit, right? You're just increasing your costs,
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3 right?
4 A. Uh-huh (affirmative). Well --
5 Q. If you increase the cost of your labor, you know,
6 your salesmen, salary expense, management expense
7 and so on, you may not have any increase in
8 profit. You may just have an increase in costs,
9 right? Do you understand?
10 A. Say it again.
11 Q. If your costs go up, that's not going to increase
12 your profit?
13 A. Costs going up, yeah.
14 Q. That lessens your profit, doesn't it? Do you
15 understand?
16 A. Yeah. But you're just -- it's not the way that I
17 came up with the fee of \$50, so --
18 Q. You tell me how you came up with the 50 then.
19 A. All right. The way I came up with the \$50 is I
20 look at everything kind of intertwining with
21 everything. So I look at a financial statement
22 and then finally you get down to the bottom line
23 of a financial statement and you got a department
24 that's losing money and you're looking at the
25 things -- you know, you're looking where the
26 expenses have risen from one year to the next
27 year, or if you wanted to go back from, you know,
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3 when I got there, you know, the dealership might
4 have been \$200,000 or up to 300 -- anywhere from
5 300 to \$350,000.
6 Q. In costs?
7 A. In expenses, yeah. And it all intertwines. It's
8 not -- you can't -- you can't say, well, this
9 costs two dollars. And you don't have enough time
10 to hire somebody that would come in and study
11 that. Like if I've got to do a OFAC report or a
12 -- we have to handle safeguard regulations or we
13 have to handle red flag rules, and we're checking
14 for terrorists and identity theft and that kind of
15 thing. You got to have people in most cases that
16 you're paying a lot of money to make those
17 decisions, hey, have I got somebody here trying
18 to, you know, steal my car, you know, with a false
19 I.D. or something. You -- you know, we become the
20 DMV, you know, that kind of thing. We've took
21 everybody -- seems like everything's falling on us
22 and everybody plays a part into it, from our
23 salespeople in the secure document areas and so
24 when I look at it all, I look at the bottom line
25 cost, how it's been rising and rising. And 50
26 bucks would help me offset that.
27 Q. If you charge more for a sideview mirror part,
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Page 81	Page 83
1 2 3 that would help you offset costs, wouldn't it? 4 A. If you -- and it could take a combination of 5 things to offset everything. 6 Q. Do you remember my question? 7 A. What was your question? 8 Q. If you charge more for a sideview mirror as a 9 part, that could -- the money you made 10 additionally on that could serve to offset costs, 11 right? 12 A. The -- if somebody would pay more for the -- for 13 the mirror. 14 Q. And of course. I mean you would have to sell it. 15 A. Yeah. 16 Q. If you cut down on the cleaning service that you 17 utilize to clean up your dealership, okay, and you 18 had less expense for that, that would tend to cut 19 your costs, wouldn't it? 20 A. And you're talking about -- 21 Q. Just answer my question. 22 A. If -- 23 Q. If you cut down on your cleaning service expense 24 for your dealership, would that tend to lessen 25 your costs? 26 A. If they would charge me less, that would lessen my 27 costs. 28 29	1 2 3 Q. If that was happening. 4 A. Correct. In my case, it wasn't happening. 5 Q. I didn't say it was, but I'm saying if it did, it 6 would offset costs? 7 A. If there's a dealer selling the cars for more, it 8 -- well, I don't know. I'm not sure about how 9 that's looked at. 10 Q. Well, every dollar of income that you take in 11 tends to offset the cost of the dollars that go 12 out, right, dollar for dollar? 13 A. I don't look at it like that. 14 Q. You don't? 15 A. No. 16 Q. If you spend a million dollars to run a dealership 17 for a year and you make a million dollars in 18 selling products, parts, cars, et cetera for the 19 year, you don't think those two wash out and 20 offset each other? 21 A. That was too fast for me. Do it -- say that 22 again. 23 Q. If you make a million dollars and you incur a 24 million dollars in expenses, you don't look on 25 that as a net zero? 26 A. The math would be a net zero. 27 Q. So all of the income is offset by all the costs 28 29
Page 82	Page 84
1 2 3 Q. And for whatever charges you incur at the 4 dealership, if you were to lessen those charges or 5 expenses, you would offset those expenses, 6 wouldn't you? You would make them less? 7 A. That's -- still your original thing was how do I 8 do it? 9 Q. Yes, and I'm coming back to that. 10 A. Yeah. Okay. 11 Q. Now, we've already been through one end of the 12 equation of how we offset costs. And one way we 13 can offset costs is to literally cut those costs, 14 right? Another way we can offset it is to 15 increase income, correct? 16 A. If we sold a mirror and we made five more dollars, 17 that would help. 18 Q. And if you charge more for a car than you 19 previously did, that would tend to offset costs, 20 right? 21 A. It could help if we could get -- 22 Q. And I'm not talking about the closing fee. I'm 23 talking about if you just got more for a '07 Honda 24 by a hundred bucks just because you sold it for 25 more than you did previously, that would offset 26 costs, right? 27 A. If that was happening. 28 29	1 2 3 and all the costs are offset by all the income? 4 A. I don't agree with the way you're saying it. 5 Q. Are you charged, as the general manager, with 6 trying to maximize the profitability of Hendrick 7 Honda of Esley? That's your job? 8 A. We're trying to have a fair profit. 9 Q. Aren't you trying to make as much money as you can 10 legitimately? 11 A. Everybody wants to make money. If it's ethical 12 and legitimately, it is fair. 13 Q. So the answer to my question is yes? 14 A. Well, if -- under those conditions. 15 Q. I understand. Now, aren't you also trying to keep 16 from losing money if at all possible? 17 A. We don't like to lose money. 18 Q. Tell me how many years since '02 has Hendrick 19 Honda lost money as a whole annually? 20 A. Never. 21 Q. Never. How many times has it lost money monthly, 22 if ever? 23 A. During the time period of the lawsuit or during 24 the time period of existence? 25 Q. 2000 to now, or 2000 to November 30th of last 26 year. 27 A. Ballpark of five or six times. 28 29

Page 85	Page 87
1 2 3 Q. Five or six times in eight years? 4 A. Yes. 5 Q. But never did you have an annual loss? 6 A. Never an annual loss. 7 Q. Would it be fair to say then that Hendrick Honda 8 of Easley has made some profit each and every year 9 you've been there? 10 A. Be fair to say. 11 Q. I will at a later time in the right circumstances 12 ask you how much profit, okay, but I won't ask you 13 that now, so don't commence to answer that. 14 A. Okay. 15 (EXHIBIT NUMBER 2 MARKED) 16 EXAMINATION RESUMED BY MR. SPEARS: 17 Q. I'm going to show you a document and ask you -- 18 this is Plaintiffs' Exhibit 2. This was produced 19 in the production. It's largely been redacted. 20 Plaintiffs' Exhibit 2, from what we can read, 21 says, "Key elements of the transaction compliance 22 policy." What is this document? 23 A. Basically gives guidelines on how to -- gives us 24 guidelines on how to operate. 25 Q. Who is it from? 26 A. Ours is from J.L.R., Hendrick. 27 Q. Well, it may be mailed from them, but who prepares 28 29	1 2 3 I wouldn't have to go through this if it was on 4 here. I would already know. 5 A. I'm sorry; what now? 6 Q. What are the key elements of the transaction 7 compliance policy? Let's start at the beginning. 8 A. Yeah. 9 Q. What is a transaction compliance policy? What 10 transaction are we talking about? 11 A. It's actually how -- the way we do business. If 12 we're going to go into this, I'm going to need a 13 copy to go through it to tell you about it. And 14 I'm not going to be able to sit here and remember 15 everything in this book. 16 Q. Oh, that'd be great. We'd like to have the same 17 thing. Could we have the whole document? 18 MR. BECKER: 19 Object to the form. 20 WITNESS ANSWERS: 21 A. I just thought I'd -- 22 EXAMINATION RESUMED BY MR. SPEARS: 23 Q. Was this a PowerPoint Presentation, something put 24 up on the wall on a computer or is it part of a 25 book? 26 A. I believe it to be part of a book. 27 Q. Have you seen in any document that you have around 28 29
Page 86	Page 88
1 2 3 the document? 4 A. Meaning the print company? Meaning the -- 5 Q. No. Isn't this prepared throughout the Hendrick 6 Automotive Group? 7 A. Not a hundred percent, but I'm thinking they're 8 similar. 9 Q. More likely than not? 10 A. Huh? 11 Q. More likely than not a similar document or the 12 same document goes out to all members of the 13 Hendrick Automotive Group, all 50 dealerships? 14 A. More likely than not. 15 Q. And although this document may be mailed to you by 16 J.L.R. Investments, so far as you know, this and 17 similar documents are prepared by Hendrick 18 Automotive Group? 19 A. I would be assuming to say that, but that would be 20 my best guess. 21 Q. More likely than not? 22 A. More likely than not. 23 Q. Now, what is contained within this Plaintiffs' 24 Exhibit 2 which says, "Key elements of the 25 transaction compliance policy"? What transaction 26 are we talking about and what are the key 27 elements? Because everything else is redacted. 28 29	1 2 3 the dealership a page that says, "Key elements of 4 the transaction compliance policy"? 5 A. Well, it's probably a page out of this book. 6 Q. And what is the name of the book? 7 A. "Transition Compliance Policy." 8 Q. That's the name of the book? 9 A. Policy. 10 Q. So the name of the book would be, "Transaction 11 Compliance Policy," and this would be one page 12 saying key elements of that, right? And the 13 things that are still unredacted out of here, it 14 says, "Transaction elements." Those would be the 15 elements of the transaction and the transaction 16 would be the sale of the vehicle? 17 A. Give me an example. 18 Q. Well, I'm asking you. You're the general manager. 19 What is a transaction? 20 A. Well, the -- that could be one element, yes, as 21 far as -- you're correct. 22 Q. The sale of the car is the transaction we're 23 talking about, right? 24 A. Yes. 25 Q. And one portion of the transaction element has to 26 do with the fees, right, as shown on -- 27 A. Yes. 28 29

Page 89	Page 91
1 2 3 Q. And by fees, aren't we talking about the closing 4 fees? 5 A. Yes. 6 Q. Now, we can't tell what else is on this page, 7 right? 8 A. Cannot. 9 Q. I assume there are other things on this page that 10 have to do with the transaction? 11 A. Yes. 12 Q. And you've read them, you know what they are. I'm 13 not going to ask you what they are, but you know 14 what they are, right? 15 A. Yeah. 16 Q. Are you saying it's part of this document 17 (indicating)? 18 A. Is this part of that (indicating)? 19 Q. Yes. 20 A. Can I look at it? 21 Q. Certainly. 22 A. Yeah. Is this a part of this (indicating)? 23 Q. No. Is this, Plaintiffs' Exhibit 2, a part of 24 what I just handed you? 25 MR. BECKER: 26 Has this been marked yet? 27 MR. SPEARS: 28 29	1 2 3 to be adhered to by your store, correct? 4 A. Correct. 5 Q. And within that policy, partially described in 6 Plaintiffs' Exhibit 3, where not redacted, it 7 says, "On all deals, the company collects the fees 8 listed below for all retail customers on all 9 transactions." Does it say that? 10 A. It does say that, yeah. 11 Q. Is that true? Now, I'm going to get to the 12 exceptions that are permitted. 13 A. Okay. 14 Q. But assuming someone is not an employee or an 15 employee of a supplier, et cetera, et cetera, is 16 it true that you collect at Hendrick Honda of 17 Easley the transaction fees, or closing fees, or 18 doc fees, whatever you want to call it, for all 19 retail customers on all transactions? 20 A. Well, I would say a more accurate -- that what 21 goes on at Hendrick Honda of Easley that we 22 account for the fee on every deal. 23 Q. Then would it be fair to say that you show on your 24 closing documents and whatever you transmit to the 25 Hendrick Automotive Group about your sales, that 26 you did collect a fee or closing fee? 27 A. We did account for a fee or a closing fee. 28 29
Page 90	Page 92
1 2 3 This is going to be Number 3 if it is. If it's 4 not, this might disappear. 5 WITNESS ANSWERS: 6 A. That's a -- you know, I don't -- you know, more 7 than likely it is part of this. I'm just not -- a 8 hundred percent recognize it. 9 MR. SPEARS: 10 Let's mark this as Plaintiffs' Exhibit 3. 11 (EXHIBIT NUMBER 3 MARKED) 12 EXAMINATION RESUMED BY MR. SPEARS: 13 Q. And you're of the opinion that more likely than 14 not, Plaintiffs' Exhibit 2 is part of Plaintiffs' 15 Exhibit 3, correct? 16 A. Yes. 17 Q. Plaintiffs' Exhibit 3 is clearly from Hendrick 18 Automotive, right? 19 A. Yes. 20 Q. Not from J.L.R. Investments, right? 21 A. That's correct. 22 Q. And Plaintiffs' Exhibit 2 is a page that would be 23 contained within Plaintiffs' Exhibit 3 so far as 24 you are aware? 25 A. So far as I'm aware. 26 Q. And the Hendrick Automotive Group has sent out 27 Plaintiffs' Exhibit 3 as a directive for a policy 28 29	1 2 3 Q. And when it says, "No deal will be billed without 4 collection and separate documentation of the 5 fees," do you follow that policy? 6 A. Let me read it. 7 Q. It's Plaintiffs' Exhibit 3 and it says, "No deal 8 will be billed," and that means billed to them, 9 right? 10 A. Uh-huh (affirmative). 11 Q. "Without collection and separate documentation of 12 the fees." Do you follow that? 13 A. Yes. It's -- well, the way I'm reading it, it 14 says that -- that we'll charge every customer for 15 the -- and it'll be on every buyer's guide or -- 16 Q. Well, it says more than that, doesn't it? Let's 17 go over it together. Do you need glasses? 18 A. Huh? 19 Q. Do you need glasses? 20 A. I got glasses on. 21 Q. I know, but are those far or near? 22 A. Actually I've got it all going on. I'm far, near, 23 and, you know -- 24 Q. So you have multi-use glasses? 25 A. I have, yes, I do. 26 Q. Can you read this line for me out loud contained 27 in Plaintiffs' Exhibit 3? 28 29

Page 93	Page 95
1 2 3 A. All right. "No deal will be billed without 4 collection and separate documentation of the 5 fees." 6 Q. Now, there's two things there that have to be 7 done. It says, "No deal will be billed." What 8 does billed mean? 9 A. Billed out of means -- or billed means basically 10 that when you print the final papers out, it needs 11 to be on the doc. 12 Q. So billed to you means the printing of the final 13 papers? 14 A. Yes. 15 Q. Does it in any way imply that billed to the 16 account of Honda of Easley or Hendrick Automotive 17 Group? 18 A. I can only tell you what it means to me. I'm not 19 sure what -- 20 Q. So what does it mean to you? 21 A. It means that it -- that when you print the 22 paperwork, it's on the paperwork. We refer to 23 bill out a customer. 24 Q. So we're billing out the customer, right? 25 A. Yeah. That's -- that's how it -- that's how it 26 refers to me. When we bill the deal, it needs to 27 be on there. 28 29	1 2 3 form? 4 A. Yes. 5 Q. In the event of a financing of the car, it has to 6 be on the buyer's order form and on the 7 installment sales contract? 8 A. Well, we do that, but that's not what the statute 9 says. It just says one. 10 Q. I'm just saying the policy that you have. 11 A. Yes. 12 Q. Not the law. 13 A. Yes. We -- we put it on both. 14 Q. So you document the fee on the buyer's order form 15 and on the installment sales contract at Honda of 16 Easley? 17 A. Well, if document means that the fee is listed, 18 yes. 19 Q. That's what I mean. 20 A. Yes. 21 Q. It's listed; okay. And you also -- in order to 22 bill the fee to the customer, no deal will be 23 billed without collection of the fee. Now, we've 24 already covered that you've got to document it. 25 A. Uh-huh (affirmative). 26 Q. You, of your own nature, document it on two forms 27 instead of one? 28 29
Page 94	Page 96
1 2 3 Q. I understand. So to read this with meaning, we 4 would say, "No deal will be billed to the customer 5 without collection and separate documentation of 6 the fees," correct? 7 A. Correct. 8 Q. Now, we've got to do two things here, right? 9 We've got to actually collect the fee, don't we? 10 A. Well, yes, collect money or the fee. 11 Q. Just answer my question. Do you have to collect 12 the fee? 13 A. And what do you mean by collect? That's what -- 14 Get it. Take it from the client. 15 A. You mean separately or all in one? 16 Q. It just says you got to collect it. I don't care 17 if you take it by check, cash, in a group of other 18 money. You, in some way or another, have to 19 collect that fee, correct? 20 A. But I still -- we account for the fee. 21 Q. Well, that's the second thing. It says, "And 22 separate documentation of the fees." Now we both 23 agree that you've got to document the fees, right? 24 A. Yes. We have to -- it has to clearly be on the 25 form. 26 Q. And the form we're referring to is in the event of 27 a cash sale, it has to be on the buyer's order 28 29	1 2 3 A. Uh-huh (affirmative). 4 Q. But you've also got to collect it. That's the 5 rules from the Honda Automotive Group, correct? 6 Here's the front page of -- 7 A. Yeah. I think collection's a little broad. We -- 8 I still say we account for it. 9 Q. Does it say anything about accounting? 10 A. No, but I'm just telling you what we do. That's 11 what you asked me, what do we do. 12 Q. Do you collect it? 13 A. We account for it. 14 Q. Do you collect it? 15 A. We account for it. 16 Q. I understand you may or may not account for it. 17 Do you collect for it? 18 A. We account for it. 19 MR. BECKER: 20 Object to the form. 21 EXAMINATION RESUMED BY MR. SPEARS: 22 Q. Can you answer my question? 23 A. I've answered your question and I understand that 24 you don't want to -- that -- and that's my answer. 25 Q. Well, let me put it this way. If I ask you 26 whether a car is blue or not -- 27 A. Right. 28 29

Page 97

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3 Q. -- and you say it's red, that would imply that
4 it's not blue. Fair? Do you understand?
5 A. I understand, but there's more to it than that.
6 Q. I want you to tell me everything about it. My
7 question is, do you collect it? And you say you
8 account for it. I understand you account for it
9 and we're going to go into how you account for it.
10 Okay? My question is, yes or no, do you collect
11 it?
12 A. We account for it.
13 Q. Do you refuse to answer the question?
14 A. No. I'm answering the question.
15 Q. Well, elaborate then.
16 A. All right. When people come in in their
17 negotiation, and I described our negotiation to
18 you earlier, they come in and sit down. The
19 salesman writes up a worksheet, and I described
20 that earlier. People are sitting there saying,
21 "Give me your best price. Give me your best
22 price. Give me your best price." You go to the
23 manager. "He wants the best price." They write
24 out a worksheet. On it, it has the starting
25 price, the price the manager's offering the
26 customer at the time, maybe a trade value if
27 that's relevant to the deal. It'll have the
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Page 99

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3 Q. Well, I think I understand what you're saying.
4 A. Okay.
5 Q. Let me see if I can give it to you.
6 A. Okay.
7 Q. If somebody says, "I'm only paying a flat rate for
8 this car and I'm not paying the closing fee --"
9 A. Closing fee, that's right.
10 Q. The number is \$8,000 and let's say the closing fee
11 is \$300.
12 A. Right.
13 Q. You or the salesman or the F&I guy of your own
14 accord may insure that the customer's going to pay
15 \$8,000. They're willing to do that, but they're
16 not going to pay some closing fee. What you do is
17 you show the selling price of the car as 7,700 and
18 you independently put down \$300 under the closing
19 fee so that the total price doesn't change to the
20 customer, but it appears as though, and they are,
21 in fact, paying a closing fee.
22 A. What most customers say to us is that, you know,
23 "I want \$500. I don't want to pay the closing
24 fee. I don't want to pay the tax." Maybe that
25 adds up to \$1,100, something like that, and we'll
26 get the bottom line to \$1,100. And they're fine
27 with showing the tax and the document -- and the
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Page 98

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3 closing fee on it. It'll go all the way down to
4 the bottom line. So when you show it the
5 customer, the salesman will say, "Mr. Customer,
6 this is the deal we got you. Here's where it was.
7 Here is all the above" that I just mentioned.
8 He'll fully disclose every line, "And there's your
9 bottom line. If you're paying cash, that's the
10 amount of the check that you got to write to go
11 out the door." The customer may say, "Well, I
12 want another \$500 off that price. Oh, by the way,
13 I'm not paying the closing fee. Oh, by the way,
14 I'm not paying the tax, I'm not paying the tags."
15 And the salesman will have to go back to the
16 manager and basically through the negotiations
17 where we actually collected it, you know, we
18 accounted for it.
19 Q. Do you ever put down that you collected it when
20 you didn't collect it?
21 A. We -- explain what you mean by that.
22 Q. Do you ever put down that you collect the fee
23 when, in fact, you didn't collect it?
24 A. In our negotiations, we account for the fee. And
25 someone might say that I'm not buying the car for
26 -- and pay that fee or another fee or something
27 else. And we might negotiate it out.
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Page 100

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3 closing fee. It's all accounted for, you know.
4 Q. That's exactly what I said.
5 A. Yeah; okay. Then I agree with that.
6 Q. So as long as the bottom line total is whatever
7 the customer insists upon, you do not necessarily
8 pay attention to the fact that he says, "I'm not
9 paying a closing fee," you just take the closing
10 fee off of the sales price and put it right where
11 you're going to put it anyhow without changing the
12 sales price?
13 A. It -- as I said, we account for it.
14 Q. You account for it?
15 A. Yes.
16 Q. He still pays \$8,000?
17 A. Right.
18 Q. But 300 of that is attributed by you or your
19 people to closing costs, correct?
20 A. Well, it -- I mean there's \$300 and we've
21 discounted a car 2,000. I don't know how, you
22 know --
23 Q. I'm not talking about the other elements.
24 A. Right.
25 Q. I could do the same thing with taxes.
26 A. Right.
27 Q. Taxes on the car are \$300.
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25 (Pages 97 to 100)

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3 A. Right.
4 Q. A guy says to you, "I'm not paying taxes." You
5 could say to him, "State law says you've got to
6 pay taxes, so you're going to pay taxes." Well,
7 that's not really the issue to him, is it? The
8 issue is what's the total cost of the car,
9 correct?
10 A. That -- that's what most people want to know. If
11 they want to write a check, they want to know what
12 they're writing a check for.
13 Q. Right. You're not sitting there with some tax
14 protester in front of you that has some inherent
15 hate of paying taxes, what you've got is a guy
16 that wants to pay \$8,000. And when he says, "I'm
17 not paying taxes," then you just put down \$300 for
18 taxes and 7,700 for the car, for a total of eight,
19 right? Correct?
20 A. Well, I don't think that's what I said.
21 Q. Well, you tell me then. What if a guy says, "I
22 ain't paying taxes, but I'll pay 8,000 for the
23 car," and that's a suitable number for you?
24 A. Well, it don't exactly work like that. Basically
25 they'll say, you know, I want to get here, here,
26 here. And then we'll go back and we'll come back
27 and say -- we'll say again, well, you know, this
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3 is -- now we'll sell the car for this and this is
4 your display on everything else. And if they
5 agree with it, it's fine.
6 Q. So what you've done is take their bottom line
7 number if it's agreeable to you and parcel it out
8 where you want it to be to comply with the law?
9 A. And then we gave -- showed it to them and they
10 wanted it, yeah.
11 Q. So is that fair? That's the way you do it?
12 A. Say it -- say it one more time.
13 Q. I'm just saying the way you just said it, you will
14 take the number that's agreeable to you that they
15 also agree with, but you will put different
16 amounts on different columns?
17 A. We -- if a customer negotiates, they'll go back to
18 the manager. The manager will rewrite the deal
19 and bring it back in and say, "Okay, you wanted
20 all this. This is what we can give you." And
21 then we just show them the new numbers and if
22 they agree to it, then that's fine. It don't
23 necessarily have to be exactly what he asked for.
24 Most of the time it's not what he asked for, it's
25 something in between.
26 Q. I know. So you're saying no deal is billed to the
27 customer without accounting for --
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3 A. Right.
4 Q. -- the collection of a closing fee, correct?
5 A. That's correct.
6 Q. And if I were to look at your buyer's order form,
7 it will look as though you collected \$299 from the
8 customer?
9 A. It would be accounted for on the buyer's order.
10 Q. And that's true of every sale you do?
11 A. Yes. We do not do a sale that is -- to answer
12 your question, every sale that we do all have the
13 -- it is accounted for on every sale.
14 Q. And that is insisted upon and required by Hendrick
15 Automotive Group, correct? That's their rule?
16 A. It is.
17 Q. And they also require you to document it, correct,
18 they, Hendrick Automotive Group?
19 A. It has to be on the paperwork, yes.
20 Q. And you have to follow the rules of Hendrick
21 Automotive Group, correct?
22 A. Yes.
23 Q. Now, it also says, "In cases where retail
24 customers refuse to pay the fees --" and you've
25 had that happen, haven't you?
26 A. Uh-huh (affirmative).
27 Q. And the fees we're talking about are the closing
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3 fees, right?
4 A. Uh-huh (affirmative). Yes.
5 Q. "The only options are a reduction in sales price
6 by the amount of the fees," and that's what you've
7 just been talking about?
8 A. That's what we've been talking about, yeah.
9 Q. "Or the sale will be voided," correct?
10 A. That's what I'm reading, yes.
11 Q. Well, that's the rule?
12 A. Yeah. I'm -- I'm following you.
13 Q. And you've been living by this policy. This is
14 not foreign or strange to you, is it?
15 A. No, it's not strange. Let me -- are you finished
16 or not?
17 Q. Well, I finished that sentence.
18 A. Okay.
19 Q. I didn't ask you a question.
20 A. Okay.
21 MR. BECKER:
22 Here's an extra copy.
23 EXAMINATION RESUMED BY MR. SPEARS:
24 Q. Do you need to refer --
25 A. Yeah.
26 Q. You don't have to look on with me. I mean you're
27 welcome to.
28
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Page 105

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3 A. Okay.
4 Q. So the next sentence says, "In cases where retail
5 customers refuse to pay the fees." Do you see
6 that line?
7 A. Yes.
8 Q. "The early options are a reduction in sales price
9 by the amount of the fees or the sale will be
10 voided." Did I read it right?
11 A. Yes.
12 Q. Is that true?
13 A. Is it true that it states that here?
14 Q. Yes.
15 A. Yes, it does state that there.
16 Q. Is it true that that is the policy you are
17 required to follow by Hendrick Automotive Group?
18 A. Yes. We follow policies by Hendrick Automotive
19 Group.
20 Q. And you follow this policy?
21 A. Yes.
22 Q. And to not do so would be against company policy,
23 right?
24 A. To -- yeah.
25 Q. To fail to follow this would be against company
26 policy, correct?
27 A. I'm just having trouble with that collection word
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Page 106

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3 I there a little bit. I don't think Hendrick
4 Automotive Group would have any problem with us as
5 long as every deal, we had a fee accounted on the
6 deal and on the form.
7 Q. Well, I can be instructive with you and show you
8 that if the customer refuses to pay the fees, how
9 they allow you to accommodate that in the very
10 next line. Your problem is with the word,
11 "collection"?
12 A. It is.
13 Q. And you want to put in there accounting. Isn't
14 that exactly what it says in the next line when it
15 says, "In cases where retail customers refuse to
16 pay the fees"? In other words, you can't collect
17 them from them, the only options are a reduction
18 in sales price by the amount of the fees, meaning
19 you drop the cost of the car to the exact amount
20 of the fees and account for them under the fee
21 heading?
22 A. You know, and sometimes that could happen.
23 Q. It does happen.
24 A. But it's not typical.
25 Q. Well, what's typical?
26 A. It -- typical would be that we don't have that
27 many people complaining about it.
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Page 107

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3 Q. So usually this is not a problem?
4 A. Yeah. And -- yeah.
5 Q. That's fine. In cases where they do complain
6 about it, you've got a company policy on what you
7 can do about it, right? And it says, "The only
8 option --"
9 A. Right.
10 Q. -- "is to reduce the sales price by the amount of
11 the fees." And that's the closing fees, right,
12 "Or the sale will be voided"?
13 A. Well, in -- if you had a -- you know, somebody may
14 say, "I'll give you -- you know, knock off the two
15 ninety-nine and we got a deal."
16 Q. I know.
17 A. And then we may say, "Hey, I'll give you free a
18 oil change," and --
19 Q. And what?
20 A. And then we got -- and we come back to the
21 customer and say, "We've got -- well, I'll give
22 you a free oil change for three months."
23 Q. And he says, "Okay"?
24 A. And he says, "Okay."
25 Q. So you go ahead and charge him the two ninety-
26 nine?
27 A. Yes.
28
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Page 108

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3 Q. That's a deal where you billed and collected the
4 fee, right?
5 A. We billed and accounted for the fee, right.
6 Q. Well, you collected it, didn't you?
7 A. I'm accounting for it.
8 Q. In that instance that you gave me, you traded the
9 two ninety-nine that he's going to give you for
10 three months worth of free oil changes, right?
11 A. That was -- our negotiation was the oil changes.
12 Q. I understand.
13 A. And the lesser cost.
14 Q. I don't care if it's a lesser cost, I'm just
15 saying that that got him to agree in your example
16 to pay you the two ninety-nine?
17 A. And in some cases --
18 Q. I didn't ask you about another case.
19 A. Okay.
20 Q. I'm going to deal with that case.
21 A. Okay.
22 Q. In that case, you collected the two ninety-nine
23 from him?
24 A. It was accounted for in the deal.
25 Q. Did you give him a free oil change?
26 A. Yeah, the free oil change.
27 Q. Did he pay the two ninety-nine?
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27 (Pages 105 to 108)

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3 A. He paid -- well, he paid the total price that he
4 was negotiating on.
5 Q. Which included the two ninety-nine?
6 A. It included it.
7 Q. So you collected it?
8 A. We accounted for it.
9 Q. This policy tells you what happens if you hit a
10 stumbling block, not if you'd reached a deal?
11 A. Right.
12 Q. So I'm not talking about the usual circumstance
13 where nobody says anything about it and it just
14 goes smooth as silk. I'm talking about when the
15 guy says, "I ain't going to pay it," okay?
16 A. Uh-huh (affirmative).
17 Q. And it tells you your only option, as the GM of
18 Honda of Easley, is to reduce the sales price by
19 the amount of the fees or the sale would be
20 voided?
21 A. Uh-huh (affirmative).
22 Q. That comes to you from Hendrick Automotive Group
23 and you have permission to do that from them,
24 don't you?
25 A. It's permission and we also have the option of
26 voiding the deal, and that could be the case, too,
27 on --
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3 Q. So that's your only two options. They don't allow
4 another option, right?
5 A. This statement does not allow another option.
6 Q. Now the next sentence says, "In all cases, any
7 retail sale will include collection and separate
8 documentation of the listed fees." Does it say
9 that?
10 A. (Reviewing document.) Yes, it says that.
11 Q. And that's the official policy that you're
12 required to follow by Hendrick Automotive Group,
13 right?
14 A. That's the transition compliance policy.
15 Q. And it requires that any retail sale include the
16 collection and the separate documentation of the
17 listed fees, right? That's what it says.
18 A. All right. Well, I still have a problem with the
19 word, "collection."
20 Q. I'm not asking you --
21 A. I think it's -- but I will agree that's what it
22 says.
23 Q. That's what it says?
24 A. That's what it says.
25 Q. And we'll ask others whether or not accounting is
26 okay with them. Okay?
27 A. Yeah. Okay.
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3 Q. Those people above you in Hendrick Automotive
4 Group, we'll say, "Is accounting okay or do you
5 have to actually get the money? Do you show you
6 got it, didn't really get it, or do you have to
7 really get it?" Then it says under there,
8 "Current doc fee," and it has a blank. And it
9 says, "Policy, doc fee not to exceed three ninety-
10 nine." Now, is it true that you know that you
11 can't charge more than \$399 for a Honda sold by
12 Honda of Easley, which is part of the Hendrick
13 Automotive Group?
14 A. That is -- it's true that three ninety-nine is
15 Hendrick Automotive Group's --
16 Q. Cap?
17 A. Cap, yeah.
18 Q. You know that you can't go over that because
19 that's Hendrick Automotive's policy, right?
20 A. That's Hendrick Automotive's policy for their cap
21 on the fee.
22 Q. So it is Hendrick Automotive that sets the max
23 fee or closing fee that you can charge at Honda of
24 Easley?
25 A. Actually would be J.L.H. Hendrick that would set
26 ours.
27 Q. I'm sorry. This document came to you from
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3 Hendrick Automotive Group; did it not?
4 A. Yes.
5 Q. And it sets the fee; does it not?
6 A. Yes.
7 Q. And you have to comply with this; do you not?
8 A. Yes. Well -- but, you know, this is -- there may
9 be a difference in some of the -- I think ours
10 says fifty cent. Okay?
11 Q. You think yours says fifty cent?
12 A. Three ninety-nine fifty is -- I might be wrong,
13 but I think that Hendrick Automotive or J.L.H. --
14 this is a Hendrick Automotive Group Transition
15 Compliance. Ours says J.L.H.
16 Q. Are you saying that I produced something that you
17 are not required to follow?
18 A. No, no, no, no.
19 Q. Are you required to follow this?
20 A. I'm just saying there may be a difference here or
21 there.
22 Q. Between this and another document? Is there
23 another document that I don't have?
24 A. I think that the difference is that ours says
25 fifty cent.
26 Q. Well, is this not yours?
27 A. Ours say J.L.H.
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Page 113	Page 115
1 2 3 Q. J.L.H.? 4 A. Yeah. That's the company I work for. 5 Q. Do you not have to follow the rules of the 6 Rendrick Automotive Group? 7 A. We're -- we are -- I answer to J.L.H. 8 Q. I keep thinking you're saying J.O.H. 9 A. J.L.H. My braces; cold, so -- 10 Q. That's all right. Every time you say J.H., that 11 middle thing is an L, right? 12 A. Okay. Right. 13 Q. J.L.H.? 14 A. Yes. 15 Q. So are you telling me that Plaintiffs' Exhibit 3 16 that we've been going over for 30 minutes does not 17 apply to you? 18 A. No, I'm not saying that. I'm just saying they're 19 -- I think it's fifty cent difference. 20 Q. Does everything else that we've gone over here 21 apply to you? 22 A. It would. 23 Q. And do you have to follow it? 24 A. We do, through J.L.H. 25 Q. And if there is a difference between this document 26 and some other document that I don't have, it's a 27 fifty cent difference? 28 29	1 2 3 A. Doesn't apply. (Reviewing document.) Fees will 4 be collected for sales to employees or owners of 5 -- 6 Q. Has that ever happened? 7 A. That's -- the thing I'm thinking about is 8 basically our employees pay the fee, yeah, and 9 retail customers of employees. 10 Q. So you've never had to go through -- 11 A. We have none of that, no. 12 Q. Let me finish the question. 13 A. Okay. Sorry. 14 Q. You've never had to go through fee exceptions 1 or 15 2 shown in Plaintiffs' Exhibit 3, correct? 16 A. Yeah, correct. Yeah. 17 Q. Do you see the last sentence on page 04556, the 18 one we're on here? 19 A. Right. 20 Q. It says, "Collection violations of the above fees 21 --" 22 A. Right. 23 Q. -- "must be reported immediately to the general 24 manager." Do you see that? 25 A. I see that. 26 Q. Do you follow that policy? 27 A. We -- yes. We -- 28 29
Page 114	Page 116
1 2 3 A. That's what I'm thinking. 4 Q. Now, the three ninety-nine fee that you would not 5 exceed or three ninety-nine fifty fee that you 6 would not exceed -- 7 A. Right. 8 Q. -- is a policy set either by J.L.H. or by Rendrick 9 Automotive or by both? 10 A. Yes. 11 Q. Now, you decide within this what current document 12 fee you're going to seek permission to charge, 13 correct? 14 A. Yes. 15 Q. And you ask Chuck if it's okay with him? 16 A. Yes. 17 Q. And it sets down here the fee exceptions; does it 18 not? 19 A. Yes. 20 Q. Do you follow those, or do those not apply to you? 21 A. Let me just read it real quick. 22 Q. Sure. 23 A. (Reviewing document.) Well, the first one kind 24 of just says that -- talks about the manufacturer. 25 Since I've been there, we've never sold a 26 manufacturer employee a car, so -- 27 Q. So number 1 doesn't apply? 28 29	1 2 3 Q. You never violate it, do you? 4 A. We've never -- I've never had anybody, customer 5 or employee or anybody that ever had to go to me 6 about a fee. 7 Q. About a violation of the policy on the fee? 8 A. Right. Yeah, since I've been there, it's never 9 happened. 10 Q. So you have always collected the closing fee from 11 every customer? 12 A. We always accounted for the closing fee on every 13 customer. 14 Q. Does that word say, "accounting"? 15 A. That word does not say accounting. 16 Q. What does that word say? 17 A. It says, "collection." 18 Q. Have you violated -- and listen to my question 19 carefully. Have you violated any collection of 20 the above fees knowingly? 21 A. I have not violated any of the above fees -- above 22 -- number 1 and 2 you're talking about, 1 and 2? 23 Q. Right. 24 A. I have not violated that. 25 Q. The above fees are referring to the fee 26 collection. These are the exceptions. 27 A. Not to my knowledge. We've never violated 28 29

Page 117

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3 anything.
4 Q. And you, as the general manager, would have a duty
5 to report to your bosses if you knew of collection
6 violations, right?
7 A. Yes, that would be correct.
8 Q. So as we sit here today with you as the official
9 representative of Honda of Easley and we assume it
10 is true, listen carefully, you have accounted for
11 or collected a document fee on every single
12 transaction since 2002?
13 A. We have, yes, accounted for every single
14 transaction --
15 Q. For the doc fee?
16 A. -- including employees.
17 Q. No car has gone out, new or used, from your
18 dealership which you did not collect a document
19 fee?
20 A. Correct.
21 Q. Do you need a break?
22 A. No, I'm good.
23 Q. When you account on either your monthly or annual
24 reports for the monies you receive in closing
25 fees, do you account it in a separate column
26 separate and distinct from the other income?
27 A. All right. Say it one more time.
28
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Page 119

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3 separately set out in their own column when you
4 refer to the sale of a car?
5 A. They're put into other income. There's no column
6 that says closing fees.
7 Q. It says other income?
8 A. Other income, that's correct.
9 Q. We know other income means closing fees, right?
10 A. Well, it could be actually other income or
11 deductions and it could have more than closing
12 fees in it.
13 Q. Well, it could, but on the average car, isn't the
14 other income the closing fee?
15 A. On the financial statement in the column other
16 income, the majority of the income are closing
17 fees.
18 Q. On the statement that you talk about every Monday?
19 A. Well, that's -- it's not a -- that's not a
20 statement. That's a Excel spreadsheet.
21 Q. I know. And the Excel spreadsheet will show how
22 many cars you sold, right?
23 A. Yes.
24 Q. Will it show the closing fee?
25 A. As a -- it'll show other income as a total of
26 where we're sitting so far in a month. It doesn't
27 specifically only, you know, show closing fees.
28
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Page 118

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3 Q. When you account for the monies you receive
4 through the collection of document fees or closing
5 fees, the two ninety-nine -- do you understand my
6 question?
7 A. It's located on the financial statement under
8 other income.
9 Q. And is it in a column by itself that comes down
10 and has a total that shows the total of closing
11 fees collected, whether it's monthly or annually?
12 A. On the financial statement you'll have seventy
13 some plus lines and it's near the bottom, other
14 income, and it's in -- on that line.
15 Q. Let's suppose you've got 20 car sales in one
16 month. You have a monthly statement, right?
17 A. Twenty car sales? Yes.
18 Q. Pick a number.
19 A. Okay. All right.
20 Q. On that accounting sheet, it will show your cost
21 of the car and what you sold it for, right?
22 A. Well, it would show the -- you're specifically
23 talking about where the closing fees are -- the
24 same line that the closing fees are on?
25 Q. Well, I'll just leap straight to that.
26 A. Okay.
27 Q. Aren't the closing fees separately stated and
28
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Page 120

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3 Q. I'm just talking about the Monday morning Excel
4 spreadsheet that you --
5 A. That's what I'm talking about.
6 Q. And of course, you know, we can subpoena Excel
7 spreadsheets and get them out and we can sit here
8 and look at them and compare them.
9 A. Right.
10 Q. But if you're talking about car number 20 that you
11 sold that month, when you show it and discuss it
12 that morning on Monday morning, it's going to show
13 as a separate income the closing fee that was
14 collected on that car, and it had better be
15 collected on every car, correct?
16 A. Well, we don't -- that's not -- yeah, I think
17 you're -- that's not what happens on Monday. We
18 don't show -- they don't look at like a log of
19 cars. Is that where you're headed?
20 Q. That's exactly what I thought.
21 A. All right. Then that's not how it is, yeah.
22 Q. Then on what document do you show the income the
23 dealership receives from the closing fee?
24 A. The financial statement.
25 Q. Which comes out how often?
26 A. Once a month.
27 Q. And that is transmitted to the Hendrick Automotive
28
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Page 121

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3 Group?
4 A. They get a copy.
5 Q. Do you ever get any inquiries back from the
6 Hendrick Automotive Group as to what your monthly
7 statements show?
8 A. Inquiries meaning --
9 Q. Questions, phone calls, "Congratulations, good
10 job," or "What happened," or "We're missing a
11 closing fee" or anything from Hendrick Automotive
12 Group, or do you just send them a copy like as a
13 courtesy?
14 A. No. We send them a copy.
15 Q. Why do you send them a copy?
16 A. They tell us to.
17 Q. They require you to, right?
18 A. Yeah.
19 Q. Hendrick Automotive Group requires you to send a
20 monthly copy of your financial statement?
21 A. That's right.
22 Q. And it would be wrong not to send it to them?
23 A. Uh-huh (affirmative).
24 Q. So you do send them?
25 A. We send them.
26 Q. And on that financial statement, you have a column
27 that says other income?
28
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Page 122

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3 A. Other -- that's right.
4 Q. And other income includes the document fee?
5 A. It does.
6 Q. Tell me some other items that are usually listed
7 under other income in addition to the document
8 fee. And I asked you that question because I can
9 tell you what the follow-up question is going to
10 be. The next question is going to be, isn't the
11 other income number almost exclusively the
12 document fee?
13 A. It's -- as I said before, the document fee is the
14 majority of the income in the -- in the other
15 income. It's a strong majority, but occasionally
16 there's something else that goes in there or
17 something that deducts from there.
18 Q. Tell me something else that would go in there.
19 A. I can't think of anything.
20 Q. Anything. Tell me anything.
21 A. I can't think of anything.
22 Q. In your experience as being the manager for almost
23 nine years now of Honda of Easley, you can't, as
24 you sit here today, under oath, think of any other
25 single figure that would go under other income
26 other than the closing fee, correct?
27 A. I can't think of anything. I know there has been
28
29

Page 123

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3 things.
4 Q. But you don't know what they are?
5 A. Don't know what they are.
6 Q. And you can't remember what they are?
7 A. That's right.
8 Q. And nothing comes to mind?
9 A. Nothing comes to mind.
10 Q. So as far as we're concerned here today, the only
11 thing that you can remember that goes in other
12 income is the closing fee?
13 A. That would be correct.
14 MR. SPEARS:
15 Let's take a break.
16 (BREAK; OFF THE RECORD)
17 EXAMINATION RESUMED BY MR. SPEARS:
18 Q. Don, if you're ready, we're back on the record
19 about 1:33. You understand you're still under
20 oath?
21 A. Yes.
22 Q. Any conversations at lunch?
23 A. Said it was taking a long time.
24 Q. Oh, what the deposition?
25 A. Yeah.
26 Q. Anything else?
27 A. That's it.
28
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Page 124

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3 Q. Do you receive any trade journals in the field,
4 any magazines, publications that you regularly
5 read?
6 A. There's a lot of them that come into the
7 dealership, not -- not necessarily ones we
8 subscribe to.
9 Q. Tell me about them. What are some of the names?
10 A. Dealer Executive, maybe. There's one, a marketing
11 magazine. I'm not really sure what the name of it
12 is, but it has a lot to do with window stickers
13 and things or different fliers as far as -- you
14 know, that you put up and things like that, direct
15 mail and stuff like that.
16 Q. What is the name of it?
17 A. Something in Marketing. I never read them, by the
18 way.
19 Q. Something in Marketing?
20 A. Marketing is in the title of it. I'm not sure
21 what else is in the title of it.
22 Q. Could it be Dealer Marketing?
23 A. Could be. I'm not -- I don't -- don't really
24 remember.
25 Q. Can you find that out for me and tell your
26 attorney?
27 A. Yes.
28
29

Page 125	Page 127
1 2 3 Q. What other magazines or trade journals? 4 A. Fixed Operations I think is the name of a magazine 5 that comes in. 6 Q. What does it concern? 7 A. Mainly service and parts. 8 Q. What else? 9 A. That's all I can think of right off the top of my 10 head. 11 Q. Tell me, if you would, what interactions you have 12 had in any way with the South Carolina Automobile 13 Dealers Association. 14 A. And what do you mean by interactions? 15 Q. Things you've received from them, things you have 16 sent to them, meetings you have gone to in which 17 they were attendants, phone conferences you 18 participated in, all communications. 19 A. All communications. We get -- we get mail from 20 them occasionally, and I can remember one phone 21 call that I had from -- never been to a meeting or 22 anything like that. And that might sum up the 23 communications. 24 Q. Do you get letters from them every now and then? 25 A. Every now and then. 26 Q. The one phone call you had with them, was that a 27 conference call? 28 29	1 2 3 Honda of Easley since 2000? 4 A. Yes. Yes. 5 Q. Let me show you a document and ask you, do you 6 remember receiving this document? Pardon me, 7 here's the second half of the document. 8 A. I don't remember receiving the document. The 9 original document, ten dollar fee is something 10 that is -- we knew about, but I don't remember 11 actually receiving this. 12 Q. Well, look at the attachment to it. 13 A. This or -- 14 Q. The next page. 15 A. The next page. I don't remember seeing this. 16 Yeah, I don't remember seeing any of these 17 documents. 18 MR. SPEARS: 19 Let's mark this as Plaintiffs' Exhibit 4. 20 (EXHIBIT NUMBER 4 MARKED) 21 (OFF THE RECORD) 22 WITNESS CONTINUES: 23 A. Yeah, I don't -- none of those I remember seeing. 24 EXAMINATION RESUMED BY MR. SPEARS: 25 Q. Have you ever seen them in the course of preparing 26 for this deposition? 27 A. No. 28 29
Page 126	Page 128
1 2 3 A. No, huh-uh (negative). 4 Q. Just a direct call? 5 A. Yes. 6 Q. Between you and? 7 A. And a man on the other line that they put me to. 8 Q. On what topic? 9 A. On closing fees. 10 Q. When was that? 11 A. That was shortly after the lawsuit came out, I 12 guess. I would say within a couple weeks. 13 Q. Who initiated the call? 14 A. I did. I called basically to find out what they 15 knew about it. 16 Q. And who was the man? 17 A. I don't know his name. 18 Q. Was he a lawyer? 19 A. I don't know that. 20 Q. What did he tell you? 21 A. I asked him what was their stance on closing fees. 22 And he told me that they took -- as of this time 23 they weren't taking a position on it. And it was 24 a fairly short and to the point call. 25 Q. They weren't taking any position on closing fees? 26 A. That's what he told me. 27 Q. Now, you've been the general manager there over at 28 29	1 2 3 Q. Have you ever read it before? 4 A. No, I have not; first time I ever seen it. 5 Q. Is Toyota of -- I mean Honda of Easley a member of 6 the South Carolina Automobile Dealers Association? 7 A. Yes. 8 Q. Do you pay anything to belong? 9 A. I do believe there is a fee. I'm not sure what it 10 is. 11 Q. How long have you been a member? 12 A. It -- we were already a member when I got there. 13 I'm not sure. 14 Q. You were? 15 A. Rub? 16 Q. You were already a member when you got there? 17 A. Yeah. 18 Q. What other mail have you received from SCADA? You 19 said you get letters from them from time to time. 20 What other letters? 21 A. Topics, is that what you're looking for is what my 22 letter says? 23 Q. Let me rephrase my question. 24 A. Okay. All right. 25 Q. Do you get -- have you gotten communications 26 before from the South Carolina Automobile Dealers 27 Association concerning closing fees? 28 29

Page 129	Page 131
1 2 3 A. Not to my knowledge. 4 MR. SPEARS: 5 Let's mark this as Plaintiffs' 5. 6 (EXHIBIT NUMBER 5 MARKED) 7 (OFF THE RECORD) 8 EXAMINATION RESUMED BY MR. SPEARS: 9 Q. This letter was sent to you after the litigation 10 started. Do you not remember reading it or seeing 11 it? 12 A. I do not. 13 Q. Who at your dealership would receive the bulletins 14 and mailings from SCADA, S-C-A-D-A? 15 A. I'd get them in the general mail. I think they're 16 addressed to Chuck Colson most of the time, but 17 they still would come in. I would be the one, if 18 they got opened, opened them. 19 Q. You remember that they are addressed to Chuck 20 Colson? 21 A. Yes. 22 Q. But you would open them? 23 A. Uh-huh (affirmative). 24 Q. And you would read them? 25 A. Not -- not very often. 26 Q. Sometimes you'd just chunk them? 27 A. Sometimes I'd take a quick look at it and chunk 28 29	1 2 3 A. I don't recognize the name Pat Watson. 4 Q. You do remember talking to someone on the phone, 5 but you don't know who that person is? 6 A. That's correct. 7 Q. And even after the litigation started, you did not 8 find this document marked as Plaintiffs' Exhibit 5 9 to be particularly interesting to you about the 10 closing fee, even though you were being sued over 11 closing fees? 12 A. I don't remember ever seeing this document. 13 Q. But you don't deny that it came in? 14 MR. BECKER: 15 Mike, I don't know that we produced this document. 16 17 MR. SPEARS: 18 You didn't. 19 MR. BECKER: 20 Okay. I didn't want you to misunderstand that. 21 MR. SPEARS: 22 Oh, no. I know where it came from. 23 WITNESS ANSWERS: 24 A. It appears to be the same thing that's in the -- 25 or close to the same thing that's in the South 26 Carolina statute. But this particular document, I 27 don't remember seeing it. I do know that we pay a 28 29
Page 130	Page 132
1 2 3 it, yeah. 4 Q. In regards to Plaintiffs' Exhibit 4 and 5 Plaintiffs' Exhibit 5, are you denying that you 6 ever received them, or are you merely saying you 7 don't recall? 8 A. I don't recall. 9 Q. You might have received them, you may not? 10 A. If we're a member and they're sending them out, we 11 may have received them, yeah. 12 Q. But you just don't specifically remember? 13 A. Not those, huh-uh (negative). 14 Q. Now, do you remember any other documents from 15 SCADA other than these two documents? 16 A. I remember -- like if I had to pick a document 17 that I could remember, there was one that had a 18 lot of people's pictures in it where they had been 19 to a SCADA meeting. And one of the car dealers in 20 town and his wife was in it and I saw his picture 21 and I remember seeing it mainly because of that. 22 So -- and that was about the one I can tell you I 23 remember. 24 Q. Well, about how often do you receive 25 communications from SCADA? 26 A. Not really sure. 27 Q. Have you met or talked with Pat Watson? 28 29	1 2 3 \$10 fee, yeah. 4 EXAMINATION RESUMED BY MR. SPEARS: 5 Q. Well, let me ask you in order. 6 A. Okay. 7 Q. Do you pay a \$10 fee? 8 A. Yes. 9 Q. Do you pay it annually? 10 A. Yes. 11 Q. Do you disclose the fee on the customer's sales 12 contract, the closing fee? 13 A. The closing fee that we charge? 14 Q. Yes. 15 A. Okay. Yes. 16 Q. Do you disclose it in a conspicuous location in 17 the dealership? 18 A. Yes. 19 Q. Do you on that disclosure indicate that it is as 20 an offset for costs and expenses incurred? We'll 21 go through that document. 22 A. Yeah. I can't remember the wording of it, you 23 know. 24 Q. And do you include the closing fee in the price of 25 any vehicle that you advertise for sale? 26 A. Yes. It -- advertise -- let's see, hold on. For 27 sale -- the vehicle includes the closing fee, the 28 29

Page 133

1
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3 price.
4 Q. So any time you advertise a vehicle in any way,
5 shape, or form, you include, and have since 2000,
6 the closing fee in the price?
7 A. And when you say include, what do you mean?
8 Q. In other words, if you put \$15,399 in there and I
9 want to go buy it from that, do you sell it to me
10 for that or do you add the closing fee on top?
11 A. Well, you're talking about the language in the ad
12 or you're talking --
13 Q. I'm talking about the language in the ad, which
14 we're going to get to.
15 A. Okay.
16 Q. I mean I've got all your ads.
17 A. Okay. To my knowledge, we have not advertised the
18 car and added the closing fee on top of it.
19 Q. Excuse me. Don't you say in your ads that, "The
20 above price does not include tax, tags, and
21 closing fees"?
22 A. Say that again now.
23 Q. Don't you say in your ads with a little asterisk
24 by it, "The above price does not include tax,
25 tags, and closing fees, or procurement fees"?
26 A. The ads that I recall, I don't remember any of
27 those as far as that added to it. I know some of
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Page 134

1
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3 the ads we supplied you had no disclosure, if
4 that's what you're talking about.
5 Q. We'll go to that.
6 A. Okay. All right.
7 Q. When you decided to go from one ninety-nine to two
8 forty-nine, a \$50 increment, you've told me before
9 that that had to do with 9-11, which I assume
10 meant a decrease in sales of cars, those sorts of
11 things?
12 A. Just tough times, you know. Around those times,
13 it's -- business was, you know, kind of tough.
14 Q. So sales had gone down?
15 A. Yeah. Sales go down.
16 Q. So because sales had gone down, you weren't making
17 as much money?
18 A. That had -- it did affect our sales, yes.
19 Q. And your sales affect your income?
20 A. Yes. You still had the same amount of people as
21 far as expense.
22 Q. Employed there?
23 A. Uh-huh (affirmative).
24 Q. Did you not trim down your employee list after 9-
25 11?
26 A. You know, I don't -- I couldn't tell you who we
27 let go or who we didn't let go.
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Page 135

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3 Q. You don't know if you decreased expenses?
4 A. The expenses rise from, you know, month to month
5 over a year period of time is what I guess I was
6 making a point at.
7 Q. They go down sometimes, too, if you fire people,
8 don't they?
9 A. They -- well, they could.
10 Q. I mean they don't always go up, do they?
11 A. Expenses?
12 Q. Yeah. If you take cost-cutting measures and you
13 fire people --
14 A. Right.
15 Q. -- whether it's in parts or autos or sales or
16 accounting or something, you can decrease costs,
17 can't you?
18 A. Right. There are -- yes. There are many ways to
19 decrease costs, yeah.
20 Q. Now, what are they ways you have to increase
21 income?
22 A. Well, you can sell more cars would probably be the
23 single best way, I guess the more cars you sell,
24 which could -- could increase income. But --
25 Q. You can also sell more parts, can't you?
26 A. You could also sell more parts.
27 Q. And you could do more service?
28
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Page 136

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3 A. Yes, if your service is -- you know, that would be
4 the main sources.
5 Q. We've pretty much covered it, haven't we?
6 A. As far as --
7 Q. You can sell more cars, you can sell more parts,
8 and you can do more service?
9 A. Yeah. I mean there's -- that's the main force of
10 the income there. That's -- yeah.
11 Q. Can you think of any other income?
12 A. That's not included in service and parts and sales
13 -- that's where it pretty much comes from,
14 service, parts, and sales.
15 Q. Now, let's separate on this issue that you brought
16 up of sells more cars.
17 A. Uh-huh (affirmative).
18 Q. That's the chief way to increase your
19 profitability, right?
20 A. Well, it could be a process.
21 Q. What do you mean?
22 A. Meaning that, you know, you can be growing and --
23 Q. What can be growing?
24 A. Your -- your staff, your sales staff, your sales
25 management because you could add more people.
26 Q. I'm sorry; I didn't mean to confuse you.
27 A. Okay.
28
29

34 (Pages 133 to 136)

Page 137	Page 139
1 2 3 Q. And I apologize if I did. I'm not talking about 4 your costs. 5 A. Okay. 6 Q. I'm talking about your income. Okay? 7 A. Okay. All right. 8 Q. When we talk about the three ways to increase your 9 income, you told me that you don't know of any 10 other ways to increase income other than to sell 11 more cars, sell more parts, give more service. Am 12 I right? 13 A. The best I can think of as of this minute, that's 14 the main source, yeah. 15 Q. If you can think of anything else -- 16 A. I can't -- right now I can't think of anything 17 else. 18 Q. Then what I asked you to do is let's just talk 19 about one of those items. 20 A. Okay. 21 Q. Let's talk about selling more cars. 22 A. Okay. 23 Q. And I'm not talking about the cost to sell the 24 cars, I'm talking about selling more cars. Okay? 25 A. Okay. 26 Q. Now, let's divide the selling more cars issue into 27 two separate categories here. Let me give you the 28 29	1 2 3 okay, the closing fee being a separate item that 4 is -- and I'm just going to say it's two ninety- 5 nine. Now, do you understand what I'm talking 6 about when I talk about the standalone deal that 7 doesn't include the closing fee? 8 A. I understand you're separating it -- the two, yes. 9 Q. Now, the gross profit that you get from the 10 standalone deal -- and I'm talking about used 11 cars or new cars, do you ever sell a car in a 12 standalone way where you sell it for less than you 13 paid for it? 14 A. Yes. 15 Q. Is that in the new car side predominantly or is 16 that in the used car side? 17 A. We sell a car at a loss is basically what you're 18 saying? 19 Q. From what you paid for it. 20 A. Yeah. Both sides. 21 Q. With what frequency does that occur? 22 A. A fair amount of time since I'm not -- I would 23 just kind of have to guess at that. I would -- I 24 don't know exactly, you know, how much -- how many 25 cars we sold for a loss and how many cars we sold 26 for a profit. But it happens regularly that we 27 sell them for a loss. 28 29
Page 138	Page 140
1 2 3 categories and see if you understand. Okay? 4 A. Okay. 5 Q. There's the standalone deal of you paid something 6 for the car and you're going to sell the car for 7 another number, a different number than what you 8 have in the car. You understand? 9 A. Uh-huh (affirmative). 10 Q. I'm going to call that the standalone deal. All 11 right? 12 A. Okay. 13 Q. If I use an example, is it going to confuse you? 14 I mean if you paid 8,000 for a car and you sell it 15 for 10,000, could I say within that that your 16 margin then is \$2,000? 17 A. And that would be describing the standalone deal? 18 Q. The standalone -- 19 A. Yeah, the -- so you're referring to the gross 20 profit made on a separate car? 21 Q. Correct. 22 A. Okay. I can understand that. 23 Q. Now, the second part of that deal -- the first 24 part is the standalone, and we referred to the 25 gross profit. 26 A. Right. 27 Q. The second part of that deal is the closing fee, 28 29	1 2 3 Q. Regularly? 4 A. Yes. 5 Q. Would you say one percent, five percent? What 6 percent of the cars that you bought do you sell 7 for a loss on the standalone deal? 8 A. On new cars, it could be 30 or 40 percent. 9 Q. And on used? 10 A. It would be less -- it would be less, but I would 11 say best guess I could take is 20 percent. 12 Q. What would cause you, knowing what you had paid 13 for a new car, to sell it for less than you bought 14 it for? 15 A. Used cars -- you could trade for a car. 16 Q. Excuse me. 17 A. Okay. I'm sorry. 18 Q. I'm asking you about new cars and -- 19 A. Oh, you -- okay. On new cars, it would have a lot 20 to do with Honda's allocation system about turn 21 and earn. 22 Q. Tell me about the turn and earn allocation system. 23 A. Basically we compete for inventory with all the 24 dealers in our zone. There's a ballpark of a 25 hundred plus dealers and depending on how many 26 cars we sell, we -- allocates how much inventory 27 we're going to get. It's -- that would be one 28 29

Page 141	Page 143
1 2 3 reason. 4 Q. Let's explore that for a little while. 5 A. Okay. 6 Q. And I'm just trying to write down what you said. 7 Under the turn and earn program, you compete with 8 approximately a hundred other dealers for 9 inventory. And depending upon how many cars you 10 sell, it determines your future inventory? 11 A. Yes. 12 Q. I got that right? 13 A. Yes. 14 Q. Now, this is a program by Honda International? 15 A. American Honda. 16 Q. You have a franchise agreement with American 17 Honda; do you not? 18 A. Yes. 19 Q. And what control, guidelines, rules, policy, 20 whatever does Honda America or -- what do you call 21 it, American Honda? 22 A. American Honda. 23 Q. American Honda? 24 A. Uh-huh (affirmative). 25 Q. What policy, rules, regulations, whatever, do they 26 set that you're required to follow in order to 27 remain a Honda dealership in Easley? 28 29	1 2 3 Q. Of course that's not what I asked you. 4 A. All right. 5 Q. I asked you, did they set any limits, either low 6 limits or high limits, on how much you can charge 7 for any given car? Is there a range or a 8 percentage? 9 A. Not to my knowledge. 10 Q. So when you buy a car from American Honda -- and 11 that's who you buy it from? 12 A. Uh-huh (affirmative), yes. 13 Q. Where are they located? 14 A. California is the main office. 15 Q. And where do your cars that get to your showroom 16 come shipped from? 17 A. Various places all over the United States and 18 Japan, different cars. 19 Q. Your contract allowing you to be a Honda 20 dealership with Honda had no constraints, so far 21 as you are concerned, on the price you can charge 22 for the cars that you sell, the Hondas that you 23 sell, correct? 24 A. My understanding -- that's my understanding. 25 Q. Then what requirements do they put on you, 26 American Honda, in regards to the cars of theirs 27 that you sell? What standards do you have to 28 29
Page 142	Page 144
1 2 3 A. What is in -- under the franchise agreement; is 4 that what you're saying? 5 Q. Roughly. I've got the franchise agreement. 6 A. Okay. 7 Q. But I want to know what the general manager 8 thinks. Do you want me to be more specific? 9 A. Yes, because I don't think I've ever read the 10 franchise agreement, or -- 11 Q. You, the general manager, have never read the 12 franchise agreement? 13 A. Or had a copy of it. 14 Q. Really? 15 A. Uh-huh (affirmative). 16 Q. Are you in any way controlled on the prices you 17 can charge for the new cars that you sell, the new 18 Hondas that you sell by American Honda? 19 A. And when you say control, what do you mean by that 20 exactly? 21 Q. Are there limits? Can you sell them for anything 22 you want to or are there minimums and maximums set 23 by American Honda or in any way any price 24 controls? 25 A. We could sell them for a profit or we could sell 26 them for a loss. They -- they don't really 27 dictate that we can't do either. 28 29	1 2 3 maintain? What policies do you have to follow? 4 What reports do you have to give American Honda? 5 A. And does this refer to the standalone deal? Is 6 that what you're referring to? 7 Q. No. Now I'm just talking in general. 8 A. Oh, in general. What requirements does American 9 Honda -- see, I'm confused. We were talking about 10 inventories and now we're talking about what 11 requirements Honda -- are you talking about in 12 terms of the inventory? 13 Q. You know, let's come back to this -- 14 A. Okay. 15 Q. -- because I've got the franchise agreement. 16 A. Okay. 17 Q. And that's going to take us several hours, but 18 I'll go over that with you. Okay? 19 A. Okay. 20 Q. On the turn and earn program, tell me about that. 21 You've already told me that you compete with all 22 the other dealers for inventory. 23 A. Okay. 24 Q. And depending on how many cars you sell, whether 25 it's for a profit or a loss -- 26 A. Right. 27 Q. -- that determines your future inventory and 28 29

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3 that's a policy from American Honda, right?
4 A. Right.
5 Q. Tell me how that works.
6 A. I don't know the formula a hundred percent that
7 they use, but it has to do with how well you do as
8 far as it -- they even break it down into the
9 different models. So, for example, you know, if
10 we sold Civics real well compared to the other
11 dealers in the zone, maybe -- here's the dealers
12 in the zone and we're about halfway and were going
13 to get about a medium allocation of Civics. If
14 we're way up in the top, we'll get a better
15 allocation of Civics based on sales.
16 Q. So this is not only a number of cars you're going
17 to get, it is a specific allocation of types of
18 cars within a number?
19 A. That's right.
20 Q. And some cars you're more favorable toward getting
21 because they're easier to sell and some you'd
22 rather not get? Are there some loss leaders or
23 poor sellers that you'd rather not get?
24 A. Well, you want everything. Nobody wants to have
25 too many I guess of one thing, and you don't
26 really want to have too less of certain cars
27 either. It's --
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3 Q. If you call it turn and earn, what do they call
4 it?
5 A. I think it's kind of common that when people talk
6 about it, they call it turn and earn. It's kind
7 of like a term.
8 Q. Are you somewhat penalized by American Honda if
9 you don't turn many cars by not earning much more
10 inventory?
11 A. Well, I don't know if you're penalized and --
12 they're -- I think they're trying to be just fair
13 to everybody. And if you're a person that sells a
14 lot of cars, then they want to give you what you
15 need. If you're not selling a lot of cars, they
16 don't want to overload you either. I don't feel
17 like they penalize, you know, but we need a
18 certain amount of cars.
19 Q. But you don't need too many?
20 A. That's right.
21 Q. And you don't need too few?
22 A. That's right.
23 Q. You need just the right amount of cars?
24 A. It's a everyday balance, everyday backlash.
25 Q. So to get just the right amount of cars and the
26 right amount of mix, you need to do well in the
27 turn and earn competition?
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3 Q. So you want a healthy mix?
4 A. Huh?
5 Q. You want a healthy mix?
6 A. Yes. Yes.
7 Q. And to maintain that healthy mix, you have to do
8 well in the turn and earn program?
9 A. Yes. Yes.
10 Q. Now, the turn and earn program from American Honda
11 says -- by its title, it seems to imply you need
12 to turn over your inventory in order to earn more
13 inventory?
14 A. Well, I'm not sure that's the name of the program.
15 That's just my terminology. When I say turn and
16 earn, that means we -- the more cars we sell, the
17 more cars we earn.
18 Q. Do you necessarily want to earn more cars?
19 A. In general, we do.
20 Q. You don't every worry about being overloaded with
21 inventory?
22 A. Sometimes we do. It's a -- it changes.
23 Q. Well, the term, T-E-R-N, turn, T-U-R-N, means
24 what, sell?
25 A. Sell.
26 Q. And the term earn means receive more inventory?
27 A. Uh-huh (affirmative). Allocation, yeah.
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3 A. Uh-huh (affirmative).
4 Q. And that competition is between about a hundred
5 Honda dealers?
6 A. Yeah.
7 Q. Have you ever done poorly in that and got less
8 than you wanted?
9 A. We've been up and down.
10 Q. Is the answer yes?
11 A. Yeah, it does.
12 Q. Sometimes you've done poorly?
13 A. Sometimes we've done poorly.
14 Q. Sometimes you've done well?
15 A. Sometimes we've done well.
16 Q. And you got more cars?
17 A. We get more when we do well than we would have if
18 we didn't do well.
19 Q. Is this a monthly program that's reviewed monthly?
20 A. Yes. Yeah.
21 Q. So every month you may get the benefit of doing
22 well under the turn and earn program or you may
23 not get the cars you want the following month?
24 A. Yes. It could -- yeah, depends on the month.
25 Q. Is this an inventory replacement program or can
26 you actually enhance and expand your inventory if
27 you continually do well on turning the cars?
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3 A. Well, yes. If you continue to outperform the
4 other dealers, you could enhance -- the more cars
5 you get.
6 Q. So let's go back to what brought us there.
7 A. Okay.
8 Q. I was talking about the standalone deal. You told
9 me that you take a loss on 30 to 40 percent of the
10 cars that you sell which are new cars. And I
11 asked you, what would cause you to sell a car for
12 less than you pay for it? And you mentioned one
13 of those things would be the incentives from the
14 turn and earn program. Do you remember that?
15 A. Let me think through that for a second. Okay, I
16 agree with that, yeah.
17 Q. What else would cause you to sell a car for less
18 than you paid for it? I mean you can always say
19 no, can't you?
20 A. Yeah. You can always say no, yeah.
21 Q. So if you had the right to say no, we're losing
22 money on that car, why would you ever sell a car
23 for less than you paid for it?
24 A. Well, it -- a lot of it is -- maybe it's just the
25 -- kind of back to the turn and earn. If you've
26 -- you know, it kind of -- yeah, it's -- there
27 could be other reasons, but that's the key thing
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3 there.
4 Q. The turn and earn?
5 A. To have inventory. I guess a example would be if
6 we didn't have any cars in stock, we'd be in bad
7 shape, you know, to sell when other dealers had a
8 lot of cars.
9 Q. I couldn't agree with you more.
10 A. Yeah.
11 Q. So can you, as you stand here right now, think of
12 no other reason you would sell a car for a loss
13 other than to compete in the turn and earn
14 program?
15 A. Honda gives us a number that we need to hit or
16 they put a number out there monthly that they
17 would want to hit. Each dealer would be assigned
18 a different number monthly and there's -- you
19 know, there's a wanting to hit that number.
20 Q. Well, that's part of the turn and earn program,
21 isn't it?
22 A. Basically, so the car --
23 Q. I'm just trying to be complete here. Can you
24 think of any other --
25 A. A car's demonstrator, maybe it has miles on it.
26 Q. Now, wait a minute. Do you really want to call a
27 demonstrator as a car that you're selling at a
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3 loss when you put miles on it?
4 A. Well, when we sell a car for less than we pay for
5 it is what I was assuming you were talking about.
6 What would be the reason? And my -- one of the
7 reasons would be, you know, if we had a car out
8 there that had 4,000 miles on it, we would sell it
9 -- possibility you'd sell it for a loss.
10 Q. Well, yeah, but you've charged off as a business
11 expense the demo model -- the demo miles; have you
12 not?
13 A. We don't charge anything against demos. When we
14 sell them, we have the same thing in them that we
15 did when we purchased the car.
16 Q. You don't write off the cost of demos as an
17 expense of the business? Do you drive a demo?
18 A. Uh-huh (affirmative).
19 Q. Do you drive it for free?
20 A. I get taxed on it.
21 Q. You get taxed on it as supplemental income?
22 A. Uh-huh (affirmative).
23 Q. But the dealership doesn't take a charge-off in
24 any regards for giving Don a car to drive?
25 A. Not a charge-off or a write-down or anything like
26 that. When we sell the car, we may lose money.
27 Q. I understand you may lose money.
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3 A. Yeah.
4 Q. You're saying that they don't -- you at Easley
5 Honda do not make a charge-off for demos?
6 A. Huh-uh (negative).
7 Q. And you don't take an expense on the expense side
8 or cost side of your dealership for the expense of
9 demos for you and other supervisory personnel who
10 may drive one?
11 A. No.
12 Q. You don't?
13 A. And I don't really recollect any dealer I've ever
14 worked at to do that, to my knowledge.
15 Q. So how do you get the right to have a demo? Do
16 you decide that?
17 A. It's -- I think it would be considered a benefit,
18 employee benefit.
19 Q. Do you decide it?
20 A. Do I decide it? It's offered as part of your
21 compensation package.
22 Q. By who?
23 A. By your employer.
24 Q. What's his name?
25 A. J.L.H., Hendrick Investment.
26 Q. And they say, "Don, you come to work for us, we'll
27 give you a salary and we'll give you a demo"?
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3 A. That's right.
4 Q. Who else gets demos at Easley Honda?
5 A. We have a -- Mike Sheltra that --
6 Q. Just a number. I don't need the --
7 A. Oh, a number?
8 Q. Yes.
9 A. Me and Mike Sheltra.
10 Q. Two people?
11 A. Two people.
12 Q. So that's two cars. And how long do you all drive
13 a demo?
14 A. You try to keep it around 5,000 miles or less.
15 Q. So would that be six months or a year, or how long
16 would that be?
17 A. It could vary, depending on driving and things.
18 But usually, say, three a year for me.
19 Q. You get three different cars a year that you drive
20 as demos?
21 A. Uh-huh (affirmative).
22 Q. And sometimes those cars are sold at a loss from
23 what you paid for them?
24 A. Yes.
25 Q. But to your knowledge, that's just part of your
26 benefits and you're taxed on it?
27 A. Yes. I am taxed on it, yes.
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3 from attempting to sell a demonstrator as a new
4 car? And have you ever tried to represent a
5 demonstrator as a brand new car?
6 A. We don't represent them as brand new cars. We
7 represent them as what they are, you know.
8 American Honda looks at them as long as they've
9 got less than 6,000 miles as a new car as far as
10 all the programs and benefits.
11 Q. Well, you never take them beyond six, do you?
12 A. No, we don't do that.
13 Q. You make a point to avoid that?
14 A. Yeah. You wouldn't want to do that.
15 Q. So you drive them under 6,000 miles so that
16 American Honda won't show them as a used car?
17 A. Well, so if American Honda has a program like a
18 1.9 percent interest rate, you don't want the
19 person buying it to be kicked out of that program
20 is more like what the intent of it is. You know,
21 you don't want them to lose that.
22 Q. I've got two types of causes for selling a car for
23 less than you pay for it. Now, the demonstrators
24 are a maximum of six cars a year, right?
25 A. That sounds about right.
26 Q. So that isn't really contributory to your 20, 30,
27 40 percent of lost sales on the standalone deals?
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3 Q. If you're taxed on it, then of course it's shown
4 to you as a benefit from somebody, right?
5 A. Yeah. I'm -- I think that's the way it is, yes.
6 Q. And that would come from J.L.H. Investments? They
7 gave you the permission to do it?
8 A. That's right.
9 Q. So you don't think J.L.H. Investments would write
10 off the cost of your demo if you're being taxed on
11 it?
12 A. I don't know what they do at the management
13 company. I know on our financial statements, we
14 don't write anything off.
15 Q. At the dealership?
16 A. At the dealership, yeah.
17 Q. But you don't know about if J.L.H. --
18 A. I don't know what, yeah, happens up there.
19 Q. There is an actual program that provides for the
20 selling of demonstrators at less than cost, isn't
21 there?
22 A. An actual program from where?
23 Q. You know when you drive a demo that you're going
24 to depreciate the value of the car by the mileage
25 you put on it, don't you?
26 A. I know that it's susceptible to losing money.
27 Q. Well, do you know of any law that prevents you
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3 A. Uh-huh (affirmative).
4 Q. So the only other one you can think of is the turn
5 and earn program, right, that contributes --
6 A. That -- it jumps out at me, yeah, that that's the
7 main one.
8 Q. Well, we've gone all the way down to the demo
9 contribution. Isn't the main one turn and earn
10 that causes you to sell cars at a loss?
11 A. That's the main one.
12 Q. And the secondary one is the demos that you and
13 one other guy drive. Can you think of a third
14 reason?
15 A. Not right at this moment.
16 Q. So now, the new cars at a 30 to 40 percent rate
17 selling at a loss is largely caused by the turn
18 and earn program which is a program whereby you
19 compete with a hundred other dealers for
20 inventory. And you have to turn the cars in order
21 to replace them or increase them for future
22 inventory, right?
23 A. Uh-huh (affirmative).
24 Q. Now, if that is the sole and exclusive reason why
25 -- and we understand the demonstrators -- why you
26 would sell a car at a loss, then this is a loss
27 you have chosen to take in hopes of a future
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Page 157

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3 profit; is it not?
4 A. To be able to compete in the future, like I said,
5 you know, there are times if you don't have the
6 cars you can't even compete with the competition.
7 Q. True. If you have nothing to sell, you can't sell
8 them?
9 A. Yeah, or even if you're limited.
10 Q. So you've made the business decision because of
11 the turn and earn program that sometimes it's
12 better to take a loss on some older cars. They
13 may be the same year, but they've been there
14 longer, so that you can get future inventory?
15 A. Yeah. Yes. We're -- yeah, we're trying to
16 compete and chase the Honda number.
17 Q. And by doing this, taking a loss in the turn and
18 earn program, you hopefully benefit from it by
19 increasing future inventory?
20 A. You benefit by that and plus the -- probably the
21 biggest single thing, you've got to be
22 competitive. I can't sit there with one Civic in
23 stock when, say, Breakaway Honda's got a hundred
24 and fifty of them, you know.
25 Q. Well, that's the benefit I'm talking about.
26 A. Yeah.
27 Q. The hope of selling something for more in the
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Page 159

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3 A. You know, you're talking about Hondas now.
4 Q. I know.
5 A. They're very limited in color.
6 Q. You can say no if you want to.
7 A. They -- yeah, that's -- the Honda -- not with the
8 way they build cars.
9 Q. Let's go to your used cars. You have about a 20
10 percent loss. You still want to say that?
11 A. I say I don't know what it is. I think it's -- in
12 my opinion, it's at least that. And it --
13 Q. So by number, you think 20 percent of the used
14 vehicles that you sell, you sell for a loss?
15 A. Well, the percentage could be bigger, but I'm just
16 going by your definition of the standalone deal.
17 Q. I understand. I am.
18 A. I'm not talking about wholesale cars that's --
19 that we've sold.
20 Q. I'm not talking about the ones that go to auction.
21 A. That could double and triple that number, you
22 know.
23 Q. Again, I am not talking about the ones that you
24 send to auction.
25 A. Okay.
26 Q. I'm talking about the ones that you keep and try
27 and resell.
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Page 158

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3 future?
4 A. Yeah. Right.
5 Q. Don't you really take your slow movers that have
6 been around for a little while and maybe take a
7 loss on those so you can replenish them with
8 potentially more sellable cars?
9 A. You're talking about new cars still?
10 Q. Yes.
11 A. There's no thought process like that.
12 Q. Oh, it's not?
13 A. We would -- we have taken losses on cars that
14 we'll deal a transfer in from another dealer.
15 Maybe we don't even have the car and bring it in
16 and sell it for a loss.
17 Q. But that adds to your turn and earn inventory?
18 A. That helps us.
19 Q. If you've got a bright orange car, you might take
20 a loss on that if you haven't been able to sell it
21 for a long period of time?
22 A. We don't have any bright orange cars.
23 Q. That's not a good example.
24 A. Yeah.
25 Q. If you ever get a pukey looking car that you just
26 go, "Yuck, we had to take that. Let's try and
27 mark it down and get rid of it."
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Page 160

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3 A. Right.
4 Q. So we agree?
5 A. Yes.
6 Q. As to what we're talking about?
7 A. Yeah. I know exactly we're talking about
8 standalone deals.
9 Q. Now, what would cause you to sell a used car for
10 less than you paid for it?
11 A. The simple fact that it's been in inventory too
12 long could -- it could be one of the causes.
13 Q. When Honda gives you a number monthly that you're
14 assigned -- and it's a different number for each
15 dealership?
16 A. Uh-huh (affirmative).
17 Q. Do you know roughly what number they give you?
18 A. I'm sorry; what now?
19 Q. What number does Honda give you?
20 A. For our monthly number?
21 Q. Yeah.
22 A. It's different. Normally they give us a number,
23 you know, and the number they give us is just
24 individual to us, yeah.
25 Q. So what is it?
26 A. This month it's 54.
27 Q. What was it last month?
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40 (Pages 157 to 160)

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3 A. Forty-eight.
4 Q. And is that directly related to the number of cars
5 you sold in the preceding month?
6 A. Now it's a little hard to understand it because of
7 what's happened in the last few months with the
8 prices of the banking and systems like that.
9 Q. Well, let's forget the --
10 A. Okay.
11 Q. Traditionally if you sold 48, were you assigned
12 48?
13 A. Yeah. Traditionally I think they -- they use a
14 period longer than a month. Traditionally, not
15 talking about now, but back, it was usually right
16 at like a 55-day period.
17 Q. And that would determine your assigned number of
18 targeted sales for the upcoming month, assigned
19 number?
20 A. Well -- assigned number. Okay; I'm sorry. I was
21 confused on that then. Assigned number, normally
22 they give that to us -- they give it to us for the
23 whole year in January.
24 Q. I'm sorry. You said Honda gives a number that you
25 need to hit monthly.
26 A. Uh-huh (affirmative).
27 Q. And each dealer is assigned a different number?
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3 numbers? In other words --
4 A. Yes.
5 Q. -- five hundred and twenty-six and we apportion it
6 X in January, Yes. in February, and --
7 A. Yeah. Every month's a different number for 12
8 months.
9 Q. On one sheet that comes in once a year?
10 A. Uh-huh (affirmative).
11 Q. Which if you add them all up, it would be the
12 total shown at the top?
13 A. There would be a total, what they would call your
14 Honda or president's award objective.
15 Q. If you sold those, you get the president's award?
16 A. Well, it's more to it than that, but that -- that
17 would be one of the qualifiers.
18 Q. What do you get if you get the president's award
19 from American Honda?
20 A. Recognition. Yeah, you don't get any money or
21 anything.
22 Q. Do you get a free trip?
23 A. No.
24 Q. You just get a plaque?
25 A. You get some -- like a trophy and some doormats
26 that say you're a president's award winner, things
27 like that.
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3 A. That's correct.
4 Q. Does American Honda give you a number that you
5 need to hit monthly?
6 A. They did every year I've been there until this
7 year as far as they would give it to you in
8 advance for the whole year.
9 Q. And you divided that number by 12 and figured out
10 what you needed to do monthly, or did once a year
11 did they say, "Here's what you got to do this
12 January, this February, this March, this April"?
13 A. They'll -- no. They'll -- I mean every month,
14 your Honda number's your Honda number. Some
15 months -- you know, it's a difference of January
16 and August as far as sales goes.
17 Q. Wait a minute. Let's don't get confused, or let's
18 don't confuse me.
19 A. Right.
20 Q. Do you get the number in monthly or do you get the
21 number in once a year?
22 A. It's been -- it's been once a year until this
23 year.
24 Q. Well, let's forget about this year. The number
25 comes in once a year?
26 A. Uh-huh (affirmative).
27 Q. Does that number have a month beside 12 different
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3 Q. Is it worth trying for?
4 A. Yes. Yeah.
5 Q. Why?
6 A. It's all about just that recognition.
7 Q. Who cares?
8 A. I care.
9 Q. You want the doormats?
10 A. I want the recognition.
11 Q. How does that help you?
12 A. It just -- it makes your employees all feel good
13 like, hey, we did something special because it's a
14 small percentage of the Honda dealers that will
15 make it.
16 Q. Does anybody get any extra money when you make the
17 president's award?
18 A. Not that I'm aware of.
19 Q. None of your employees, nor you?
20 A. Not on any of the pay plans, not on my pay plan.
21 Q. No bonuses?
22 A. Huh-uh (negative).
23 Q. So on the standalone cars that you sell for a
24 loss, and we understand why, if you were to add in
25 the \$299 closing fee, would you still lose 30 to
26 40 percent of your deals on 30 to 40 percent of
27 your new car deals, or would the two ninety-nine
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Page 165	Page 167
1 2 3 generally take a lot of those lost standalone 4 deals into the profit? 5 A. We don't take in account the closing fee when 6 we're making a deal. 7 Q. That is not part of -- 8 A. As far as -- 9 Q. -- whether the car was sold at a profit or not? 10 A. Whether we're going to sell or not, yeah, sell or 11 not the car. 12 Q. So you look at the car generally what you paid for 13 it, what your costs are in having it sit there. 14 That's what you have in the car and from that you 15 judge what you want to sell it for, right? 16 A. You judge, yeah, what you want to sell it for. 17 And -- 18 Q. Without consideration of the -- 19 A. And then there's the negotiation thing, you know. 20 Q. I'm going to get to that. 21 A. Yeah. It's not -- 22 Q. I'm just talking about what you want to do. Okay? 23 A. Uh-huh (affirmative). 24 Q. There's no customer in the store yet. You're just 25 sitting there going, I'm pricing my inventory here 26 getting ready for Monday morning and this is what 27 I've got in the following ten cars. Now, because 28 29	1 2 3 you've got employees. You know that there's 4 another attributable cost to that car that you'd 5 like to see reflected in what you sold the car 6 for. It's called your overhead, right? 7 A. Uh-huh (affirmative). 8 Q. Do you have a standard figure -- and if this is 9 privileged, you let me know and we'll clear the 10 room. But do you have a standard figure based on 11 the number of units that you sell annually that 12 you feel like you need to make out of each unit in 13 order to defer your costs? 14 A. We look at every deal deal by deal. 15 Q. I'm certain you do, but you know annually how many 16 cars you've got to sell to make the president's 17 club, right? 18 A. We know that. 19 Q. And not every dealership makes the president's 20 club, right? 21 A. That's correct. 22 Q. If you make president's club, you consider from 23 the recognition that you've done well? 24 A. Well, and a lot of the things with president's 25 club is how you treat your customers, so it gives 26 you a good feeling about the dealership. 27 Q. I'm sure that's true. 28 29
Page 166	Page 168
1 2 3 of the turn and earn program and what it costs to 4 run this place, I have both an incentive to get 5 rid of this car and a reason not to. One reason I 6 have to not get rid of it is I've got more in it 7 that I paid for it and that it costs to have 8 around here than I'm thinking about selling it 9 for. But I might want to sell it for less because 10 of the turn and earn program, kind of competing 11 things? 12 A. I mean that's not something we sit around and 13 think about I mean every Monday morning, you know. 14 Q. I didn't say you did. I'm just saying you know 15 what you've got in the car, correct, your costs in 16 the car? 17 A. We can -- we can look it up in our system and see 18 what we've got in each car. 19 Q. But that's not just what you paid for it? I mean 20 you paid a certain dollar amount to get the car 21 there from American Honda. That's one number, 22 right? 23 A. Uh-huh (affirmative). 24 Q. Let's call that \$10,000, if you're comfortable 25 with that. 26 A. Okay. 27 Q. But you've got a showroom, you've got lights, 28 29	1 2 3 A. Okay. 4 Q. Those are the surveys that are sent out at the end 5 and those sorts. But you say not many dealerships 6 -- not all dealerships make president's club? 7 A. That's right. 8 Q. You're happy if you make president's club. 9 President's club, you're given an annual number, a 10 goal of sales that you need to meet, right? 11 A. That's right. 12 Q. And if you meet it, along with other things like 13 customer satisfaction, you're happy, right? 14 A. If -- along with other things we'd be happy, yeah. 15 Q. Now, that number, whether it's 600 or whatever it 16 is, as far as number of units you're going to have 17 to sell, you know that that's your goal for the 18 president's club for the upcoming year, right? 19 A. Yeah. We know what our president's club number 20 is, yes. 21 Q. You also know what your projected costs are for 22 the upcoming year based on what your past expenses 23 have been, right? Everything from the shop to the 24 cleanup to jet sealing the parking lot to the 25 light bill, you already know all those as best you 26 can, as best you -- 27 A. As best you can. 28 29

Page 169	Page 171
1 2 3 Q. So you know how much of that cost you have to 4 spread out over your parts and service and car 5 sales departments, which are your only three 6 sources of income, right? 7 A. There's -- yeah, we do spread it over actually 8 four departments, parts, new car, used car, and -- 9 we have four departments it gets spread over. 10 Q. New car, used car, parts and -- 11 A. Service. 12 Q. The only think I missed was the used car, but I 13 was just talking about car sales as one 14 department, so I apologize. So new car, used car, 15 parts, and service are your four sources of 16 revenue or income. You already know your 17 projected costs for the upcoming year and you know 18 the number of units that you have to hit to meet 19 president's club. Don't you project -- don't you 20 plan in some way how to offset your costs with 21 profitability and parts or service or used cars or 22 new cars? Don't you know in regards to the car 23 section how much profit you need to make in order 24 to offset your costs on these standalone deals? 25 A. We know how much -- we have an idea of how much 26 costs or expense I guess I'd call it -- same 27 thing, right? 28 29	1 2 3 Q. Well, let's say it's a hundred bucks. 4 A. Okay. 5 Q. I'm not prying into what you -- 6 A. Okay. 7 Q. But let's say if he sells it below a certain 8 amount, he's only going to get a flat rate for 9 selling the car. Fair? 10 A. That's fair. 11 Q. If you bought the car for \$10,000 and he's going 12 to get a flat rate of a hundred dollars, then 13 you've got \$10,100 in the car, right? 14 A. We don't look at it like that. 15 Q. How could you not? That's a cost of the car. Let 16 me put it this way. 17 A. Okay. 18 Q. If you sold a thousand cars that you bought for 19 \$10,100, and you paid a salesman a hundred dollars 20 each time, you wouldn't make a thousand times a 21 hundred, you'd make nothing, because you forgot to 22 figure in that you're paying the salesman a 23 hundred dollars. 24 A. All right. 25 Q. A thousand times a hundred is a hundred thousand. 26 A. All right. Start that one over because I lost you 27 on that one. 28 29
Page 170	Page 172
1 2 3 Q. Yes, expenses. 4 A. Okay, that we're likely to incur of the month. 5 And so naturally, yes, you could say if we have 6 this much expense, then we either need to sell a 7 lot of cars or we need to make more money on cars. 8 That would be kind of the way we look at it. 9 Q. Do your salesman get paid commission or do they 10 get paid a flat rate for selling a car? 11 A. Both. 12 Q. If they sell a car at one price, they get a flat 13 rate. If they sell it at a higher price, they get 14 commission? 15 A. Yes. 16 Q. So the better they do, they might get a 17 commission? 18 A. That's correct. 19 Q. But if they sell it below a certain number, they 20 just go straight rate? 21 A. [Affirmative gesture; no verbal response.] 22 Q. That's added to the cost of the car for what 23 you've got in the car, right, because you paid 24 American Honda 10,000 for the car, now you're 25 going to pay the -- 26 A. And when you say that, what do you mean, the 27 commission? 28 29	1 2 3 Q. You pay American Honda 10,000 for car A. 4 A. Okay. 5 Q. Car A is sold by salesman D to a customer. 6 A. Okay. 7 Q. He's going to get a flat rate of a hundred 8 dollars, let's say, because he sold it a price 9 that didn't get a commission. You got me? 10 A. Uh-huh (affirmative). 11 Q. Isn't your cost in that car what you paid for it, 12 plus what you've got to pay the salesman, the 13 hundred dollars? 14 A. We don't put salesman's pay into the cost of the 15 cars. 16 Q. Where do you put -- I'm sorry. Where do you put 17 salaries and bonuses and commission? 18 A. The sales would have a -- what they call -- a line 19 on the financial statement that will say sales 20 compensation. 21 Q. Sales compensation? 22 A. Uh-huh (affirmative). 23 Q. And that's a line on the financial statement? 24 A. Uh-huh (affirmative). American Honda's financial 25 statement. 26 Q. On American Honda's financial statement? 27 A. Uh-huh (affirmative). 28 29

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3 Q. Who pays the salesmen, American Honda or Honda of
4 Easley?
5 A. Honda of Easley.
6 Q. Do you not realize when you pay 10,000 for a car
7 that's on your showroom floor and you're getting
8 ready to sell it, that you need to regain the
9 commission you're going to pay your salesman? In
10 other words, that the sales price of the car needs
11 to exceed not only what you paid for it, but his
12 flat rate?
13 A. Are you saying to me that if I sell it for 10,000
14 and I got 10,000 in it and I pay a salesman, that
15 I'm going to lose money?
16 Q. Yeah. You're going to lose a hundred bucks.
17 A. I do understand that.
18 Q. So don't you contemplate that when you let your
19 sales manager agree or disagree to the sales price
20 of a car? Don't you tell him, "We've got to get
21 our cost out of this, as well as what we paid for
22 the car?"
23 A. We don't have any discussions about where to take
24 a deal or not because of the salesperson's
25 commission.
26 Q. But yet they're all compensated out of the money
27 made by Honda of Easley and from no other source,
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3 Q. So we're back to the salesmen's commission being
4 an expense that you have in selling a car and it's
5 an expense solely and exclusively for Honda of
6 Easley?
7 A. That's correct.
8 Q. And you know what your annual sales compensation
9 is generally going to be, do you not?
10 A. It can vary on what month we're in and how many
11 cars we sell.
12 Q. I said annually.
13 A. Annual -- and that could vary on how many cars we
14 sold that year.
15 Q. Of course.
16 A. Yeah.
17 Q. But you generally know if you meet target, you
18 meet your assigned number, you know almost exactly
19 what your sales compensation is going to be, don't
20 you?
21 A. Depends on our grosses on the car in your example.
22 Q. Well, sure. If you sell them for more, you're
23 going to make more.
24 A. Right. Yeah.
25 Q. So you pay more salary, but you don't mind making
26 more, do you?
27 A. Don't mind -- don't mind making money. We're
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3 the salesmen?
4 A. Well, salespeople could -- could have money coming
5 from American Honda and they do have contests
6 sometimes for them. It's a possibility.
7 Q. Well, could it be that the flat rate that they get
8 for selling a Honda is paid to them by American
9 Honda?
10 A. Well, American Honda's money is separate than
11 Hendrick Honda's.
12 Q. I didn't say it wasn't. What does American Honda
13 pay your salesmen for selling a car?
14 A. They'll come up with programs sometimes during the
15 year that they'll have a spin they call it where
16 you -- the salesman goes on line and he puts some
17 numbers in and it tells him he made, you know,
18 whatever he made, \$50, \$500, \$200, whatever it
19 might be. And that could happen any time that
20 American Honda might feel like they need to do
21 something, you know, to get that particular car
22 line moving.
23 Q. As a regular habit and custom, does American Honda
24 pay your salesmen if they sell any vehicle, any
25 new vehicle?
26 A. Not as a regular habit, just a occasional thing
27 here and there.
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3 there. We hopefully make money, yeah.
4 Q. So if you sell the car for more than you
5 anticipated, you're going to make more profit than
6 he's going to make commission, so you're still
7 going to net more on the car. Clear?
8 A. No. Say that again.
9 Q. If you sell a car for more than you anticipated
10 and you make more profit on the car, the salesman
11 may make more commission, but his commission isn't
12 going to eat up all of your excess money that you
13 make? You're always going to make more, even if
14 you pay more commission. Clear?
15 A. You know, I'll tell you where I'm struggling is it
16 just ain't like that. You know what I'm saying?
17 It's just -- I mean I understand what you're
18 saying I think, but it just -- it don't work like
19 that.
20 Q. Do you ever pay more commission to the salesmen on
21 a car than you make on the car?
22 A. Many times.
23 Q. But I mean does it eat up everything that you
24 make? His commission, in effect, puts you in the
25 negative column on the car?
26 A. Never analyzed that.
27 Q. You don't know?
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Page 177

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3 A. I don't -- and that's what I was talking about
4 with your questions, that when a sales manager's
5 working a deal, he don't sit there thinking about
6 the salesman's going to get a hundred bucks. It
7 just -- he's thinking about should he take the
8 deal in where it's at, so -- like in a direction
9 that we don't -- we don't even participate in.
10 Q. So you don't even consider what the sales
11 commission is on a car?
12 A. Not as far as whether we take a deal or not take a
13 deal, an example of the standalone customer. We
14 don't consider that.
15 Q. And the standalone customer is the number we're
16 talking about that does not include the closing
17 fee?
18 A. Right.
19 Q. Now, if you treat the closing fee separately and
20 you make a decision on the standalone deal, in
21 other words, take it or not take it based on what
22 you paid for and you don't consider the salaries
23 and commissions --
24 A. You're too fast for me.
25 Q. On a standalone deal, meaning a deal not including
26 the closing fee, your sales manager makes a
27 decision or you make a decision on whether to
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Page 179

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3 A. Okay.
4 Q. I mean haven't we covered that? Do we need to go
5 back over it?
6 A. I don't know. I'm --
7 Q. You take a loss because you choose to take a loss
8 under the turn and earn program because of the
9 benefits that come later?
10 A. We do choose to take a loss, but the condition
11 would be we're down to the customer has finally
12 made his -- the final offer. Is he going to leave
13 the showroom? Is he not going to leave the
14 showroom and go shop somewhere else? We just have
15 to make up our mind if we're going to take the
16 deal.
17 Q. I don't question that at all.
18 A. Okay.
19 Q. But the incentive you have to take the deal that
20 you normally wouldn't take from this guy is the
21 turn and earn program that lets you replace that
22 car with more inventory later?
23 A. That would be one of the incentives.
24 Q. What is the other incentive?
25 A. What we just talked about I guess, hitting the
26 Honda number, being able to compete with dealers,
27 you know, things like that.
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Page 178

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3 take a deal or not take a deal without thinking
4 about the commission that's going to be paid to
5 salesmen on the car; is that what you just told
6 me?
7 A. That's what I just told you. They don't think --
8 they don't -- there's not -- yeah, that's not
9 going on in their mind.
10 Q. And to take or not take a deal, not including what
11 you're going to get on the closing fee, you give
12 consideration to the turn and earn program, which
13 we've discussed at length, and you have maybe six
14 cars a year on the demo situation that you might
15 take a loss on. Got it? Is that right?
16 A. I mean it's not -- not the way we think.
17 Q. I'm just quoting you. You tell me you sell 30 to
18 40 percent of your cars at a loss?
19 A. That sounds --
20 Q. You told me the prime reason that you sell them
21 for a loss --
22 A. Right.
23 Q. -- is for the turn and earn program?
24 A. Yeah, but we're talking about one deal, one
25 standalone deal.
26 Q. Well, I'm talking about all the ones you sell for
27 a loss.
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Page 180

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3 Q. Competing with dealers is to keep your inventory
4 in a competitive market to make president's club,
5 to hit your assigned numbers annually. All of
6 those are things which profit you later on by
7 taking a loss today, right?
8 A. It can be a vicious circle.
9 Q. But it's not my circle.
10 A. I know.
11 Q. It's something you and Honda have worked out,
12 right?
13 A. I know. Well, it's Honda's program.
14 Q. It's Honda's program and you participate in it and
15 sometimes you voluntarily take the choice to take
16 a loss on a car because down the road it may
17 actually help you out?
18 A. It could keep us competitive.
19 Q. So we've got that. Now, that explains all the
20 reasons why you would take the loss in a car that
21 was a new car, correct?
22 A. That I can think of right now.
23 Q. On the used cars, you've already told me you may
24 decide that you had a car too long and you may
25 sell it because it's been in inventory too long
26 and you need to get it out of there?
27 A. That could be one of the reasons.
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3 Q. Sure, it could be one. Can you think of any other
4 reason?
5 A. We made a mistake when we traded for it.
6 Q. You paid too much?
7 A. We paid too much for it and it could --
8 Q. Now, how would you make a mistake?
9 A. It's common practice.
10 Q. You have a common practice of making mistakes on
11 used cars? I'm sorry, I did not get that in the
12 production.
13 A. I know. It is a -- things that happens, I guess.
14 You get tangled up in cars that maybe you don't
15 know a lot about, you know, that --
16 Q. You don't have the 27-point check system where you
17 certify cars?
18 A. I'm not talking about that. I mean, for example,
19 if somebody came into the dealership with, I don't
20 know, a Mercedes, you know, a hundred and thirty
21 thousand dollar car -- that would be a extreme
22 example, but that's just -- you know, we're real
23 comfortable with Hondas, but when you get into,
24 you know, some models, makes, you can make
25 mistakes, you know, especially if you don't know
26 the incentive programs on them, things like that
27 or different things. It's just -- used car
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3 managers make mistakes. That's -- I guess that's
4 the point I'm trying to make.
5 Q. So you make mistakes?
6 A. And if we made a mistake, we realize we made a
7 mistake, and we -- we get a deal on it. And we
8 say, "Hey, look, if we can get out of this deal
9 and only lose \$800, let's go," you know.
10 Q. And that's a standalone deal, too?
11 A. That's a standalone deal, too.
12 Q. If you charge him a two ninety-nine fee, then
13 instead of losing \$800, you lose about \$501, right?
14 A. Uh-huh (affirmative).
15 Q. Now, when you turn in your financial statements --
16 do we have the financial statements? We haven't
17 seen any of your financial statements.
18 A. Uh-huh (affirmative).
19 Q. But you monthly get them and give them?
20 A. Yes.
21 Q. In your financial statements, your column for
22 procurement fees or closing fees comes all the way
23 down under other income and there's no other thing
24 that goes in other income but closing fees,
25 correct?
26 A. No. It just -- there's other things that could go
27 in there. I just couldn't -- I just didn't tell
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3 you exactly what it is.
4 Q. I thought you told me that although other income
5 could be in there, you don't know of anything else
6 that ever goes in there but for the closing fees.
7 A. No. There's -- other income includes adds and
8 deducts was the conversation we had.
9 Q. Well, you add -- an add would be your closing
10 fees, right?
11 A. An add would be closing fees.
12 Q. What's a deduct?
13 A. I told you -- I think we already answered this
14 question. We -- I didn't know, but I know there
15 are some other things that can be added and
16 deducted that goes in that column. My office
17 manager could answer your question.
18 Q. Is that the person more experienced and more
19 likely to know the answer to these financial
20 questions that I'm getting ready to ask you about
21 how the accounting is done, your office manager?
22 A. In details. There may be some details that she
23 could tell you better than me.
24 Q. The F portion here says I'm asking for the person
25 most knowledgeable for your accounting and
26 bookkeeping concerning the administrative fees.
27 Are you telling me your bookkeeper would be more
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3 knowledgeable than you or your office manager? I
4 don't mind.
5 A. Yeah. I -- well, I know there's other things that
6 go into the other income -- into other income and
7 other deductions than just closing fees. I just
8 couldn't tell you exactly what they are.
9 Q. And I'm asking you, because of your response, are
10 you still the person most knowledgeable on item F
11 which has to do with the accounting and
12 bookkeeping of administrative fees? See right
13 here (indicating)? You're produced for me to ask
14 questions to in regards to the person most
15 knowledgeable on accounting and bookkeeping
16 concerning administrative fees. Now are you, in
17 fact, the person most knowledgeable?
18 MR. BECKER:
19 Object to the form of the question.
20 WITNESS ANSWERS:
21 A. I'm knowledgeable. I'm like anybody. I might
22 have to go look something up to get it for you or
23 something like that, you know.
24 EXAMINATION RESUMED BY MR. SPEARS:
25 Q. Have you had adequate time to prepare to answer
26 questions today about the bookkeeping?
27 A. Yes. I've had time, although when I say something
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Page 185

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3 like I feel like I've had time. I've looked it
4 over. I've done it where I could ever concede
5 that I could answer every single question that you
6 guys had, I don't know if that would be, you know
7 -- I mean I don't know what the percentage of that
8 would be.
9 Q. Well, let me ask you this. I'm not trying to test
10 your memory.
11 A. Okay.
12 Q. But you've told me that procurement fees don't go
13 in a column called procurement fees, they go in a
14 column called other income?
15 A. That's correct.
16 Q. That we know to be true?
17 A. That's -- that we know to be true.
18 Q. You also told me under other income, you can think
19 of no other income that would go in other income
20 other than procurement fees?
21 A. Or deductions, income or deductions.
22 Q. No. Other income is income. We're going to get
23 to other deductions. That's a different column,
24 right?
25 A. Yeah. I can't specifically tell you what it is.
26 Q. Well, let's straighten out the columns since I
27 don't have the book in front of me. You have a
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Page 187

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3 and you've learned what the deductions are or you
4 learned what the other income may be, it's going
5 to be a surprise to me.
6 A. Okay.
7 Q. So I need to know now your best recollection. Can
8 you think of one single item that is deducted in
9 the -- under the other income and deductions
10 column in your nine years?
11 A. I can't think of anything.
12 Q. Can you think of any other item that's ever been
13 shown as other income in the other income and
14 deductions column other than procurement fees?
15 A. I can't think of it, I just know it's happened.
16 But I can't think of it.
17 Q. Would you say it's very infrequent?
18 A. I think we got into that.
19 Q. I don't know. Did we?
20 A. Yeah, with percentages and I gave a percentage of
21 something and it was very low.
22 Q. So what was it?
23 A. I think we said it was below ten percent. I'm not
24 sure, but it's -- I don't know. I'd be guessing,
25 but it's really low.
26 Q. Ten percent is a high number to me. If you're
27 saying ten percent of your other income is
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Page 186

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3 column that says other income, a line, a
4 horizontal line?
5 A. We have -- yeah, there's --
6 Q. It says other income?
7 A. Total dealership and there's a line of 70 some odd
8 lines. And towards the end, there's a column that
9 says other income and deductions.
10 Q. The line says other income and deductions?
11 A. Uh-huh (affirmative).
12 Q. On the same line?
13 A. On the same line.
14 Q. In regards to other income, you can think of no
15 other source of income other than procurement
16 fees, right?
17 A. That's the only one I can name.
18 Q. But you know that there are other sources of
19 deductions that might subtract from that number?
20 A. I believe that there's both income and deductions
21 that rarely and occasionally happen, you know, and
22 I just don't know what they might be without
23 researching, yeah.
24 Q. Do you know, as you sit here today -- and see,
25 this is my only chance to take your deposition.
26 A. Okay.
27 Q. When we go in front of a jury, if you've gone back
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Page 188

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3 something other than procurement fees, I would ask
4 you to test your memory again to see where it
5 could possibly come from because I only get this
6 chance to ask you this. So where could possibly
7 ten percent of your total other income come from?
8 A. Well, income and deductions is the line.
9 Q. I'm not asking you about the deductions portion of
10 the income and deductions line.
11 A. Right.
12 Q. I'm talking about income other than procurement
13 fees.
14 A. It'd be fair to say that it's below ten percent.
15 Q. I didn't ask you that.
16 A. Okay. Well, ask me again.
17 Q. What other source of income other than procurement
18 fees are shown on the other income line?
19 A. I know I've answered that before. I said I don't
20 know. Okay?
21 Q. Yet at the same time you've told me that you don't
22 know and that you can't think of any --
23 A. That's right.
24 Q. -- you've told me that those things you can't
25 think of amount to less than ten percent of the
26 total. Well, if you can't think of them, how can
27 you possibly quantify them at ten percent?
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47 (Pages 185 to 188)

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3 A. To me it sounded like a low number and I -- it's
4 very low. It's very low.
5 Q. Well, it may not be there at all.
6 A. And it is very low, yeah.
7 Q. Would you agree that it's somewhere between zero
8 and ten percent?
9 A. I would.
10 Q. Could it be between five and zero?
11 A. I don't know. I've speculated all I want to
12 speculate about it.
13 Q. The truth is you don't know of anything that is in
14 other income other than procurement fees?
15 A. I don't know exactly what is in it. I know
16 there's other stuff in it.
17 Q. But you don't know what it is?
18 A. I don't know what it is.
19 Q. Do you know for a fact there's other stuff in it?
20 A. Yes.
21 Q. And you can't give any single guess or example?
22 Who would know that?
23 A. Our office manager.
24 Q. Is it similarly true that this column called other
25 income and deductions does not have subtracted
26 from it any of your dealer expense? As you bring
27 it forward from January to February to March to
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3 year?
4 A. The fact -- what did you mention? Light bills.
5 What else?
6 Q. Any other expenses of the dealership.
7 A. Any expenses. They all have their own lines on
8 the financial statement.
9 Q. And they do not subtract from that one line that
10 says other income and deducts, that line --
11 A. Well, they don't. Yeah, they're separate lines.
12 They don't have really anything to do with each
13 other.
14 Q. Now another question.
15 A. Okay.
16 Q. That line, other income and deducts, goes straight
17 across to end of year. And it has a total there,
18 right?
19 A. Uh-huh (affirmative), yes.
20 Q. And that is the sum total of all your procurement
21 fees?
22 A. And whatever else might be in there.
23 Q. Right. And it might have some deducts from it,
24 but none of those deducts are for the normal
25 operating expenses of the dealership, correct?
26 A. When you say none of those deducts, and we don't
27 really know what those deducts are --
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3 April, you don't take the light bill or the parts
4 bill or anything off of that as a deduct?
5 A. Say that again. You're talking about where the
6 line's located?
7 Q. I think you said it was -- you've got 74 lines and
8 this is toward the bottom. It says other income
9 and deducts, and you know that the vast majority
10 of the other income is procurement fees?
11 A. Uh-huh (affirmative).
12 Q. You think there might be some other income, but
13 you can't tell me what it is?
14 A. That's correct.
15 Q. You would be guessing if you were to give me a
16 percentage, but you think there might be other
17 types of income?
18 A. Yes.
19 Q. You know there's some deducts, but you can't think
20 of any of those deducts, right?
21 A. Right.
22 Q. So can I glean from that that your other dealer
23 expenses, whether it's the guy who cleans up the
24 dealership or the light bill, none of those are
25 charged off against that column and show up in
26 that column as deducts or expenses, that column is
27 just brought forward as it is to the end of the
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3 Q. You've kind of got me over a barrel there. You
4 think there's some deducts, but you can't tell me
5 what they are. Certainly if you can't tell me
6 what they are, you can't tell me that they are the
7 net operating expense of the dealership?
8 A. Say that again.
9 Q. Do you bring the total all the way across to the
10 end of your report? Your annual report just shows
11 the total of your net operating income and deducts
12 line, true?
13 A. There's a line that -- that shows the other
14 deductions and other income, and it has a total.
15 Q. And you have supplied me with a document that
16 shows what you have made on an annual basis on
17 procurement fees?
18 A. -- supplied that.
19 Q. Now, would this be the numbers contained on your
20 other income and deduct line for the year-end
21 total for these years?
22 A. I would --
23 Q. Let me ask it again so you understand.
24 A. All right. Well --
25 Q. Would this number be included in your other income
26 and deduct line for your end of year report?
27 A. Would it be included? Yes.
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Page 193	Page 195
1 2 3 Q. And at no point or time during the year, even end 4 of year are these numbers as shown on the other 5 income and deduct line ever reduced by operating 6 expenses of the business. This line stays 7 undeducted from except for those things you don't 8 know about, which are other deducts? You 9 understand? 10 A. I'll try and understand. They're at the bottom of 11 the statement on a line by their self. 12 Q. Now, that covers how your accounting fee is 13 treated on books and records. We've covered that, 14 right? You told me how it's presented and we've 15 gone over the actual numbers that are included on 16 that line. 17 A. Yes. We've said that they're in other income. 18 Okay? 19 Q. And that other income is reported separately and 20 by itself at the bottom of the report? 21 A. That's correct. 22 Q. Both monthly and annually? 23 A. Right. 24 Q. And it's unreduced by other charges or costs? 25 A. I'm not -- that's the part I'm just not clear on 26 as far as -- 27 Q. Because you don't know or because you -- 28 29	1 2 3 going to get in every year -- 4 A. Right. 5 Q. -- or you hope that you know it? 6 A. Right. 7 Q. And you know what your projected operating costs 8 are? 9 A. Right. 10 Q. Do you divide the units into the operating cost 11 and apply that number to the number of units 12 you're going to get so that when you pay \$15,000 13 for a new car, you actually write it down as 14 18,000 because you allocate the cost over the 15 number of new units you're going to get in? 16 A. We don't look at it like that. Okay? 17 Q. So how do you allocate your expenses over your 18 units for sale in order to figure out how much you 19 need to make? 20 A. On a deal-by-deal basis we make a decision to take 21 the deal or not take the deal. 22 Q. Well, you've already told me that in every year 23 that you've been there, Toyota of Easley has made 24 a profit? 25 A. That's correct. 26 Q. If you always made a profit, then would it be fair 27 to say that you have always exceeded your expenses 28 29
Page 194	Page 196
1 2 3 A. Well, because I don't really know exactly what you 4 mean by that. I thought we settled that when I 5 said it's on a line by itself. I thought that was 6 the answer I gave. 7 Q. We do know in the standalone deals that you might 8 actually make money on the car versus what you 9 paid for the car and still overall end up losing 10 money on the deal, right? 11 A. How so? 12 Q. Because you've got other costs attendant to that 13 car other than the mere price you paid for it. 14 You've got a building that it's in, you've got a 15 light bill, you've got all those other things 16 which are expenses. 17 A. Well, yeah. 18 Q. You know, let me think of something here. 19 A. Okay. 20 Q. Maybe I'm so unfamiliar with the practice or the 21 business of cars that I might have neglected 22 something. When you pay for the car from American 23 Honda, are you already contemplating your cost of 24 doing business and that's included in the cost you 25 assign to that car? 26 A. And what would you mean by that? 27 Q. Well, you know the certain number of units you're 28 29	1 2 3 by your income? Isn't that the definition of a 4 profit? 5 A. Yeah. Since we have -- yeah, the overall 6 dealership, parts, service, sales, new and used, 7 would have -- some departments could lose money 8 and other departments could make up. But at the 9 end of the year, yeah, you have a profit. 10 Q. But you have always had a profit since you've 11 been -- 12 A. That's correct. 13 Q. Under your guidance and leadership, you've made 14 sure that whatever needed to be adjusted got 15 adjusted and you ended up with an annual profit? 16 A. That's -- we've always had a profit. 17 Q. Do you, as GM of Easley Honda, get bonus for 18 profit? 19 A. That's -- I do. 20 Q. And the more profit, the more bonus or is it a set 21 percentage bonus? 22 A. No. It's -- yeah, the more we make, the -- it's a 23 set percentage, but it -- yeah, set percentage as 24 far as my pay plan. Is that what you're saying? 25 Are you referring to my pay plan? 26 Q. Yes. 27 A. Yeah, it's a percentage, or part of my pay plan's 28 29

Page 197	Page 199
1 2 3 a percentage. 4 Q. You get a salary and you may get something else. 5 You may get a demo car, but you also get a bonus 6 either monthly or annually for exceeding goals, 7 correct? 8 A. We -- basically profitability. 9 Q. Profitability. And the goal is to make a profit? 10 A. Right. 11 Q. Do you get bonused monthly or annually? 12 A. Monthly. 13 Q. Do you get an annual bonus on top of monthly 14 bonus? 15 A. No. 16 Q. Monthly, do you get bonused if there's any profit 17 at all or does it have to be a certain amount of 18 profit? 19 A. If there's -- yeah, any profit. If there's no 20 profit, then I get zero. 21 Q. You get some percentage, and I don't want to know 22 what it is. But you get some percentage that's 23 under ten percent of monthly profitability, right? 24 A. That's what now? 25 Q. You get some percentage bonus per month if the 26 dealership is profitable? 27 A. Yes. It could be one dollar profitable and I'd 28 29	1 2 3 Number 6, but it has just been stipulated that 4 these are the sworn responses of the dealership. 5 Okay? 6 A. Okay. 7 Q. In regards to administrative fees, have you had 8 meetings with employees in your dealership 9 concerning administrative fees? 10 A. We've had meetings that tell them -- you know, 11 explain what we have posted on the wall and what 12 it means and that kind of thing. 13 Q. So the answer is yes, you've had meetings? 14 A. We've had meetings. 15 Q. Now, I'm going to ask you that which you partially 16 answered. 17 A. Okay. 18 Q. What is the content of some of those meetings? 19 A. Yeah. We'll tell them that, "Hey, you know, this 20 is what it says and this is what you could point 21 out to a customer if they had questions and that 22 it's allowed, you know, in the South Carolina 23 statute as far as -- it's not required, but 24 allowed as far as that goes. It's not a mandatory 25 fee." 26 Q. Do you tell your employees that no deal will be 27 billed without accounting and separate 28 29
Page 198	Page 200
1 2 3 get a percentage of one dollar. 4 Q. And your percentage is somewhere under ten 5 percent? 6 A. My percentage? 7 Q. For the bonus of the profitability. 8 A. It's more. 9 Q. I don't need to know what it is. 10 A. Okay. 11 Q. But it's more than ten percent; okay. 12 A. Can we take a break? 13 (BREAK; OFF THE RECORD) 14 (3:03 p.m. -- Mr. Martin exits deposition; Ms. Teer 15 enters deposition.) 16 (EXHIBIT NUMBER 6 MARKED) 17 MR. BECKER: 18 We will stipulate that every one of our discovery 19 responses that are sworn statements of the 20 dealership -- we will stipulate that every single 21 one of the formal written discovery responses 22 that we have provided to Plaintiffs' counsel are 23 the sworn testimony of THE Defendant J.L.H. 24 Investments, LLP, doing business as Hendrick Honda 25 of Easley. 26 EXAMINATION RESUMED BY MR. SPEARS: 27 Q. I was going to present to you Plaintiffs' Exhibit 28 29	1 2 3 documentation of the fees? 4 A. Yes, we tell them that. 5 Q. So is it a policy or rule that you tell your 6 employees, "You cannot sell the car without 7 charging the procurement fees"? 8 A. Yes. Yes, we've done that. 9 Q. You did that in 2000, and you still do that today? 10 It's still your policy? 11 A. Did not do that in 2000. 12 Q. When did you start doing that? 13 A. Probably in the last couple years. 14 Q. So after the lawsuit began, you made the 15 collection of procurement fees mandatory and 16 before that, they were not mandatory, or have they 17 always been mandatory? 18 A. No. They've always -- we account for them in 19 every deal ever since I've been there. 20 Q. So they've always been there? 21 A. Uh-huh (affirmative). 22 Q. If I work for you, I can't sell a car without 23 collecting or accounting for the procurement fee, 24 right? 25 A. You have to have it on every deal. 26 Q. And if a customer refuses to pay that closing cost 27 or procurement fee, the only thing you can do is 28 29

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3 drop the cost of the car by the amount of the fee?
4 A. Well, we negotiate. It's a -- I don't know if
5 that's the same thing.
6 Q. Well, because it says, "The only options are a
7 reduction in sales price by the amount of the fees
8 or the sale will be voided," meaning it won't take
9 place, that's the only think you can't do? You
10 told me that on some occasions you may offer the
11 guy three months' worth of free oil changes or
12 something like that, but that's to allow you to
13 charge him the collection fee or procurement fee,
14 to get his agreement to pay it, right? So in that
15 event, he's paying the procurement fee?
16 A. Well, I think what I was saying -- we were talking
17 about the normal way that we do things versus --
18 and this may be something that -- you know, that's
19 not normal. But --
20 Q. The normal way --
21 A. The normal way -- well, go ahead.
22 Q. The normal way is that nobody objects to it,
23 right?
24 A. Well, even when people object to it, the normal
25 way is you negotiate it. See, it's presented --
26 we present the price first.
27 Q. The price of the vehicle?
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3 A. Let me look through that one so I can look at --
4 or do you want to look at them one at a time. All
5 right, here we go.
6 Q. You've got 43?
7 A. Yes, I got it.
8 Q. And 51?
9 A. Right.
10 Q. Is that the entire sales worksheet?
11 A. Yes. This would be the front and this would be
12 the back.
13 Q. On this particular worksheet down here, it has
14 administration fee of two ninety-nine. Now, is
15 administration fee the same thing as procurement
16 fee?
17 A. Yes.
18 Q. Is administration fee the same as processing fee?
19 A. It's the same disclosing fee.
20 Q. I didn't ask you that.
21 A. All right. Processing fee?
22 Q. Administration fee, does that also mean processing
23 fee?
24 A. If I was looking at paperwork from another
25 dealership and I saw processing fee on there, I
26 would think it'd be one and the same, or I would
27 -- I would say yeah, they're one and the same.
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3 A. Yes, with all the -- everything inclusive.
4 Q. What is everything?
5 A. Like I was talking earlier, salesman sits down,
6 fills out a worksheet. The customer says, "Go get
7 me your best price." We come back. They present
8 a worksheet and then they break down the prices,
9 including all fees and taxes and tags and
10 everything else.
11 (EXHIBIT NUMBER 7 MARKED)
12 EXAMINATION RESUMED BY MR. SPEARS:
13 Q. Let me show you Plaintiffs' Number 7, which is the
14 deal jacket on the Plaintiff in this case, Julie
15 Freeman. Here, you can have --
16 A. All right.
17 Q. Turn to the page in there and give it to me by
18 number --
19 A. Let me get my glasses.
20 Q. Look, if you would -- is this your worksheet on
21 that deal packet, Plaintiffs' Exhibit 7?
22 A. That's the back part of it.
23 Q. What's the front part of it?
24 A. Front part should be in here. Here's 14. They're
25 all one piece of paper.
26 Q. Am I presenting you 04543 and 04551, the front and
27 back of what is known as the sales worksheet?
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3 Q. How about if it said closing fee?
4 A. I would think it would be one and the same.
5 Q. What if it said procurement fee?
6 A. I would think it'd be one and the same.
7 Q. So these are all the same animal, they've just got
8 different names?
9 A. Sort of like I was talking about with the buyer's
10 order and the bill of sales. It's just -- they're
11 the same thing, just some people call them
12 different things.
13 Q. I understand. Now, this is part of Plaintiffs'
14 Exhibit 7, and we've identified 04543 and 04551 as
15 the front and back of the sales worksheet; is that
16 right?
17 A. Okay. That's correct.
18 Q. In this particular case, the administrative fee is
19 preprinted on the form; is it not?
20 A. It is.
21 Q. So the dealer, the salesman, and the customer have
22 no discretion as to whether or not it's going to
23 be an administrative fee or a closing fee,
24 correct?
25 A. That's correct.
26 Q. Then you turn over to the back of the worksheet
27 here and this is where the selling price and the
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Page 205

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3 trade price and those sorts of things are
4 negotiated showing the monthly payment?
5 A. Yes. Yes, that's the negotiation that -- that
6 would indicate negotiation.
7 Q. Now, the manufacturer's suggested retail price is
8 shown at 18,995, correct?
9 A. Uh-huh (affirmative), correct.
10 Q. And when you to go the worksheet on this, every
11 item here is filled in my hand except one item and
12 that item is the administrative fee, right?
13 A. Uh-huh (affirmative).
14 Q. Is the state tax on the sale of a new vehicle or a
15 used vehicle always \$300?
16 A. Majority of the time.
17 Q. When would it not be?
18 A. If somebody traded in a vehicle and it was worked
19 -- it's based on a difference figure, so if a
20 person traded in a vehicle that was -- the total
21 price was equal to, it would be less, or if a
22 person bought a car that was a thousand dollars,
23 it would be less. Five percent of a thousand
24 dollars would be fifty bucks.
25 Q. So when does the sales tax trigger at \$300 a unit?
26 A. Well, it'd be five percent. If you do the math on
27 that --
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Page 207

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3 Q. I understand, but it's mislabeled. It's not the
4 manufacturer's suggested retail price?
5 A. That's correct.
6 Q. It is your suggested retail price on the car?
7 A. Yes.
8 Q. And then there is a reduction to 18,695; is there
9 not?
10 A. There is.
11 Q. And then there is a reduction to 18,295; is there
12 not?
13 A. There is.
14 Q. When we add the two ninety-nine to the 17,995,
15 what do we come back up to?
16 A. You'd have to --
17 Q. You come to 18,274, don't you?
18 A. Yes.
19 Q. So what you've done is knock off approximately
20 \$320 on the car and add back into it \$300 on the
21 car?
22 A. You're asking me what did we do on this deal?
23 Q. This deal.
24 A. Yeah. I wasn't there. I don't know exactly what
25 happened.
26 Q. Well, could you tell us with the numbers if that's
27 what happened? Isn't that the net result?
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Page 206

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3 Q. No more than five percent?
4 A. Five percent is the dollar amount.
5 Q. And why do you charge \$39 for transfer of title
6 and registration fees?
7 A. That's the DMV fee.
8 Q. Are you sure that's what the DMV charges you?
9 A. Yes.
10 Q. And is that to transfer it?
11 A. Transfer I believe is 25.
12 Q. And what is the addition?
13 A. For a new tag.
14 Q. Fourteen dollars for a --
15 A. Or -- yeah, that would be my -- yeah. What year
16 was that? It's '06. I believe that that would be
17 a new tag on that deal and not a transfer.
18 Q. So this person just wanted a new license plate; is
19 that what you're saying?
20 A. Or maybe the vehicle traded in was in -- I think
21 on this deal, I notice the vehicle was traded in.
22 Maybe her father or somebody --
23 Q. This MSRP of 18,995, that is not the
24 manufacturer's suggested retail price, is it?
25 A. No. As we talked earlier, all our forms are --
26 that's our form and basically we use it on new car
27 and used cars.
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Page 208

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3 A. I could guess or speculate, but it -- it appears
4 -- I can tell you it appears there was a lot of
5 negotiation when I looked at this sheet and this
6 sheet together. It looks like it.
7 Q. I think the point is it relates back to the policy
8 where in this particular case, you reduced the
9 sales price by the amount of the fee, didn't you?
10 The sales price --
11 A. Well, I'm not sure that policy even existed that
12 -- what was the date on that?
13 Q. 12/03. This was bought in '06.
14 A. All right. Ask me your question again.
15 Q. You reduced the amount of the sales price to cover
16 the procurement fee, the administrative fee, just
17 like the policy --
18 A. Like I said, I wasn't there. I don't know what
19 happened. It would be speculation.
20 Q. Aren't the numbers strongly suggestive that's
21 exactly what happened?
22 MR. BECKER:
23 Object to the form.
24 EXAMINATION RESUMED BY MR. SPEARS:
25 Q. I mean when you look at the numbers, is there any
26 question about -- I mean you didn't want to call
27 anything else off of the sales price of the car?
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Page 209

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3 MR. BECKER:
4 Same objection.
5 WITNESS ANSWERS:
6 A. All right. So what are you saying? Are you
7 saying that they took this number and deducted it
8 up here because the customer complained: is that
9 what you're saying to me?
10 EXAMINATION RESUMED BY MR. SPEARS:
11 Q. I'm saying that this number, okay, 18,295 and this
12 number, the cash price of the vehicle and
13 accessories. Okay?
14 A. Uh-huh (affirmative).
15 Q. This number got reduced to this number; did it
16 not?
17 A. I don't know. I don't know. I thought maybe you
18 were looking more at this number since it's almost
19 identical to it.
20 Q. Well, that is exactly a \$300 discount; is it not?
21 A. Yes.
22 Q. But then a number came down here at 18,295, right?
23 A. Right.
24 Q. But then when it got down to what's she really
25 going to pay, you know, not counting what her
26 trade-in is, it was 17,975, right?
27 A. No. I mean, you know, I don't know Julie Freeman.
28
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Page 210

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3 I've never met Julie Freeman. It looks like there
4 was a lot of negotiation. The thing I do know, it
5 looks very clear to me that it's a very well-
6 disclosed document.
7 Q. And we're going to get to that.
8 A. Okay.
9 Q. Now, let me ask you, are you not the person who
10 knows the most about the purchase negotiation of
11 the vehicle purchased by Julie Freeman? Because
12 you're listed on here as being the person most
13 knowledgeable.
14 MR. BECKER:
15 Object. Mike, we don't -- I disagree with your
16 characterization of what the Rule requires. We
17 prepared Mr. Pendleton to testify about the sale,
18 but make no representation that he is necessarily
19 the most knowledgeable person about the sale. He
20 has studied the dealer jacket. He's the general
21 manager of the dealership, so he's certainly
22 prepared to give testimony on behalf -- as the
23 designee of the corporate Defendant, but there may
24 be someone else at the dealership who may or may
25 not know more. I don't believe that's the case,
26 but --
27 MR. SPEARS:
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Page 211

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3 How long is this objection going to go on?
4 MR. BECKER:
5 Well, it's not really an objection.
6 EXAMINATION RESUMED BY MR. SPEARS:
7 Q. Based on the speech given by your attorney, do you
8 feel like there's someone else who knows more
9 about this deal at the dealership than you and
10 that you are not the one most knowledgeable?
11 A. I talked to Randall Clement, the salesperson. He
12 told me he don't remember. That has -- you know,
13 he wouldn't recognize Julie Freeman if she came in
14 the door; basically the same thing I just told you
15 was from gathering all the information that I
16 could to do the best job I could. But it --
17 Q. So you talked to the person who did the deal and
18 he doesn't remember?
19 A. That's right.
20 Q. He's looked at these documents and they don't
21 refresh him any?
22 A. That's right.
23 Q. So you know as much as anybody else about it?
24 A. I do.
25 Q. That's fine. And in looking at these documents,
26 you can't deny that the price of the car was
27 reduced exactly the amount that the processing fee
28
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Page 212

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3 was?
4 MR. BECKER:
5 Object to the form.
6 EXAMINATION RESUMED BY MR. SPEARS:
7 Q. In conformance with what you were told to do,
8 which is the only way that the person can refuse
9 to pay --
10 A. Well, even your math is not exact.
11 Q. I know. It's within several dollars.
12 A. Well, it's within one dollar up here.
13 Q. If you want to use that one --
14 A. No.
15 Q. -- I'm happy to use that one.
16 A. I'm just saying I don't know and you don't know
17 and nobody knows.
18 Q. Well, tell me this. Where does it end up here?
19 As the general manager, what's the price you're
20 charging this lady? Is that what you're charging
21 her?
22 A. No. Actually there's a buyer's order in there
23 that has everything, but --
24 Q. I'm going to go to that, but I'm on the worksheet.
25 A. Okay.
26 Q. We have to finish the worksheet --
27 A. Okay. I'm on the worksheet.
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53 (Pages 209 to 212)

Page 213

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3 Q. -- before we have a deal, right?
4 A. Yeah, that's right.
5 Q. We work on this worksheet?
6 A. That's right.
7 Q. We started off and it was shown as a MSRP that we
8 know is not an MSRP?
9 A. Uh-huh (affirmative).
10 Q. So the number you all chose to market this car at
11 was 18,995?
12 A. That -- the price up there is 18,995, I agree with
13 that.
14 Q. Then there's an arrow drawn down to 18,675?
15 A. Uh-huh (affirmative), which is exactly \$300 less.
16 Q. You think so?
17 A. Well, oh, it's 75. I thought it was a nine.
18 Okay. Well, I don't know. Is it a nine or is it
19 a seven?
20 Q. Well, does it really matter, because we drop down
21 to 18,295, don't we?
22 A. Yes, we -- yeah.
23 Q. So we're still working on this worksheet, right?
24 A. It looks like a lot of negotiations on this
25 worksheet.
26 Q. Well, that's speculation?
27 A. That is.
28
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Page 214

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3 Q. We just know that this number's dropping here and
4 the arrows are showing that it's going down?
5 A. Right. And we're -- that's what we're doing is
6 speculating.
7 Q. And then we get down here on the thing that says,
8 "Cash price of vehicle and accessories." What is
9 the number given?
10 A. It is 17,975.
11 Q. Now, does that not say that during our working
12 process, what we finally got down to at this stage
13 was none of these numbers above, but we got down
14 to we, Honda of Easley, will accept 17,975 on the
15 worksheet?
16 A. That's not exactly what -- to me, I know what I
17 think it says.
18 Q. What is it saying?
19 A. It says that it was a lot of negotiation going on
20 and we got down to 17,995. And everything was
21 disclosed in nickels and dimes and it came down to
22 a bottom and she signed that she understood it and
23 agreed with it and went on to purchase a car.
24 Q. I appreciate the summary fashion which you're
25 treating it.
26 A. Okay.
27 Q. But I'm on a worksheet and at this stage, 17,975
28
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Page 215

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3 appears to be what your salesman, who doesn't
4 remember a thing about this, is asking for for the
5 dealership.
6 A. Okay.
7 Q. Do you disagree with that?
8 A. I'm just -- go ahead. Say that again.
9 Q. This is what your salesman, probably in
10 consultation with the sales manager, is offering
11 to sell this car to this lady for if she were to
12 pay cash?
13 A. Well, cash would be irrelevant, but --
14 Q. Is he offering to sell it for 17,975?
15 A. That looks like that's the final number that they
16 agreed on because looking at this other sheet,
17 there was some negotiation going on, and the
18 negotiation's not all written. Sometimes it's
19 verbal.
20 Q. I know, but I'm disagreeing with you.
21 A. Yeah, and this is -- this looks like -- this whole
22 block, and when I say whole block, all the way
23 down to balance, it looks like they agreed on that
24 after a lot of negotiation.
25 Q. They agreed on 17,975, correct?
26 A. They agreed on the bottom line is 18 something and
27 all the numbers in -- they agreed on every single
28
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Page 216

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2
3 number that's on this sheet.
4 Q. Well, wait a minute. What's the cash price of the
5 vehicle with the accessories shown on this line?
6 A. It's 17,995.
7 Q. And then does he add the mandatory state tax of
8 \$3,000?
9 A. Or \$300.
10 Q. It's \$300; excuse me.
11 A. Yes. All -- everything's basically added or
12 deducted.
13 Q. Does he add the mandatory state license transfer,
14 title, tags, and fees of \$39?
15 A. He adds that.
16 Q. Does he add the \$299 admin fee?
17 A. He adds everything, but it's already agreed on.
18 Q. Does he add this to 17,975, the two ninety-nine?
19 A. It's added on -- what line is it, under
20 administration fees.
21 Q. And would you agree that on the worksheet, the
22 administrative fee is listed right next to the
23 state tax fee?
24 A. I agree.
25 Q. And that is listed right next to the title, tags,
26 and registration fees?
27 A. I agree.
28
29

Page 217	Page 219
1 2 3 Q. Now, let's go to the other portion of the -- let's 4 see, you've got the packet here? 5 A. Yeah. Well, this -- you need it back? 6 Q. No, that's okay. I'm sure I've got it right here. 7 Turn to, if you would, page 04539. 8 A. D5? 9 Q. 04539. Isn't that 04539? 10 A. Oh, okay, I'm sorry. I was looking at -- okay. 11 Q. What is that page? 12 A. That is a invoice. 13 Q. Is that what we would call a buyer's invoice? 14 A. No. 15 Q. What is that an invoice for? 16 A. That's for accounting purposes. It's the last 17 thing that a P&I manager does on a deal. 18 Q. Does it require a signature anywhere? 19 A. No. 20 Q. Does she get a copy of this? 21 A. No. It's a internal form. 22 Q. It's an internal form okay. And this internal 23 form, which is 04539, shows that you collected a 24 procurement fee of two ninety-nine, right? 25 A. That's what that line says. 26 Q. Would that be the same as the administrative fee 27 shown on the worksheet on 04543 of two ninety- 28 29	1 2 3 EXAMINATION RESUMED BY MR. SPEARS: 4 Q. This is a document supplied by your attorney, and 5 it's got redacted on it, but it's an '02 deal. 6 Okay? 7 A. Uh-huh (affirmative). 8 Q. And what would you term this form? 9 A. That would be the buyer's order. 10 Q. That's a buyer's order form, but you're not going 11 to find it in Julie Freeman's packet. 12 A. Yeah. That was a buyer's order right there. 13 That's what it appears to be. 14 Q. This is the '02? 15 A. Right. You're right. 16 Q. Do you see it? 17 A. Yes. 18 Q. And then at that point in time, the procurement 19 fee was \$249, right? 20 A. That's correct. 21 Q. On Julie Freeman's, it's 299? 22 A. Yes. 23 Q. Who made it go up? 24 A. I did. 25 Q. Why? 26 A. All the reasons that we went into earlier. 27 Q. Before we went into 9-11, which you told me 28 29
Page 218	Page 220
1 2 3 nine? 4 A. Procurement fee and administrative fee are the 5 same thing. 6 Q. Why do you call them different names on different 7 forms used by the same business? 8 A. Well, I don't know. 9 Q. You're the GM. 10 A. There's -- I could only speculate. 11 Q. But you're the GM. 12 A. I know. 13 Q. Did you have any decision making ability on how to 14 level these things or was this all dictated from 15 above? 16 A. No. It was -- it was probably done in house. 17 Q. Well, it had to be done with your permission? 18 A. Well, somebody redoes a worksheet and maybe you 19 just don't catch it. You know what I'm saying, 20 that you've got this -- and this is a internal 21 form, not a customer form. 22 Q. I know it's an internal form. 23 A. If you're working on a worksheet, you might not 24 even consider working on a invoice, but the 25 customer doesn't see this. 26 Q. Well, let's go to -- let's mark this as Number 8. 27 (EXHIBIT NUMBER 8 MARKED) 28 29	1 2 3 decreased sales, et cetera, we didn't have a 9-11 4 between these two times. 5 A. Okay. Well, all the reasons -- 6 Q. So why did you choose to go up here? 7 A. The reasons being -- and that was in '02, and 8 this is Julie Freeman's, what, in '06? So three 9 or four years later, same kind of decisions. 10 Everything intertwines. Looking at the bottom 11 line, decided to move the doc fee, or the closing 12 fee up. 13 Q. Well, that's completely discretionary with you, 14 right? It's completely discretionary with you. 15 You didn't have to get anybody's permission to do 16 that as long as you didn't go over three ninety- 17 nine. American Honda wouldn't permit that? 18 A. I would still check, yeah. 19 Q. With Chuck? 20 A. Chuck, yeah, out of respect, you know. 21 Q. I don't deny that you checked with Chuck, but if 22 Chuck says yes, there is no offset, no costs, no 23 charge-off that this \$50 is supposed to offset, it 24 is merely an increase from two forty-nine to two 25 ninety-nine, right? 26 A. No. 27 Q. Now, we've just spent over an hour going through 28 29

Page 221	Page 223
1 2 3 the other income and how nothing that you can 4 remember is added to it or deducted from it, 5 right? 6 A. Rephrase your question. 7 Q. We've just spend over an hour going through the 8 other income statement that all the procurement 9 fees are listed at month by month to come to a 10 yearly total. You told me you don't remember what 11 the other income is, but there must be some. We 12 even asked whether or not the bookkeeper knew more 13 than you. You indicated that you're probably the 14 most knowledgeable. You indicated there might be 15 deducts from the other income column, but you 16 couldn't remember what they were? 17 A. That's correct. 18 Q. So when you go from two forty-nine, which is in 19 the other income column monthly and annual shown 20 unreduced by anything else that you remember, and 21 you go to two ninety-nine on Julie's, the reason 22 to charge more is just your decision, and this 23 doesn't go to offset anything on your books? 24 MR. BECKER: 25 Object to the form of the question. 26 EXAMINATION RESUMED BY MR. SPEARS: 27 Q. When you do your accounting -- 28 29	1 2 3 Q. I'm confident that as you look over what the 4 expenses of your business are and what your income 5 is, you'd like to minimize your expenses and 6 maximize your income, right? 7 A. I look at this as compensating my income, or the 8 -- excuse me; compensating the expense area as far 9 as offsetting expenses, not as -- don't look at it 10 as income a hundred percent. 11 Q. I didn't ask you that. 12 A. Okay. All right, but -- 13 Q. Don't you, when you look at your business -- 14 forget this for a minute. Okay? 15 A. Okay. 16 Q. This might be confusing you. 17 A. Okay. 18 Q. When you look at your business, don't you try and 19 minimize your expenses as best you can and 20 maximize your income? Because the difference 21 between the two is your profit. 22 A. Right. Yeah, you want to -- you want to make 23 profit and you want to control your expenses. I 24 agree. 25 Q. And you want to make as much profit as you can 26 fairly and accurately? 27 A. That's right. 28 29
Page 222	Page 224
1 2 3 A. Okay. 4 Q. -- neither your lights nor your car acquisition or 5 any other accounting number that's an expense for 6 you is offset against the sum total of all your 7 procurement fees, correct? 8 MR. BECKER: 9 Same objection. 10 WITNESS ANSWERS: 11 A. Well, yeah. With due respect, it's another one of 12 those questions that just ain't how it is. 13 EXAMINATION RESUMED BY MR. SPEARS: 14 Q. Well, if the answer is, "No, you're wrong Mike," 15 tell me where I'm wrong. 16 A. When I -- well, I don't -- I look at the bottom 17 line because I look at expense of a department or 18 dealership as everything intertwines. And when 19 expenses are getting out of control, you look for 20 ways to cover them and you think about a lot of 21 things. You think about people. You think about 22 processes. You think about time, just everything, 23 and -- and you're just -- and you're trying to 24 think some way that basically you could offset it. 25 It's not hiring somebody to come in and measure 26 every minute that this guy does this or this guy 27 that. And that costs more than -- you know. 28 29	1 2 3 Q. When you choose to go from one procurement fee 4 number to another procurement fee number, it 5 should, all other things being equal, increase 6 your profit, right? 7 A. If it offsets the expenses, then your profit would 8 go up. 9 Q. Well, let's suppose you had expenses that were 10 pretty well steady and income from standalone car 11 sales that was pretty well steady and income from 12 parts and service that was pretty well steady. 13 Then if you increase by \$50 per unit your new and 14 used car sales, then it's all going to go to 15 profit, right, assuming everything is the same? 16 A. Well, I don't do -- I didn't do it like that is 17 what I'm trying to tell you. I didn't sit there 18 and do the math, "Here's \$50. Add it all up, do 19 this kind of stuff." 20 Q. I may get to the point where I ask you how you did 21 it. I'm just saying the net effect of going up 22 \$50 per unit is to take the number of units that 23 you sell that year and make \$50 more on each one 24 of them, right? 25 A. Well, no. 26 Q. No? 27 A. No. 28 29

Page 225	Page 227
1 2 3 Q. Why not? 4 A. Because like we said, we negotiate and -- and some 5 people negotiate more because of the fee. They 6 say, "I'm not paying it." It creates more 7 negotiations. So whether it's helping our profit, 8 it's debatable. 9 Q. Are you telling me that sometimes the charging of 10 the fee causes you to reduce the cost of the car 11 more than the fee itself was? 12 A. Sometimes the fee -- somebody may say, you know, 13 "Knock this off, knock that off, knock that off," 14 and they just -- they bunch it all up. It's more 15 normal than what you were saying. 16 Q. Did somebody call you and tell you to charge more 17 fee or is that your decision? 18 A. That was my decision. 19 Q. And you went from two forty-nine to two ninety- 20 nine, even though you were losing money by going 21 up, or do I misquote you? 22 A. Probably went there -- of course, whenever the fee 23 happened to happen, the thought process I can tell 24 you in general exactly everything that came out. 25 I don't know if I could sit here and say, you 26 know, I remember watching, you know, the Super 27 Bowl and figuring it out that night or something, 28 29	1 2 3 schedule. Is there something in there that could 4 be eliminated, you know. 5 Q. Let me ask you something. 6 A. Okay. 7 Q. For the years that you've been there, how many 8 years has the parts department lost money for the 9 year? 10 A. I don't know. I couldn't tell you exact. 11 Q. Did it ever lose money for a year? 12 A. Yes. Yes, it lost money last year. 13 Q. How many years since you've been there has the new 14 car department lost money? 15 A. I couldn't tell you that exact either. 16 Q. Has the new car sales ever lost money for the 17 year? 18 A. Yes. 19 Q. The used cars, has it ever lost money for the 20 year? 21 A. Yes. 22 Q. The service department, has it ever lost money for 23 the year? 24 A. Yes. 25 Q. Yet somehow or another, though, each and every one 26 of those four categories has at one time or 27 another lost money, the dealership has never 28 29
Page 226	Page 228
1 2 3 but I just, you know, you're looking at financial 4 statements. You get to feeling like you're under 5 water with expenses and, you know, you feel it's 6 -- well, we've had that doc fee for a certain -- 7 or closing fee for a certain amount of time and 8 there'd be some way that you could, you know, 9 offset some of the expenses. That's just one of 10 many ways that we could have done it. It's not 11 the entire program that came -- that we came up 12 with. It's -- 13 Q. The possible ways you could have done it are 14 limitless. I'm asking you the way you did do it. 15 Is your answer, "I don't know"? 16 A. My answer -- I don't remember a hundred percent, 17 but I can tell you just knowing me in general and 18 the way I think, which I probably know me as good 19 as anybody, you know, we -- there was a lot of 20 thought process in it and there was a lot of other 21 areas that we covered besides just that -- or I 22 covered besides that. 23 Q. Besides what? 24 A. Besides the closing fee. That wasn't just that. 25 You look at -- you look at things line by line, 26 item by item. You pull schedules and you -- and 27 you try to figure out, well, what's in this 28 29	1 2 3 finished up a year in the red? 4 A. That's correct. 5 Q. It's always made a profit? 6 A. That's right. 7 Q. So some area has always overtaken the area that's 8 fallen behind and generated a net profit? 9 A. Well, I think proportionally that they all didn't 10 lose money at the same year. 11 Q. Well, that's what I mean. 12 A. Yeah. 13 Q. Now, these are standalone sales, right? 14 A. Now we're talking about parts department and 15 you're talking about standalone? 16 Q. New and used sales. The two forty-nine or two 17 ninety-nine or those sorts of things are not the 18 only changes that you, Don, made as the general 19 manager when you went to these fees, is it? 20 A. Now say -- say that again. All right? 21 Q. Look at -- let's see, I've shown you document 22 number 6. What is this called, document number 6? 23 A. The procurement fee. 24 Q. And that's Plaintiffs' Exhibit 8. 25 A. Okay. 26 Q. And what is the amount? 27 A. Two forty-nine. 28 29

Page 229	Page 231
1 2 3 Q. You did that. That document is 8/29/02, right? 4 A. Yes. 5 Q. Why did you call that a procurement fee? What are 6 you procuring? 7 A. You know, I don't know. I'm looking at this 8 document and then I was noticing the one on Julie 9 Freeman's, there's -- let's see, I think it's 10 different. I'm just trying to refresh my memory. 11 I don't know. To my knowledge, I wasn't involved 12 in deciding what to call the closing fee, the 13 administrative fee, the procurement fee, the doc 14 fee in that period of time. 15 Q. In '02, when you were the sales manager -- the 16 general manager? 17 A. I think this is a form that's leftover, best of my 18 knowledge; from the nineties probably. 19 Q. Is this from Hendrick Automotive the form comes 20 down? 21 A. I wouldn't know. 22 Q. You're the general manager. You don't know where 23 your forms come from? 24 A. Well, this form is a form that in my best 25 knowledge, or my best guess, I guess, would be a 26 form that was created prior to me coming to the 27 dealership. It appears to not have any indication 28 29	1 2 3 A. We can do it, yeah. 4 Q. And you made money in 2002, because you've always 5 made money? 6 A. We've made money every year. 7 Q. Compared to 2001, if you hadn't gone up \$50 per 8 unit, you wouldn't have made as much money in 2002 9 as you made, right? We already know in 2002 you 10 made \$127,239 in doc fees. You wouldn't have made 11 that money if you hadn't have gone up, right? You 12 would have made \$50 per unit less. Fifty dollars 13 times -- 14 A. I don't look at it that way. My answer would be, 15 I don't know what we would have made if I hadn't 16 charged it. I mean I don't know for a fact that 17 we would have made exactly \$50 more or if we would 18 have made less. I don't know. It's -- it would 19 be -- how could I know that. 20 Q. You can know it in the following way. 21 A. Okay. 22 Q. Did you tell me that you charge a doc fee on every 23 single car you sell? 24 A. Yeah. Yes, we charge a doc fee. 25 Q. You sold 511 cars during this time period, right? 26 A. We did. 27 Q. These are your answers. 28 29
Page 230	Page 232
1 2 3 where it came from. 4 Q. Does that tell you where it may have come from? 5 A. Honda Automobiles? 6 Q. Yes. 7 A. That's American Honda. It's not American Honda's 8 form I know. 9 Q. So are you saying you don't know how procurement 10 fee got labeled to be procurement fee on 11 Plaintiffs' Exhibit 8? 12 A. I was not involved in that. 13 Q. But you did make the decision to increase from one 14 ninety-nine to two forty-nine -- 15 A. I did. 16 Q. -- this fee that you did not name; is that what 17 you're telling me? 18 A. That's right. 19 Q. And you made that decision just by checking with 20 Chuck? 21 A. Well, when I'll check with Chuck, I probably would 22 have to -- 23 Q. Tell him the fee? 24 A. -- yeah, tell him the fee and -- 25 Q. Get him to approve it? 26 A. Yeah. He'd have to approve it. 27 Q. But for that, you can go ahead and do it? 28 29	1 2 3 A. Right. 4 Q. And you charged \$50 more in '02 than you did in 5 '01, right, so didn't you make 50 times 511 during 6 this time period? 7 A. If you multiply the multiplication you just said, 8 that's correct, but I don't know if that would be 9 what we would have ended up at the end of the 10 year. I have no way of knowing that that meant 11 \$50 to every single deal. I have no way of 12 knowing that. 13 Q. Well, let me put it this way. If you hadn't 14 charged the \$50 more per 511 vehicles, then you 15 know for a fact you wouldn't have made that much 16 more money. You wouldn't have made -- 17 A. I don't know for a fact what we would have made, 18 an exact dollar amount. 19 Q. Are you raising the possibility that by charging a 20 document fee, you actually diminish the sales 21 price of the car? 22 A. I'm not thinking like that. 23 Q. You're not saying that? 24 A. I'm not saying that. 25 Q. We know if you charge and collect the two forty- 26 nine as opposed to the one ninety-nine, that you 27 are making \$50 more times 511 vehicles in 2002? 28 29

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3 A. I don't agree.
4 Q. How could you not?
5 A. I just -- I just don't agree.
6 Q. Well, is my math wrong?
7 A. Your math is correct.
8 Q. Then where is my problem?
9 A. Nobody knows what the effect would be for the \$50.
10 I don't know, you don't know, nobody in this room
11 knows what it would be, if it would be positive or
12 negative. The only way that I could know what it
13 wouldn't have been if I left it at one ninety-nine
14 would be to leave it at one ninety-nine and see
15 where it ended up at the end of the year. That
16 would be the only way -- sure fire way I could
17 tell you exactly what we would have made that
18 year.
19 Q. When you said price of your vehicles at whatever
20 you sell, your new or your used, what are the
21 factors that you use to ascertain what you're
22 going to charge for a new vehicle or a used
23 vehicle? Do you feel free to put a \$50,000 tag on
24 every Civic that you put out there?
25 A. Well, it's -- I think -- now you're talking about
26 new and used or you're talking about -- which one
27 do you want to address?
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3 Q. And you see this little peel-off section right
4 here?
5 A. Uh-huh (affirmative).
6 Q. Isn't that the supplemental portion of a Monroni
7 that the dealership adds its own charges to? See,
8 right here are the things that the dealership
9 does.
10 A. Uh-huh (affirmative). Yeah, this is a Toyota, and
11 they're Southeast Toyota. Sorry. They may do
12 that. Honda doesn't have anything like that.
13 Q. You use the supplemental to add dealer prep and
14 all those other charges to it?
15 A. We use them only if we add accessories.
16 Q. Whether it's undercoating or wire-wheeled or
17 whatever you might add at the dealership, you add
18 that to the supplemental, not to the Monroni,
19 correct?
20 A. For example, undercoating has been gone for 20
21 years now. But what --
22 Q. Well, I don't know, whatever you do.
23 A. All right.
24 Q. That goes on the supplemental, right?
25 A. Yeah. If there is a spoiler on the back of a car,
26 it goes on a supplemental. It's a separate
27 sticker. It's not the same.
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3 Q. If they're different, address them separately.
4 New.
5 A. All right. New car -- the price tag on a new car
6 as far as the MSRP is already on the vehicles, so
7 that's a guideline that they give us to work with,
8 a suggested retail price so we don't have to do
9 anything as far as -- what was the question, price
10 -- I couldn't even remember. Say the question
11 again. What are you -- all right, you asked me
12 how do we price our new cars, decide what they
13 sell for, is that what it was?
14 Q. Yes.
15 A. Okay. And the manufacturer already puts that
16 sticker on it, so we don't really have to do
17 anything else.
18 Q. Are you telling me in your career, you have never
19 sold a car for greater than what the Monroni
20 sticker said?
21 A. Yes. We've sold cars -- I know of cars sold in my
22 career over the years that have been greater. I
23 can think of some special cars, you know, things
24 like that.
25 Q. Well, this is not yours, but this is a Monroni
26 sticker, isn't it?
27 A. It is.
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3 Q. Right. I understand the vagaries between a Honda
4 and Toyota.
5 A. Okay.
6 Q. Here, it's just awfully convenient to have it on
7 the same thing and they can either put that on or
8 leave it off. But this portion -- let me throw
9 this out here. This portion is what you know as a
10 Monroni, right?
11 A. That's a Monroni sticker.
12 Q. And down here is the MSRP; is it not?
13 A. Yes, it is.
14 Q. And prior to the MSRP is a delivery charge of
15 seven ninety-five, right?
16 A. Yes, it is.
17 Q. It says delivery, processing, and handling fee;
18 does it not?
19 A. Yes.
20 Q. Now, if this dealership were to charge me another
21 \$300 for processing, do you think there'd be a
22 problem in the naming that you have here for
23 processing fee? Is the processing fee on the
24 Monroni?
25 A. I mean I don't want to talk about what Honda -- I
26 mean Toyota does, because I'm not familiar with
27 that. I'm not prepared to speak what Toyota of --
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3 Southeastern Toyota does.
4 Q. We've got your Monronis. Do you not have a charge
5 for delivery fee on your Monroni?
6 A. Let me see one. Let me run to the bathroom while
7 you're looking.
8 Q. Okay.
9 (BREAK; OFF THE RECORD)
10 (EXHIBIT NUMBER 9 MARKED)
11 EXAMINATION RESUMED BY MR. SPEARS:
12 Q. This is Plaintiffs' 9, the Monroni that you
13 supplied us. Okay? This document, for counsel,
14 is document 8133 and 8134. May I assume that this
15 Monroni is actually, when presented on the car,
16 presented like this side by side on the window?
17 A. Yes.
18 Q. Now, this Monroni is --
19 A. Well, actually it'd be flipped --
20 Q. Like that?
21 A. There you go.
22 Q. This is on the car when it comes to you, right?
23 A. Yes.
24 Q. And the total vehicle price, 18,355, includes a
25 destination and handling fee of 595; does it not?
26 A. Five ninety-five, yes.
27 Q. So the MSRP on this is 17,760, right?
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3 prices?
4 A. Yes.
5 Q. I'm not necessarily saying there's anything bad or
6 nefarious or evil about that.
7 A. All right. Then I misunderstood.
8 Q. And I think you may have a problem and we may get
9 to being more lengthy than we need to when you try
10 and guess where I'm going. Okay?
11 A. Okay. All right.
12 Q. The MSRP is 17,760, right?
13 A. Right. Right.
14 Q. We've had a conversation just previously about
15 selling cars for more or less than MSRP.
16 A. Uh-huh (affirmative).
17 Q. Do you remember that?
18 A. I remember that.
19 Q. And you said, "On occasion, we have sold cars for
20 more than MSRP." And I --
21 A. In my career I know of that, yes.
22 Q. But you make it sound like it rarely ever happens.
23 A. It does rarely ever happen.
24 Q. Yet when it's listed on the lot with the Monroni,
25 it's already listed at \$595 above MSRP because of
26 the addition of not a nefarious or bad or evil
27 delivery charge, it just has a delivery charge
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3 A. Yes.
4 Q. Yet you upped that by nearly \$600?
5 A. We don't. We being Hendrick Honda?
6 Q. No. The sales price of the car is up by someone
7 \$695 -- \$595, correct?
8 A. There's \$595 added to the suggested retail price.
9 Excuse me.
10 Q. Do you want some water?
11 A. I just got some. I've just got a cold.
12 Q. Do you want me to ask the question again?
13 A. Yeah, ask the question again.
14 Q. The MSRP on this car is 17,760, right?
15 A. Right.
16 Q. Now, when it hits your lot, it is already priced
17 above the MSRP at 18,355, isn't it?
18 A. Okay. All right.
19 Q. Is that a confusing question?
20 A. Well, it's -- and maybe I'm -- I apologize. It
21 sounds like that somebody is mysteriously adding
22 595 to it, and that's not the case, you know. My
23 understanding of this -- of destination, all the
24 prices on every Honda would be the same in the
25 United States. It's the -- it gets the car from
26 the port to the dealership.
27 Q. When you say all the -- you mean all the delivery
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3 that's added to it. So the MSRP is already
4 exceeded --
5 A. Okay. In the term -- go ahead; I'm sorry.
6 Q. The MSRP is already upped by about \$600 when it
7 hits your lot through no fault of yours?
8 A. Well, we have had a misunderstanding.
9 Q. Because you've been calling MSRP after delivery?
10 A. Yes. That's what -- that's -- what I'm referring
11 to when I say MSRP is the price of the car on the
12 bottom line.
13 Q. Would you agree with me that MSRP, as set by Honda
14 America, is clearly shown here at the top to be a
15 different number than what you take it to be?
16 A. Well, yeah. That's -- they're numbers are
17 different.
18 Q. We've covered that. Your response to -- which was
19 already stipulated to be your response.
20 A. Okay.
21 Q. We've asked you to admit that the charging of the
22 document fee is not tied to any certain specific
23 overhead cost. And your answer is, "Although the
24 closing fee does not cover," quote-unquote, "Any
25 particular overhead or other costs --" do you
26 agree with that?
27 A. My answer?
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3 Q. This is your answer as submitted by your counsel.
4 "Although the closing fee does not cover any
5 particular overhead or other costs, Hendrick Honda
6 ofasley charges a closing fee as a means of
7 reimbursing costs associated with document
8 preparation, storage, and retrieval, and other
9 costs associated with transferring title sold by
10 Hendrick." Is that right?
11 A. Yes.
12 Q. It's already been sworn to.
13 A. Right.
14 Q. So honestly I don't need to get you to agree to
15 it.
16 A. Okay.
17 Q. It is the law of the case right now. Now, tell me
18 what your document preparation fee is per car,
19 your doc prep costs, not your fee? What does it
20 cost you to do document preparation on a car?
21 A. I don't know.
22 Q. What is your storage fee for those documents on
23 any given car?
24 A. I wouldn't be sure about that either.
25 Q. Well, what is the cost of retrieving any documents
26 and what sort of documents would you be
27 retrieving?
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3 A. As far as costs, I don't know.
4 Q. You have no idea about the cost of retrieving the
5 documents, right?
6 A. Right.
7 Q. And what are the other costs associated with
8 transferring title to vehicles that are not
9 covered by the license and transfer fee? What
10 costs do you have on transferring title of
11 vehicles that's not already paid for by the
12 customer on the transfer fee?
13 A. Well, the intertwined expenses of the whole
14 process.
15 Q. No.
16 A. Yes.
17 Q. No. I want to know the cost associated with
18 transferring title, okay, that are not paid for
19 by the license transfer and title fee. I want to
20 know what those costs are. I'm not asking you the
21 number, I'm asking you, what do you do to transfer
22 a title that costs you money that isn't already
23 paid for when the guy pays \$39?
24 A. It's a lot of stuff when you go through documents.
25 Q. I'm not talking about that, I'm talking about just
26 this.
27 A. Yeah. Transfer title to vehicle?
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3 Q. Yeah, other than what he paid \$39 for. You know,
4 our friend here, Julie, paid \$39 to have you
5 transfer her title. And we talked about the new
6 tag she got and you broke those down for me. One
7 was 25, one was 14. Doesn't that cover all the
8 charges you have for transferring title to the
9 vehicle?
10 A. No.
11 Q. You've got some other charges?
12 A. Other costs, expenses. Is that -- that's what I
13 mean when I say no. There's -- you're going to
14 have a title clerk.
15 Q. That's at your place?
16 A. Yeah, that's right, that handles the process, that
17 that's their main responsibility of handling just
18 -- well, like she bought a tag. You know, she
19 does the -- all the work on the tag.
20 Q. Well, what does that cost per car? What did that
21 cost you for Julie Freeman's car for that title
22 clerk to do that over and above the \$39?
23 A. Well, there's more to it than just that, and I
24 don't know what it cost for Julie Freeman's car.
25 Some cars can be different as far as there's --
26 some deals have more administrative work done.
27 Q. Do you have any books where you set out the cost
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3 of document preparation per car?
4 A. No.
5 Q. Storage per car?
6 A. No.
7 Q. Retrieval per car?
8 A. No.
9 Q. Or other costs associated for transferring title
10 to vehicles per car?
11 A. No.
12 Q. Do you have a document -- assuming that you don't
13 have it on any car; is that correct? You have
14 none of these costs set out for any car?
15 A. Now, when you say set out, what is that set out
16 for?
17 Q. Individually set out, the cost of document
18 preparation for any car that you've ever sold. We
19 just went through that.
20 A. Like a study; is that what you're talking about?
21 Q. No. I'm talking about a set of books that shows
22 what it costs to do document preparation on Julie
23 Freeman's car and then the car after that and the
24 car after that with a separate number attributable
25 to each.
26 A. Well, we do not.
27 Q. Do you have a set of books that shows your entire
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Page 245	Page 247
1 2 3 cost of document preparation on all vehicles you 4 sold for that month or that year? 5 A. We don't have it categorized like that. 6 Q. Do you have a set of books that show all the costs 7 you incur for document storage on all the vehicles 8 you sold for that month? 9 A. And you keep saying a set of books. And what does 10 a set of books mean? 11 Q. A line item. 12 A. On a financial statement? 13 Q. Yes. 14 A. No. 15 Q. Do you have any financial data that shows your 16 cost of document retrieval for the month on all 17 the cars that you've sold or for the year on all 18 the cars that you've sold? 19 A. On retrieving; is that where you're pointing to? 20 Q. Yes, retrieving. Like if your secretary has to 21 reach over here, do you set out a cost for that? 22 A. No. Well, we -- that is a cost, but we don't set 23 it out. 24 Q. And do you have anything that shows other costs 25 associated with transferring title to vehicles 26 separately set out for all the vehicles you sold 27 in a month or in a year? 28 29	1 2 3 Q. There's certainly more to it than is listed on 4 this note, right? 5 A. There's more expense. 6 Q. Then is listed on this, right, Plaintiffs' Exhibit 7 10? 8 A. Yes. 9 Q. Correct? 10 A. Yes, there's more expense. 11 Q. And you have no idea the actual overhead cost for 12 document retrieval or document preparation on this 13 vehicle that Julie Freeman purchased or the sum 14 total of all the vehicles, correct? 15 A. Say that again. 16 Q. You do not have any idea as to the expense for 17 document retrieval or document preparation on 18 Julie Freeman's vehicle or all vehicles? 19 A. We have never broke it down individually on Julie 20 Freeman's vehicle or any other vehicle. I look at 21 it as -- like I said, there's another one of those 22 questions that is not how we're looking at it. 23 We're looking at it different than you. We're 24 looking at it as a whole. 25 Q. Yes, sir. I didn't prepare Plaintiffs' Exhibit 26 10. You prepared it, right? 27 MR. BECKER: 28 29
Page 246	Page 248
1 2 3 A. All other costs associated with transferring title 4 to a vehicle? We -- it would be too overwhelming 5 to even try to do that. It would be -- it would 6 probably cost more than -- I don't know what it -- 7 it would cost a unbelievable amount of money to 8 have to figure that. 9 (EXHIBIT NUMBER 10 MARKED) 10 EXAMINATION RESUMED BY MR. SPEARS: 11 Q. Then let's look at Plaintiffs' Exhibit Number 10. 12 This certificate is not true, is it? 13 MR. BECKER: 14 Object to the form. 15 WITNESS ANSWERS: 16 A. (Reviewing document.) Okay, the term, "many 17 factors" makes it true. 18 EXAMINATION RESUMED BY MR. SPEARS: 19 Q. Well, it says, "The full cash price charged at any 20 dealership depends on many factors." I certainly 21 agree with you that the full cash price would 22 depend on many factors, right? Is that what you 23 mean? 24 A. Well, let's see. (Reviewing document.) Well, I 25 think it lists examples of certain overhead costs 26 such as -- I can tell you there's more to it than 27 that. 28 29	1 2 3 Object to the form. 4 EXAMINATION RESUMED BY MR. SPEARS: 5 Q. This is your notice. 6 MR. BECKER: 7 Object to the form. 8 EXAMINATION RESUMED BY MR. SPEARS: 9 Q. Well, maybe I should set a base. Is this the 10 notice that you represent that you posted in your 11 dealership for your customers to see to comply 12 with the law? 13 A. That -- that is. The only -- I'm just trying to 14 think where it came from. If -- I'm not sure if 15 it -- you know -- 16 Q. Well, it had better come from the notice that you 17 post at your dealership. 18 A. Uh-huh (affirmative). No, this is the notice, I 19 agree with that. I was -- maybe I was thinking 20 too deep on it. Okay? 21 Q. Yet, although you posted that you charge a two 22 ninety-nine closing fee for reimbursing it for 23 certain overhead costs, you don't mention anywhere 24 in here about the two ninety-nine may be profit, 25 do you? 26 A. There's nothing in that particular document. 27 Q. You instead say, "We've got to charge you this two 28 29

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3 ninety-nine as a means of reimbursing for certain
4 overhead costs, such as document retrieval and
5 document preparation," correct? Isn't that what
6 it says word for word?
7 A. It says -- yes. It says, "Such as." And my
8 interpretation would be broad -- it's a broad
9 statement.
10 Q. But I've asked you about document retrieval and
11 document preparation and you've never calculated
12 the cost on Julie Freeman's car or on any
13 individual car or on all the cars that you sold,
14 correct?
15 A. We do not do it like that. I do it in a different
16 way.
17 Q. Well, you do it by ball-parking profit and loss
18 and deciding whether to go up or down -- I mean go
19 up or not on your --
20 A. I do it by looking at intertwined expenses.
21 Q. Versus income so that you stay profitable, like
22 anybody would?
23 A. Well, I still look at it as a offsetting expense.
24 Q. How you look at it is a question for another day.
25 I'm saying how you represent it. And this notice
26 published in your dealership says it's for
27 reimbursing certain overhead costs such as
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3 document retrieval and document preparation?
4 A. Uh-huh (affirmative).
5 Q. And you've already told me you have no idea what
6 the cost of document retrieval or document
7 preparation is, and it's never been accounted for?
8 A. We've never broke it down until -- by car by car
9 like you were talking about.
10 Q. Or in a grand total you don't know it. You don't
11 know what your document retrieval costs for the
12 year are, correct?
13 A. On those two items.
14 Q. On document retrieval or document preparation, you
15 have no idea what your costs are, correct?
16 A. No idea is a broad term. It's just -- it's hard
17 for me to answer to that.
18 Q. You want me to use another modifier other than no
19 idea? Do you want to say that you don't know what
20 your costs are for document retrieval or document
21 preparation?
22 A. Do not know the exact costs.
23 Q. And you've never accounted for it?
24 A. Because we -- I figure it in a different way.
25 Q. Do you do it in any acceptable, generally accepted
26 accounting manner?
27 A. I'm not a accountant.
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3 Q. I didn't ask you that.
4 A. Yeah. So I don't really --
5 Q. Do you know what GAP accounting is?
6 A. I don't do it in any of that form, GAP accounting
7 or --
8 Q. Do you know what GAP accounting is?
9 A. No.
10 Q. Your notice claims that you're offsetting a
11 certain overhead that you specifically spell out,
12 yet you don't know what the cost of that overhead
13 is, correct or incorrect?
14 A. Well, I think it's incorrect because of the, "such
15 as." It's more to it than just that. I think
16 that's what I'm looking at.
17 Q. Well, let me ask you this.
18 A. Okay.
19 Q. What overhead would you expect this notice to make
20 a client who might be buying a car from you aware
21 of other than the ones that you list under such
22 as? I mean is Julie Freeman or somebody else
23 supposed to divine from this notice that you have
24 other costs in addition to document retrieval and
25 document preparation?
26 A. I'm -- I'm not prepared to answer what Julie
27 Freeman might would say.
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3 Q. Then we know what you posted and what we put in as
4 Plaintiffs' Exhibit 10 as an example of what your
5 certain overhead costs are. And you've already
6 told me that you never independently account these
7 per car or in total, so you don't know what these
8 costs are, your example costs, correct? You don't
9 know what your document retrieval cost is per car
10 or in total and you don't know what your document
11 preparation cost is?
12 A. I'm not -- yeah, I'm just -- I'm not comfortable
13 with that statement as far as --
14 Q. Are you not comfortable with your own notice that
15 goes on your own wall, or you're not comfortable
16 with what I'm saying about it?
17 A. Well, yeah. I'm just -- it's -- again, it's that
18 approach that you're taking. When we're doing
19 document retrieval and all the other expenses, you
20 said how much does it grab over and pull a piece
21 of paper out.
22 Q. Well, if you're going to claim that you're
23 charging somebody for it, I want to know what
24 you're paying for it. You told me you don't know
25 what you're paying for it.
26 A. Well, I know it's expensive.
27 Q. So is it accurate to say that this is merely the
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Page 253	Page 255
1 2 3 reimbursement for certain overhead and that you 4 make no money out of this? You make no profit out 5 of this? 6 A. We've never analyzed it to see if it made money or 7 not made money. 8 Q. It might, it might not? 9 A. We've never been -- 10 Q. Never been tested? 11 A. Never been analyzed, yeah. 12 Q. So as we sit here today, you can't tell me that 13 this two ninety-nine completely is eaten up by 14 your overhead costs, can you, because you never 15 studied it? 16 A. Well -- 17 Q. It could be overhead. It could be profit. You 18 just don't know? Fair? 19 A. There's like -- no, not fair. There's so much 20 more to it. 21 Q. Than this notice says? 22 A. No, that -- as far as the details behind the 23 document retrieval and details behind the 24 preparation. 25 Q. What are you saying, that the notice is wrong? 26 A. Well, no. I'm just saying it's broad and there's 27 -- it sounds simple I think when you're saying it. 28 29	1 2 3 know, you would -- if you're a client and you ask 4 me and you wanted to know what all this goes, then 5 we would -- we could -- 6 Q. Well, when you went from two forty-nine to two 7 ninety-nine, did you have a cost study or a 8 comparison study or any outside or inside study 9 that showed that your costs had gone up \$50? 10 A. Other than myself? 11 Q. Yes. 12 A. Okay. We did not hire a outside service or 13 anything for that. 14 Q. And every time this company goes up, Hendrick 15 Honda goes up -- 16 A. Right. 17 Q. -- it goes up \$50. Are we to believe that your 18 cost goes up exactly \$50 or that Don just decided 19 to go up \$50? 20 A. Well, there's decision making in it. There is -- 21 you got to decide how much -- not necessarily that 22 the \$50 would cover everything that you're trying 23 to cover. 24 Q. Or not necessarily that it wouldn't exceed what 25 you're trying to cover. Are you trying to paint 26 the picture for me that this is an insufficient 27 amount to cover the overhead for costs that you 28 29
Page 254	Page 256
1 2 3 To you, it's a simple thing. To me it's a very 4 complex thing. 5 Q. It's your notice. Do you think it's an inadequate 6 notice? 7 A. It's a notice that is reasonable for a customer to 8 look at. And if they have a question, we would be 9 prepared to answer them as far as we can. 10 Q. Well, I'm asking you now in a deposition, not as a 11 potential customer. 12 A. Yeah. 13 Q. And you and I are going much deeper into this than 14 any customer would. This is sitting on your wall 15 and I'm either a customer or a lawyer taking your 16 deposition. 17 A. Right. 18 Q. Can I rely on this to be true? 19 A. Yes. 20 Q. Even though you have no idea as to what your 21 document retrieval costs are, and you've never 22 counted them up, and you don't know what your 23 document preparation cost is because you've never 24 counted them up? 25 A. I know what it takes to do it. 26 Q. Do you share that with your potential clients? 27 A. If somebody would try to get this deep in it, you 28 29	1 2 3 don't know the price on? 4 A. Well, like I said, I don't -- I'm not looking at 5 it like you're looking at it. I'm looking at it 6 like at one time expenses were \$200,000, now 7 they're up to 300 to \$350,000, and that's a month. 8 A hundred thousand times 12 is a lot of money 9 expense wise. A lot of it has got to do with this 10 documentation and everything that we do. 11 Q. A lot of that increase in cost has to do with your 12 documentation and retrieval costs? 13 A. You have high-dollar people working in these 14 areas. 15 Q. If that was a major factor of your increase in 16 costs, a hundred thousand dollars a month times 12 17 months a year, surely you would do an accounting 18 study to show what your cost of document retrieval 19 is, wouldn't you? 20 A. We have not done that. 21 Q. Despite the fact that it's a major component of a 22 hundred thousand dollar a month increase, is that 23 right? 24 A. We're -- I've never done a document study. 25 Q. But yet you claim it to be a major component of a 26 hundred thousand dollar a month increase? 27 A. It's a lot of money. 28 29

Page 257	Page 259
1 2 3 Q. Is that yes to my question? 4 A. It's -- well, define major component. 5 Q. I don't know. 6 A. Yeah. 7 Q. You said it's a lot of it, of your hundred 8 thousand. 9 A. I look at it that we have people in high salary 10 positions that have to do this type of work. 11 Q. Well, is it a major component of your hundred 12 thousand dollar a month increase? 13 A. Well, if you'll add finance managers. 14 Q. Well, is that part of your document preparation 15 fee? 16 A. They're the ones that do the majority of the 17 preparation. 18 Q. So then is your answer yes, that your document 19 retrieval and your finance managers are a major 20 portion of your hundred thousand dollar a month 21 increase that you've suffered? 22 A. That and many, many, many more things. 23 Q. Yes or no? Is it a major component of your 24 hundred thousand dollars? 25 A. Is what now? 26 Q. These two charges, a major component of your 27 hundred thousand dollar a month increase. 28 29	1 2 3 Q. On this form, if you'll look on the right-hand 4 side under itemization of amount financed, for 5 this purchaser, whose name is omitted, were they 6 charged a document preparation charge of two 7 forty-nine? 8 A. You're referring right here (indicating), right? 9 Q. B. 10 A. B, yes. That's two forty-nine. 11 Q. Document preparation charge is what this person 12 was billed \$249 for, right? 13 A. That's the Honda terminology. 14 Q. You use it and you get your customer to sign it, 15 right? 16 A. Yes. 17 Q. Now, that doesn't mention anything about a 18 procurement fee or a processing fee or a document 19 retrieval fee, does it? 20 A. No. 21 Q. And in your notice, Plaintiffs' Exhibit Number 10, 22 you're saying that the two ninety-nine or whatever 23 at that time, the two forty-nine, was a means of 24 reimbursing for certain overhead costs such as 25 document retrieval and document preparation. This 26 B charge is for document preparation alone, isn't 27 it? 28 29
Page 258	Page 260
1 2 3 A. They're part of it. 4 Q. Yet you haven't ascertained what part or the 5 amount of it, correct? 6 A. I hadn't got into that detail. 7 MR. SPEARS: 8 Let's take a break. 9 (BREAK; OFF THE RECORD) 10 (EXHIBIT NUMBER 11 MARKED) 11 EXAMINATION RESUMED BY MR. SPEARS: 12 Q. I'm showing you Plaintiffs' Exhibit Number 11, 13 and Plaintiffs' Exhibit Number 11 is a retail 14 installment contract. 15 A. Is that this one here? 16 Q. Isn't that a retail installment contract? 17 A. Yes. 18 Q. Didn't you tell me earlier that for a purchase 19 agreement to be complete in the case of a financed 20 car, you need both the buyer's order and the 21 retail sales contract? 22 A. Yes. 23 Q. Is this contract provided by Honda Financial 24 Services or is it created by you? 25 A. It's provided by Honda Financial Services. 26 Q. And they are part of Honda America? 27 A. I think they're separate. 28 29	1 2 3 A. It's a Honda form. That's the way that they 4 describe it. 5 Q. Yet you use it in your dealership? 6 A. I agree that they describe it as a Honda document, 7 yes. 8 Q. And the document speaks for itself, but it's a 9 document that you use in your dealership? 10 A. Yes. Honda won't accept anything but their 11 document. 12 Q. And their document exclusively charges for a 13 document preparation charge, correct? 14 A. Their document -- say that again. 15 Q. Their document exclusively refers to a document 16 preparation charge? 17 A. That's what line B is. 18 Q. It doesn't mention anything about your notice or 19 the document retrieval fee or the processing fee 20 or the procurement fee, it just lists one of the 21 things you list, which is document preparation? 22 A. Uh-huh (affirmative). 23 Q. Does it cost you \$249 to prepare a document on a 24 car? 25 MR. BECKER: 26 Object to the form. It's vague. 27 EXAMINATION RESUMED BY MR. SPEARS: 28 29

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3 Q. You've never calculated it, we already know that.
4 A. Right. We know that.
5 Q. Would it be fair to say that if you've never
6 calculated, you have no idea whether it costs you
7 \$249 just to prepare a document on a car?
8 A. I don't -- we don't know the exact charge. I feel
9 like the two forty-nine would be fair.
10 Q. You don't know the exact charge?
11 A. Or of the exact expenses because, like I said,
12 again, to me, I'm looking at everything
13 intertwined. I'm not sure how Honda's looking at
14 that.
15 Q. And I'm not asking you how you're looking at it or
16 Honda's looking at it, I'm just saying when the
17 buyer comes in, is the buyer led to believe that
18 the preparation of documents costs two forty-nine
19 because you put up a sign saying this is what the
20 cost of document preparation is?
21 A. All right. Say that -- say that one more time.
22 Q. Does it cost you \$249 to prepare the documents as
23 Honda did on their form for any given car? And
24 the answer has to be you don't know, doesn't it?
25 A. Well, I'm not -- yeah. I'm not sure of the exact
26 cost on any given car. I'm not sure.
27 Q. So why would you have two parts of the same form,
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3 A. Right. And --
4 Q. But yet here on item number 11, we don't have
5 processing fee, we don't have procurement fee, we
6 don't have administrative fee, we don't have
7 closing costs. We have a brand new term. And
8 here it is limited solely and exclusively to the
9 term, "document preparation charge."
10 A. Uh-huh (affirmative).
11 Q. Now, you know it doesn't take \$249 to prepare the
12 documents on a car, true or untrue?
13 MR. BECKER:
14 Object to the form.
15 WITNESS ANSWERS:
16 A. Well, I don't -- this is a Honda form. Bank of
17 America has a form. Many lenders -- you might
18 have 22, 23 forms. They may have some different
19 name, just like procurement fee, administrative
20 fee. It's all the same fee.
21 EXAMINATION RESUMED BY MR. SPEARS:
22 Q. To you?
23 A. To -- yeah, well -- yeah, in my opinion.
24 Q. But for someone not in the business buying a car
25 and they come in there, here's a new term that
26 hasn't been used by you before. It's called
27 document preparation charge. Now, my question has
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3 one saying document procurement fee and the second
4 form, also part of the deal and incomplete without
5 having it, a retail installment contract which
6 refers merely to the document preparation charge?
7 A. All right. Where's the other part?
8 Q. The other part would be the buyer's order form.
9 A. The buyer's order form. And where's that?
10 Q. The buyer's order form says procurement fee.
11 A. Is that this form (indicating) here?
12 Q. Yes.
13 A. Well, is the question directed about why is -- one
14 form says one thing and one form says the other
15 things; is that what you're referring to?
16 Q. Well, you say both forms are necessary to seal the
17 deal in a car that's financed, right?
18 A. Yeah, but my question was, are we saying these
19 forms -- these are two different things? Because
20 all along I thought we agreed it's all the same
21 thing.
22 Q. No, we didn't agree. You told me that you thought
23 that all the different references meant the same
24 thing, whether it's procurement fee, processing
25 fee --
26 A. Administration fee.
27 Q. -- or administrative fee?
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3 been several times, and I'll ask it again, don't
4 you know for a fact that it doesn't take you \$249
5 on a car just to prepare the document?
6 A. Well, this -- my answer would be that I believe
7 this to mean the same thing as this and then --
8 and so it's too -- it's too broad of a -- I can't
9 narrow it down to just that.
10 Q. Well, the form narrows it down to that and you
11 specifically set that out as a separate
12 delineation as an example in your notice. You're
13 talking about certain overhead costs and you say,
14 "Such as document retrieval." That's one example,
15 right?
16 A. Uh-huh (affirmative).
17 Q. And then you write, "and." And means
18 additionally, "Document preparation." Yet here,
19 you charge for document preparation, so you used
20 the term. You must know what it means.
21 A. Well, to me what it means is, here's an example
22 and there's two things.
23 Q. And here's document number 11, which only lists
24 one of those two things, correct?
25 A. Yeah.
26 Q. Same terms?
27 A. That lists -- that's Honda's term. This has got
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3 two, but there's many more.
4 Q. None of those are what I'm asking you.
5 A. Yeah.
6 Q. I realize there may be many more.
7 A. When you say going to the beach, you know, and
8 we're going to go swimming and we're going to go
9 surfing and you're going to do a lot of other
10 things, and it's the same thing here. It's the --
11 there's more to it. It says, "such as," and it
12 gives a couple examples.
13 Q. And one of those examples is document preparation,
14 right?
15 A. That's correct.
16 Q. And document preparation is listed here on number
17 11?
18 A. That's correct.
19 Q. Costing \$249?
20 A. That's right.
21 Q. Does it cost \$249? Your example --
22 A. In my opinion, that it -- I don't know what the
23 exact cost is. But the -- in Honda -- it's a
24 Honda form.
25 Q. And Honda makes you use that form, right?
26 A. You have to use that form.
27 Q. And they have specific requirements that went over
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3 before that you've got to charge that fee? You
4 don't have the option of charging that fee, you've
5 got to charge?
6 A. We're -- yeah, we -- we do charge the fee.
7 Q. On every car?
8 A. Every car that qualifies.
9 Q. And on the Honda form, the customer's told that
10 it's a document preparation fee, right?
11 A. That's what it says.
12 Q. And on your notice, that's just one of several
13 examples of your overhead costs?
14 A. Uh-huh (affirmative), yeah. I just don't agree
15 with --
16 Q. You don't agree with Honda?
17 A. With -- I think they're more broader than it gives
18 it in this thing. That would be my interpretation
19 of it.
20 Q. How would the purchaser know that?
21 MR. BECKER:
22 Object to the form.
23 WITNESS ANSWERS:
24 A. We've posted things. We've -- if a purchaser has
25 a question, we ask -- answer questions about does
26 -- some purchasers get into a little detail or --
27 and some purchasers may just say, "I don't want to
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3 pay it." They have options.
4 EXAMINATION RESUMED BY MR. SPEARS:
5 Q. I'd like for you to try and be responsive to my
6 question. Okay?
7 A. All right. I thought I answered it. I'm sorry.
8 Q. If a purchaser comes in and wants to buy your car
9 and you show him this form, and item B says,
10 "Document preparation fee," are you telling us and
11 the Court that you would expect that the purchaser
12 would know that that's not just document a
13 preparation fee, that counts as a lot of other
14 things; is that what you're saying?
15 A. Well, you got to -- you got to remember that a
16 customer's been through a process by the time --
17 this is one of the last things he'll sign. He's
18 already been through all the details of
19 everything.
20 Q. Well, I'm not going to try and educate you on
21 what's known as the parole evidence rule. But I
22 want to know, in the written contract, which is
23 one half -- the buyer's order is required and this
24 is required for you to close a deal. When you're
25 closing a deal on this, what you disclose to the
26 client is that the document preparation fee is two
27 forty-nine, correct or incorrect? Is that what it
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3 says?
4 A. I will agree that it says document preparation
5 charge is one -- two forty-nine. I just don't
6 agree with the context.
7 Q. That doesn't list every cost that you list on your
8 notice, does it?
9 A. This does not.
10 Q. Thanks. And this is document 11, Plaintiffs' 11?
11 See it down there?
12 A. (Affirmative gesture; no verbal response.)
13 Q. Yes, it's Number 11?
14 A. Yes, Number 11.
15 Q. Do you advertise at Hendrick Honda?
16 A. Yes.
17 Q. Do you advertise on television?
18 A. Yes.
19 Q. Radio?
20 A. Used to.
21 Q. Do you do any print advertising, including
22 newspapers?
23 A. Used to do more.
24 Q. Do you do any ink?
25 A. I'm sorry; what now?
26 Q. Do you do any now?
27 A. With newspapers?
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3 Q. Yes, sir.
4 A. Yes.
5 Q. Internet?
6 A. Yes.
7 Q. Do you put window stickers on your cars?
8 A. On our new car or used cars?
9 Q. New cars.
10 A. New cars we put a sticker if it has a dealer-added
11 accessory.
12 Q. Well, it comes with a Monrooni, doesn't it?
13 A. Yeah, but we don't put those on.
14 Q. I didn't say you did. Do all new cars come with a
15 Monrooni?
16 A. Yes.
17 Q. Do they have a price listed on the Monrooni?
18 A. Yes.
19 Q. Have we already gone over the manufacturer's
20 retail suggested price on the Monrooni?
21 A. That is -- yes. Yes, we went over it.
22 Q. Have we already gone over the fact that that is
23 always inflated by a delivery charge?
24 A. The delivery charge is additional to the
25 manufacturer's, although my personal opinion, it's
26 one and the same.
27 Q. Do you do direct mailings?
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3 A. Yes.
4 Q. Now, on the advertised price of your vehicles, do
5 you admit that you have not disclosed the charging
6 or the amount of the administrative fee in your
7 television ads? You do not separately state the
8 amount of your procurement fee, processing fee,
9 closing fee?
10 A. Our television ads have -- say that again.
11 Q. Have you changed your television ads since 2000?
12 A. We've only started running television in 2008.
13 Q. That's the first time you did it?
14 A. Yes.
15 Q. In 2008, do you say anywhere on there or print on
16 the television the amount of your closing fee?
17 A. There's no need to. We don't.
18 Q. Do you do it, yes or no?
19 A. Well, it's a little bit more than a yes or no. I
20 mean we don't advertise any price.
21 Q. On your T.V. advertising, you don't advertise any
22 price for any cars?
23 A. That's right.
24 Q. You just, what?
25 A. It's strictly awareness.
26 Q. So you're just talking about, "We've got great
27 cars and they're for sale," and you might talk
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3 about you've got a special or employee pricing?
4 A. Y'all have got copies of them. We've sent them to
5 you.
6 Q. But you don't ever name a price for any car?
7 A. Not on any television ads.
8 Q. Do you name -- or did you name prices for any cars
9 on your radio ads?
10 A. No.
11 Q. You never did?
12 A. Never did between the time period of 2000 and
13 2008.
14 Q. You never named -- you know we've --
15 A. 2002. Yeah, we didn't -- 2002.
16 Q. To now?
17 A. To now.
18 Q. You've never stated a price for a given car on any
19 radio ad?
20 A. To my knowledge, no. And I know I sent them all
21 to you, yeah.
22 Q. In your newspaper ads, do you ever set out the
23 exact amount of the processing fee, closing fee?
24 A. In our newspaper ads --
25 Q. Now, I know they've changed over the years. So I
26 want to know, was there a time when you did not
27 put a closing fee charge in your television -- I
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3 mean in your --
4 A. Newspaper. Yeah, I've actually -- some of the ads
5 we sent you, we have no closing fee charge on the
6 newspaper ad.
7 Q. Meaning that you didn't disclose it or that you
8 put on there there is no closing fee?
9 A. No. It was no disclosure at all.
10 Q. Have you started putting in your newspaper ads
11 that there is a closing fee?
12 A. We have not.
13 Q. Don't you, in fact, say that the price excludes
14 taxes, tags, and closing fees?
15 A. I'm not sure on the time line of that if we did
16 between that time period or not.
17 Q. Between 2002 and now?
18 A. Now, yeah.
19 Q. Are you saying that what you did is you just never
20 mentioned the closing fee?
21 A. Well, I know that to be a fact because we've sent
22 the ads. And say the question again: make sure I
23 understood it. You were saying --
24 Q. In your newspaper ads --
25 A. Okay.
26 Q. -- you don't disclose the closing fee?
27 A. That -- there's -- there are occasions that
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3 happened, yes.
4 Q. Are there any occasions where that didn't happen?
5 A. It's been several years since we ran a display ad.
6 In line ads, we've never put -- and that's what
7 we're running now. I guess that's what's giving
8 me trouble. We don't put anything. We just put
9 nothing.
10 Q. So in your display ads, you never listed the
11 closing costs, correct?
12 A. (Affirmative gesture; no verbal response.)
13 Q. And in your line ads, you don't mention it at all;
14 am I getting that right?
15 A. In -- in the display ads that I saw that were
16 collected, there was mention of everything
17 inclusive except tax and tags in some new car ads,
18 mainly lease payments. And the -- but the used
19 cars listed beneath it were -- just had nothing.
20 So I'm just really saying on what I've seen, you
21 know, recently preparing for this thing.
22 Q. Do you think I'm talking about taxes or tags? I
23 haven't brought suit based on taxes or --
24 A. No, no. I'm not -- I'm saying --
25 Q. You know that this suit is about the closing
26 costs?
27 A. Yeah. I'm saying on line ads, there's nothing
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3 that mentions closing fee or tax or tags.
4 Q. And on the display ads previously done, there was
5 nothing that mentioned the closing fee, true or
6 untrue?
7 A. On the used car section of the one that I looked
8 at, there was nothing that mentioned a closing
9 fee. On the new car section, it -- best I can
10 remember it -- y'all probably got it right here.
11 Q. We got it.
12 A. But it says, you know, in a lease, you know, this
13 is -- everything's included except tax and tags.
14 It does not mention closing fees are included, but
15 the closing fee is in the payment.
16 Q. I'm not talking about leases, I'm talking about
17 purchases.
18 A. Purchase. Okay.
19 Q. I'll be happy to take the time to go through all
20 these ads if you want to.
21 A. Well, I'm just -- all I know is the ones I've
22 seen. On the purchase -- on purchasing a car, are
23 you talking about specifically a price?
24 Q. Yeah, disclosing the cost of the closing fee.
25 It's not put on any of your new car ads or used
26 car ads, true or untrue?
27 A. I'm not sure.
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3 Q. You don't know?
4 A. I'm not sure. The ones I've seen, I told you how
5 it was.
6 Q. The ones you've seen --
7 A. Right.
8 Q. -- you told me that it's not there.
9 A. I told you that, here's a lease for two thirty-
10 nine. I've seen no ads with price. I've just
11 seen -- and it breaks down in very detail about
12 how much cash people have to bring in, the sign
13 and drive, so to speak, and ride out with a car.
14 Everything's included it says in the ad except for
15 -- for tax and tags, but it doesn't use the word,
16 "closing fee."
17 Q. And it's your position that on a lease, the
18 closing fee is already figured into the lease?
19 A. Well, I know it to be a fact. Okay?
20 Q. But I'm talking about cars for sale.
21 A. I know it.
22 Q. And you can't answer my question?
23 A. Okay. I can't -- I answered your question on line
24 ads. We put a price in there and we have no
25 disclosure.
26 Q. Of the --
27 A. Of anything, tax, tags, or closing fee.
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3 Q. So if a person thought in your line ads that
4 that's what they could buy the vehicle for, the
5 truth is that they would have to pay in addition
6 taxes, tags, and a closing fee?
7 A. Well, the salespeople are instructed not to do
8 that. They're -- when the people come in, then
9 they, you know, work it in. But every deal, if
10 you remember, virtually is negotiated.
11 Q. You don't disclose that there is a fee for taxes,
12 tags, or closing fee in your line ad?
13 A. That's right.
14 Q. You do not, in your display ads for your new cars
15 or your used cars, display a number as a closing
16 fee in any of those printed advertisements either,
17 true?
18 A. The ones that I've looked at. It's been several
19 years since -- since we ran display ads. Quite
20 frankly, they don't work, for us anyway.
21 Q. I didn't ask you any of that.
22 A. I know. I know. I'm just saying this, that we
23 got out of that business and we -- and the ones
24 that I've looked at recently that you guys should
25 have, they got a real -- again, I think I've said
26 it several times, that they fully describe
27 everything the customer would have to pay except
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Page 277

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3 for taxes and tags, but it does not use the term,
4 "closing fee" or "administrative fee."
5 Q. But you're talking about the lease cars?
6 A. We don't -- we don't advertise -- the ones -- the
7 advertisements -- we didn't have any
8 advertisements that I've looked at that wasn't a
9 lease car.
10 Q. You're saying you don't advertise new cars for
11 sale?
12 A. We do.
13 Q. And you did when you did display ads?
14 A. Toyota -- Honda -- well, let me -- Honda has a
15 advertisement compliance.
16 Q. We're going to get to that.
17 A. Okay. And it virtually -- I've learned early on
18 that it doesn't do us a lot of good to advertise a
19 price in new cars because Toyota always looks
20 better because we can't advertise over invoice.
21 Q. You can't advertise over invoice?
22 A. Or -- excuse me, below invoice.
23 Q. But you did display ads for a number of years and
24 they were on new cars. And in those ads, as in
25 the used car ads, you did not disclose that there
26 was a closing fee or the amount of the closing
27 fee, correct?
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Page 279

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3 about that portion of new cars that you've
4 advertised in design ads as lease cars?
5 A. No, no. It's a Honda, just like any other car.
6 I'm sorry. A customer comes in. Instead of
7 making a purchase on it, they lease on it. Is
8 that what you meant?
9 Q. And I don't want to know about lease cars. I want
10 to know about --
11 A. A lease car is the same as -- a Honda Civic's a
12 Honda Civic.
13 Q. Well, I know that.
14 A. Yeah.
15 Q. I'm talking about a person coming in, not to lease
16 it --
17 A. Right.
18 Q. -- where all of those attendant charges are worked
19 into the lease and they just have a monthly rate.
20 They don't know what all's in there, but they know
21 what the monthly payment is. That's what's
22 advertised in the paper, right? If they put a
23 certain amount down for the lease car --
24 A. Leases have full disclosures, just like a regular
25 purchase.
26 Q. The lease doesn't have anything about the closing
27 fee in it, does it.
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Page 278

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3 A. All right. Let's -- I think I've said -- I've
4 actually agreed with you three times now.
5 Q. Are you saying --
6 A. I'm thinking, but what I'm saying is, it's been
7 several years since we've ran display ads in
8 newspapers.
9 Q. I heard you.
10 A. Okay. So by memory of exactly what we did, as far
11 as telling you exactly what we did is based on the
12 -- what my attorneys have showed me, you know, an
13 ad.
14 Q. And showed us.
15 A. And I looked at the ad and I see down at the
16 bottom where the used cars have no disclosure,
17 okay, and the new cars have a full disclosure.
18 Although they don't mention closing fees, it does
19 mention that -- that that's the -- what they could
20 buy it for if they bring in this much cash, but it
21 does not mention the closing fee.
22 Q. At all?
23 A. At all. And the closing fee will not be charged
24 to them at all, and the -- as far as in addition
25 to that price. It's all inclusive. The closing
26 fee was in it.
27 Q. Now, let me get this straight. Are you talking
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Page 280

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3 A. It does not mention the closing fee, but it says
4 -- basically it says, you give me \$2.50 and you're
5 driving this car out of here for two thirty-nine a
6 month. And --
7 Q. And you don't tell them that part and parcel of
8 that is the financing of the closing fee in the
9 ad?
10 A. It's not -- we do not have the words, "closing
11 fee" in the ad.
12 Q. And you do not have the amount?
13 A. We do have the -- well, we have the amount in the
14 payment, but we don't have it in the ad.
15 Q. You don't show it separately in the ad?
16 A. No.
17 Q. And you don't mention a closing fee or procurement
18 fee?
19 A. That is I think what I've said for the fourth time
20 now.
21 Q. So now we've got not only used cars out of the
22 way, we've got lease cars out of the way. Now
23 let's go to new cars for sale.
24 A. Okay.
25 Q. Not for lease.
26 A. Okay.
27 Q. You advertised those in print advertising in the
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70 (Pages 277 to 280)

1
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3 past, didn't you?
4 A. We have.
5 Q. And you advertise them now, don't you?
6 A. No.
7 Q. You don't?
8 A. Euh-uh (negative).
9 Q. In the past when you advertised new cars for sale,
10 not for lease --
11 A. Right.
12 Q. -- did you disclose in the print advertising --
13 obviously we're all sitting here and know the
14 answer.
15 A. Right.
16 Q. But did you advertise the amount and the
17 terminology of a closing fee or a procurement fee,
18 new cars, not lease cars?
19 A. I have -- it's been several years. I hadn't
20 looked at it, but in that time period, I feel
21 comfortable with we may not have.
22 Q. Thank you. Now in internet ads, do you advertise
23 the price of the car?
24 A. Well, when you say -- I mean we may not have
25 advertised it is what I'm saying.
26 Q. I know.
27 A. Okay.
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3 A. Yes.
4 Q. But it's a purchase, not a lease? You're
5 advertising on the new car that is being
6 purchased, a financing package that really
7 incorporates what the monthly payments are going
8 to be?
9 A. Right.
10 Q. What you don't disclose in there is that amortized
11 within that monthly payment is the \$299 closing
12 fee. You don't mention it.
13 A. That's still not where I was headed exactly.
14 Q. I don't care where you were headed, I was
15 wondering did I do that right?
16 A. Yeah. Yeah, I'm not sure. Let me just put it
17 between the blocks. I'm not sure we did that from
18 2002 to 2008 is what I'm saying.
19 Q. When do you think you did it?
20 A. We went to leases.
21 Q. You mean you never sold a new car, you just leased
22 everything?
23 MR. BECKER:
24 Advertised.
25 WITNESS ANSWERS:
26 A. Advertised, yeah. It's --
27 EXAMINATION RESUMED BY MR. SPEARS:
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3 Q. That's all I'm asking.
4 A. As far as I know, we hadn't advertised anything in
5 -- since 2002 on a price in a new car. Is that
6 what -- you understood it the same way?
7 Q. Yes.
8 A. Okay.
9 Q. You never listed the procurement fee or the --
10 A. No, no, no.
11 MR. BECKER:
12 Can I just speak with you just outside just a
13 second? I think it'll help things go faster.
14 MR. SPEARS:
15 Sure.
16 (BREAK; OFF THE RECORD)
17 EXAMINATION RESUMED BY MR. SPEARS:
18 Q. After our conference with your attorney, I am
19 informed that -- and I think I understood this.
20 A. Okay.
21 Q. But I am informed that when you advertised new
22 cars, you would advertise not a lump sum price
23 like \$19,500, but instead you would advertise a
24 financing package, like, "You can drive this 2008
25 off the lot for 350 a month for 60 months"?
26 A. Similar to a lease.
27 Q. Similar to a lease?
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3 Q. Are you saying you never advertised a new car?
4 A. All right. Bear with me.
5 Q. Believe me, I have been.
6 A. Okay. All right. If Mr. Toyota has got a Camry
7 for 15,950 in the paper, and I got a Honda just
8 like it for 18 something -- because no matter --
9 Honda will not allow us to go below invoice. So
10 if we got dealer cash, a thousand dollars, two
11 thousand dollars, whatever on a particular Honda,
12 you know, we'll be actually -- we're going to be
13 two or three thousand dollars higher than the
14 Toyota guy. So you can buy you a full page ad,
15 throw your big \$18,000 car in there and he's got
16 his Camry in there for 15 thousand something, and
17 I'm wasting my money by advertising a price is
18 what I'm trying to say. I learned that early.
19 Q. I'm very clear on that. And that's why I know you
20 don't list the lump sum purchase value of a car
21 because comparatively to a Toyota, you're going to
22 lose customers?
23 A. Yeah.
24 Q. I got that.
25 A. So what I'm saying -- well, what was your original
26 -- I don't even know what the original question
27 was.
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Page 285	Page 287
1 2 3 Q. Assuming that when you advertise new cars -- 4 A. Right. 5 Q. -- not for lease, but new cars for purchase, you 6 don't list the lump sum price of them, you 7 instead, in your print advertising, list a 8 financing package for that car? Do you know what 9 I mean by a financing package? 10 A. Yeah, I know exactly. Here's a lease, 30 months. 11 Here's a finance package, 60 months. 12 Q. Right. 13 A. But I'm not sure I've ever done that. I don't 14 remember ever doing that. 15 Q. Well, can we say this? 16 A. All right. 17 Q. First of all, let's let your advertisements speak 18 for themselves. 19 A. Okay. 20 Q. Because they say what they say, right? 21 A. Okay. 22 Q. Would you agree that so far as you know, if you 23 ever listed a new car for sale on a financing 24 package, which is the monthly -- 25 A. Right. Right. 26 Q. -- that you did not disclose the amount or the 27 fact of a closing fee? 28 29	1 2 3 correct. 4 MR. SPEARS: 5 This is a stipulation. 6 MR. BECKER: 7 It is. Well, it's my statement regarding what I 8 believe the situation to be, the facts to be, and 9 Mr. Pendleton can correct me if I'm wrong. But 10 it's this, that sometime prior to the -- for some 11 period of time relevant to the beginning of the 12 relevant time period for this litigation as 13 defined on the last page of Plaintiffs' Exhibit 1 14 to this deposition, Hendrick Honda of Esley did 15 advertise new vehicles and include an advertised 16 price for those new vehicles, and also would have 17 included a disclaimer or disclosure at the bottom 18 that the price would be plus tax, tag, or title or 19 words to that effect, and a closing fee or a doc 20 fee, or words to that effect. At some time either 21 prior to or shortly after, within not a long time, 22 but sometime either shortly before or shortly 23 after the relevant time period, the beginning of 24 the relevant time period, Hendrick Honda of Esley 25 ceased a practice of advertising the price for new 26 cars and also ceased the practice of including a 27 disclaimer that said plus tax, tag, or title or 28 29
Page 286	Page 288
1 2 3 A. And when I say I'm not sure I ever did that, I 4 would be answering a question based on something I 5 never did, like if we've never put a -- you know, 6 a payment and a price -- I'm not sure if we've 7 ever done that during that time period. 8 MR. SPEARS: 9 Counselor, can we stipulate that when new cars 10 were advertised, that the procurement fee was 11 never separately set out in print advertising? 12 MR. BECKER: 13 I'm not sure that my understanding is correct. I 14 thought it was, but I just -- 15 MR. SPEARS: 16 Let's go off the record. 17 (DISCUSSION OFF THE RECORD) 18 MR. BECKER: 19 Mr. Pendleton and I have just had a off-the-record 20 conversation at the suggestion of and with the 21 consent of counsel for the Plaintiffs in an effort 22 to try and determine if there is or is not a 23 misunderstanding. And I've spoken with Mr. Spears 24 about this outside and we've agreed that I will 25 make the following statement, which Mr. Pendleton 26 can agree with or correct if necessary. I hope 27 that won't be, but if it is, he should feel to 28 29	1 2 3 words to that effect, and dealer closing fee or 4 document fee or admin fee, or words to that 5 effect. And since that time, it has not included 6 any such disclaimer in any of its display ads for 7 either new or used cars. 8 WITNESS: 9 My version would be -- or it is the same thing 10 basically as -- we ran tax, tags, plus the two -- 11 or one ninety-one, whatever it was, doc fee early 12 on. And somewhere we said, it makes no sense to 13 advertise the price and we quit doing it. And 14 then somewhere -- I'm just not sure if it was -- 15 if it spilled over into the relevant time or not. 16 My recollection back -- did it stop before or 17 after the relevant time, I'm not sure. And the 18 one about the sales contract, I'm not sure that we 19 ever ran a ad like that, period. And that was my 20 hangup was just not being sure that it was 21 anything in the relevant period of time, because I 22 had no records to look at that would indicate that 23 I did. And then we -- you know, there we go. 24 EXAMINATION RESUMED BY MR. SPEARS: 25 Q. Let me see if I can sum that up. More likely than 26 not during the relevant time period, 2002 forward, 27 when you advertised new cars, you advertised them 28 29

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3 at a financing price, not a lump sum price, i.e.,
4 a monthly price which you, in the ad, did not set
5 out included a doc fee?
6 A. Actually what I think I just said, I'm not even
7 sure if I ever even advertised them at a monthly
8 price, like a sales contract price, not -- I just
9 don't have any memory of that.
10 Q. Well, how did you advertise new cars during the
11 relevant time period?
12 A. In the newspaper is what we're talking about?
13 Q. Yes, sir.
14 A. Yeah. We got out of the newspaper business except
15 for line ads.
16 Q. But not since 2002?
17 A. Well, that's --
18 Q. I mean we have your ads.
19 A. That's my -- we have some. I know the ones I've
20 seen, but I'm just -- and that's a lease.
21 Q. Can we agree to this?
22 A. Okay.
23 Q. If you advertised new cars for purchase in the
24 relevant time period, 2002 forward, okay, you
25 advertised a monthly purchase -- I mean a monthly
26 payment which was inclusive of the closing fee,
27 but it didn't disclose that it was inclusive of
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3 the closing fee?
4 A. All right.
5 Q. Did I do that right?
6 MR. BECKER:
7 I think he's already answered -- testified to
8 that, but his testimony is what it is. Go ahead,
9 Mr. Pendleton.
10 WITNESS CONTINUES:
11 A. Yeah. It's -- I'm not sure I've ever even done
12 that, period, like --
13 EXAMINATION RESUMED BY MR. SPEARS:
14 Q. But if you did, that's the way you did it?
15 A. That's my reluctance to answer the question.
16 Q. You're not sure if you did, but if you did, that's
17 the way you did it?
18 A. I'm not sure if I did run a monthly sales contract
19 thing.
20 Q. And are you saying so far as you are aware --
21 A. I'm sure I ran the lease.
22 Q. So far as you are aware, all new cars that you've
23 advertised since 2002 have been advertised under a
24 lease, so far as you are aware?
25 A. A lease, yes.
26 Q. Is that correct?
27 A. Yes, just like the copies you have. That would --
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3 Q. Did I say that right?
4 A. Yes. I'm just not sure --
5 Q. I know that. I know that.
6 A. That's my problem. I just don't know..
7 Q. You're straining over that?
8 A. Yeah. I don't know.
9 Q. I'm not going to scream at you on the stand in
10 front of the jury if I find an ad where you tried
11 to sell a car for a monthly finance rate. Okay?
12 A. Okay.
13 Q. I'm just saying, so far as you know, in a good
14 faith effort, you believe that all new cars
15 advertised during this 2002 forward period were
16 advertised for lease with a monthly payment,
17 right?
18 A. That's what I feel like. The lease was the main
19 thing.
20 Q. And it would also be true within that ad for the
21 lease of the car that you had advertised or
22 financed a closing cost which was not disclosed in
23 that advertisement?
24 A. It was not disclosed in the advertisement, but it
25 was included in the payment.
26 Q. I understand.
27 A. Okay.
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3 Q. Now, did you advertise on the internet?
4 A. We have specials that we advertise on the
5 internet.
6 Q. Does that mean yes, you've advertised on the
7 internet?
8 A. Yes. Yes.
9 Q. Now, do you advertise only used cars or only new
10 cars or both on the internet?
11 A. We -- we have, yeah, special places that we
12 advertise new and used cars on the internet.
13 Q. On the internet, do you disclose that there is an
14 additional charge for closing costs?
15 A. Yes.
16 Q. Where?
17 A. On the front page, the home page.
18 Q. And what does it say?
19 A. In general, basically the same thing that our -- I
20 think our buyer's guide says now, the one that you
21 were showing me earlier, that it is not required
22 by law and it's a charge that we can charge.
23 Q. I mean do you say on your internet ads -- and I
24 think you must know that we have gone to the
25 internet.
26 A. Uh-huh (affirmative).
27 Q. Do you say in there that the stated price does
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Page 293

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3 include or does not include a closing fee?
4 A. We say it does include a closing fee.
5 Q. Of? Do you name the amount?
6 A. Yes, of the two ninety-nine.
7 Q. Since when?
8 A. Since sometimes after the lawsuit.
9 Q. Prior to then, did you do internet advertising?
10 A. We -- I'm assuming we did.
11 Q. And prior to the beginning of the lawsuit, did you
12 disclose and include the closing cost number on
13 the price of the car?
14 MR. BECKER:
15 The closing fee number?
16 MR. SPEARS:
17 Yeah.
18 WITNESS ANSWERS:
19 A. The closing fee number is added to -- is that what
20 you're saying?
21 EXAMINATION RESUMED BY MR. SPEARS:
22 Q. Yes.
23 A. No.
24 Q. You didn't disclose it and you didn't disclose the
25 amount of it, correct?
26 A. In the --
27 Q. Prior to the lawsuit.
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Page 295

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3 internet, you either didn't mention the closing
4 costs at all, or you put it down and said it was
5 not included in the cost. Fair?
6 A. I'm stuck in that place again, the same thing we
7 just talked about out here.
8 Q. Forget the starting -- beginning 2002. We might
9 have leaped over a little bit.
10 A. Well, it's not even exactly that. It's I'm not --
11 prior to the -- and when would the lawsuit start?
12 MR. BECKER:
13 The relevant time period is between August 29,
14 2002 and November 30, 2008
15 WITNESS:
16 2008; all right. So in '02.
17 MR. BECKER:
18 But the lawsuit was filed in August, 2006.
19 WITNESS:
20 Yeah.
21 EXAMINATION RESUMED BY MR. SPEARS:
22 Q. And that's when I'm asking about, the time period
23 prior to the notice that you had that a lawsuit
24 had been filed. You did internet and that internet
25 either did not mention the closing fee or it
26 mentioned it and said it wasn't included in the
27 price of the car?
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Page 294

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3 A. Well, it could have been either/or. It could have
4 been --
5 Q. Yes or no?
6 A. Well, no. It could have been either we had it
7 there as a plus or we had it -- or we didn't have
8 it there.
9 Q. Well, that would be yes or no.
10 A. Yeah.
11 Q. Prior to the lawsuit, you did something that the
12 lawsuit caused you to change, right? After the
13 lawsuit, on your internet advertising, you
14 disclosed a \$299 closing fee and you said it was
15 included in the cost, true?
16 MR. BECKER:
17 Object to the form.
18 WITNESS ANSWERS:
19 A. We -- we added it to our page, our web page,
20 that's right.
21 EXAMINATION RESUMED BY MR. SPEARS:
22 Q. And what it said was the amount of the closing fee
23 and that it was included in the cost of the car?
24 A. Or the price of the car.
25 Q. Price of the car?
26 A. Yeah.
27 Q. Prior to then, when you advertised on the
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Page 296

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3 A. Yeah. I'm -- I'm not sure. Like this -- from two
4 thousand -- early on in the internet, it was very
5 antiquated, I guess.
6 Q. Who would know?
7 A. Well, I would know why I'm not sure.
8 Q. How do you know why you're not sure?
9 A. Early on, we had one internet salesperson. We
10 didn't have a lot of anything else as far as
11 people that managed the site and things like that.
12 It was -- you wouldn't even have pictures of cars
13 a lot of times back in those days. I doubt we ran
14 any ads, you know. There would maybe become a
15 time that we would have somebody that did manage
16 the site that would -- would put service coupon in
17 a service thing, would -- maybe under Honda, they
18 would -- and this is basically what we do now. We
19 would put all the Honda specials, lists them just
20 like Honda lists them in their language for all
21 their specials. And that's -- when they click on
22 specials, that's what they go to. Could we have
23 ran a price of a car in there somewhere? There's
24 a possibility. Can I tell you what car when and
25 what, where? I can't and that kind of thing.
26 Q. Would you agree that prior to the lawsuit, if you
27 listed cars for sale new or used, that you did not
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3 list that the cost or price of the car included
4 the doc fee?
5 A. All right, say that again. If we ran -- if we did
6 run the car?
7 Q. If you ran internet advertisements on cars prior
8 to the 2006 filing of the lawsuit, on the internet
9 when you listed the price of the car --
10 A. Right.
11 Q. -- you did not list the doc fee?
12 A. See, there's where I've got the problem. I -- I
13 don't know if we did or not.
14 Q. Is that the problem, you don't know?
15 A. I don't know, yeah.
16 Q. And you don't know anybody else that would know?
17 A. (Negative gesture; no verbal response.)
18 Q. So if I've got you on the stand in court in front
19 of the jury and I say, "Don, you can't deny that
20 prior to '06, when you ran an internet ad, you
21 failed to disclose the doc fee," you wouldn't be
22 able to say anything other than, "I don't know
23 whether we did or we didn't"?
24 A. Well, I don't know if we ran a car that would
25 qualify for that, like here's a price of a car
26 and a price. I just don't know if we did that.
27 Q. In whatever way you advertised cars on the
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3 internet, whether you did a lump sum price or
4 whether you did a lease or whether you did a
5 monthly financing number, would you agree that if
6 you're on the stand and I ask you the question,
7 "Prior to '06 when you did internet advertising,
8 in whatever way you did it, you did not disclose
9 the doc fee"?
10 MR. BECKER:
11 Can I say something?
12 MR. SPEARS:
13 Yes.
14 MR. BECKER:
15 Do you mean like a little separate disclaimer that
16 includes the doc fee? Is that what you're
17 referring to?
18 MR. SPEARS:
19 Well, he specifically said that sometimes there
20 was a -- not a disclaimer, but an addition saying,
21 "This includes the doc fee." My understanding is
22 the vast majority of his advertising in print and
23 now in internet prior to the commencement of this
24 lawsuit specifically made either no mention of a
25 doc fee or said this does not include tax, tags,
26 and document fees prior to '06.
27 EXAMINATION RESUMED BY MR. SPEARS:
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3 Q. Do you understand what I just said? Here's a big
4 difference.
5 A. Okay.
6 Q. There's a big difference in saying here's the
7 price of a car or here's the monthly payment on a
8 car. And either the price or the monthly payment,
9 whichever, includes a document fee of two ninety-
10 nine. There's a big difference between that and
11 listing either the price of the car or a monthly
12 rate and either not mentioning that you included a
13 document fee in that cost or specifically saying,
14 asterisk, this does not include taxes, tags, and
15 document fees. Do you see the difference in that?
16 The first one includes it, the second one doesn't
17 include it.
18 A. Yeah. And I don't think that's what's holding me
19 up. What's holding me up --
20 Q. Let's answer that, though.
21 A. Okay.
22 Q. Do you agree that prior to the commencement of
23 this lawsuit, your internet advertising did not
24 say that the price or the monthly rate, however
25 you advertised it, did not include taxes, tags,
26 and doc fee?
27 MR. BECKER:
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3 Did not say that it did not include it?
4 EXAMINATION RESUMED BY MR. SPEARS:
5 Q. Did not say anything about it, or if it mentioned
6 it, it said it did not include it on the internet?
7 A. Did not say anything about it or -- what was that
8 last part?
9 Q. Or if it mentioned a document fee, it specific
10 said that the doc fee was not included in the
11 price?
12 A. My hangup is I just don't know if we ever ran an
13 ad that I would be saying we did something and it
14 just never, ever happened. You know, there were
15 Hondas -- the majority of that was just Honda
16 specials. We would pull it off the Honda site and
17 put it on our site, drop it down.
18 Q. Well, you've got to add something for it, whether
19 it's monthly or lump sum, right?
20 A. You got to have what now?
21 Q. You got to add something for it, whether it's
22 monthly or a purchase price, a lump sum. A Honda
23 special -- a Honda costs something. You either
24 work out the monthly payments for them and they
25 agree to that and walk off with it and it's a
26 purchase --
27 A. Right.
28
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Page 301

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3 Q. -- or you work out the monthly payments and they
4 walk off with it and it's a lease, or you
5 advertise it as a lump sum?
6 A. Right. But in general, Honda would be a lease, or
7 maybe a special would be there's two point nine on
8 Civics that would have no prices or anything at
9 all.
10 Q. I understand that.
11 A. Okay.
12 Q. And in that sort of -- whether that's a special or
13 a lease or whatever, prior to '06, you either
14 didn't mention the doc fee at all or if you
15 mention it, you said it was not included.
16 A. That was on -- I think we were -- you're talking
17 about newspaper ad?
18 Q. Internet.
19 A. But -- but on the internet, I don't know if we ran
20 any ads besides just listing what Honda had,
21 specials. I'm not sure if we went past that.
22 Q. Well, if you just listed what Honda listed, you
23 still didn't mention the doc fee, right, because
24 Honda doesn't mention doc fees?
25 A. It's quiet in here, isn't it?
26 Q. What's your answer?
27 A. I'm not sure what happened back then.
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Page 302

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3 Q. So we're back to my ultimate question. If I put
4 you on the stand in front of the judge and I say,
5 "You charged people prices for cars that included
6 document fees that you didn't disclose to them,"
7 you won't be able to admit or deny that?
8 A. I would probably ask you to rephrase it in a way
9 that I could explain, I guess.
10 Q. You don't know whether your internet advertising
11 did or did not disclose the document fee or the
12 amount, correct?
13 A. Would that be the same as if we posted a internet
14 ad? The only thing I'm afraid of that we actually
15 did it right and I might -- somebody in 2005 did
16 it right and I'm sitting here saying he did it
17 wrong, and I'm wrong. I would --
18 Q. I'm just saying that you say today under oath you
19 don't know?
20 A. I don't know.
21 Q. If you did it right or if you did it wrong you
22 don't know?
23 MR. BECKER:
24 When, prior to 2006?
25 MR. SPEARS:
26 Prior to 2006.
27 MR. BECKER:
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Page 303

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3 Prior to August of 2006?
4 MR. SPEARS:
5 Right.
6 EXAMINATION RESUMED BY MR. SPEARS:
7 Q. Prior to August of 2006, as you sit here today,
8 you don't know if you all did it right or did it
9 wrong. Fair?
10 MR. BECKER:
11 Object to the form.
12 WITNESS ANSWERS:
13 A. I don't know if it's fair or not.
14 EXAMINATION RESUMED BY MR. SPEARS:
15 Q. Well, you state what's fair. What did you -- what
16 do you know about what was done on the internet in
17 regards to disclosing or not disclosing the doc
18 fee?
19 A. On Honda's list, my best guess would be that there
20 was a payment on a lease just like we were talking
21 about in the paper. It -- and it had maybe like a
22 sign and drive, like you bring in \$4.15 and you
23 drive a car out. And if a customer would have
24 came in, they would have brought \$4.15 and drove
25 out with a car. The doc fee would be inclusive.
26 They -- "I want the special. I want the \$99 or
27 the 2.99 and I want the -- and here's the cash,"
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Page 304

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3 and they could drive off with the car. That's
4 what I think happened.
5 Q. And that those internet ads never mentioned the
6 doc fee?
7 A. That would be my gut feeling. My reluctance is
8 that I'm not sure that that's true, but that would
9 be my best guess.
10 Q. Thank you. Now, do you use, on all your new cars,
11 Monroni window stickers?
12 A. Yes.
13 Q. And we have a copy of the Monronis already
14 admitted into evidence here. Is this a Monroni
15 window sticker that you supplied to us as
16 Plaintiffs' Exhibit Number 9?
17 A. Let's see, yeah, that is a Monroni sticker.
18 Q. And every new car you sell has one of those in the
19 window, right?
20 A. Yes.
21 Q. And that is put in there by Honda America, right?
22 A. Yes.
23 Q. And it does not mention in any way a document fee
24 or procurement fee, true?
25 A. On the window sticker?
26 Q. On the Monroni in front of you, Plaintiffs'
27 Exhibit Number 9.
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Page 305

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3 A. Oh. (Reviewing document.) No, I'm sure it
4 doesn't. I mean no, there's nowhere that it
5 mentions that.
6 Q. If I were to walk up to a car with a Monroni
7 window sticker on it on your lot, would I have any
8 way to know from this window sticker that you're
9 going to hit me up for another two ninety-nine?
10 A. I don't think that's the purpose of the window
11 sticker.
12 Q. I didn't ask you the purpose. Would I have any
13 way of knowing, by looking at the Monroni, that
14 there's going to be an additional doc fee?
15 A. There's -- there's no added price for the
16 document.
17 Q. We've already answered that question.
18 A. Yeah.
19 Q. Would I have any way of knowing by looking at this
20 Monroni on this car advertising the price of this
21 car that there's going to be another charge --
22 MR. BECKER:
23 Object to the form of the question.
24 EXAMINATION RESUMED BY MR. SPEARS:
25 Q. -- for a doc fee?
26 A. Unless you've bought cars before, you may --
27 Q. Is the answer no?
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Page 306

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3 A. Yeah. There's nothing on here that says anything
4 about anything else, taxes, tags, or doc fees.
5 Q. In your Answers to Interrogatories, you indicated,
6 "For all new vehicles, Hendrick Honda of Easley
7 has displayed paper window stickers prepared and
8 affixed by the manufacturer commonly known as
9 Monroni stickers." That's Number 9 that you're
10 looking at right now, right?
11 A. Okay.
12 Q. You say those are required by federal law, right?
13 A. Yes.
14 Q. And you saw this is prepared by Honda of America?
15 A. Yes, that when a car comes in on a truck, they're
16 on there.
17 Q. Is it Honda America that prepares --
18 A. American Honda. And some of them can come from
19 Japan, you know. This -- but it's a Honda
20 sticker.
21 Q. A Honda sticker?
22 A. Yeah.
23 Q. Done by the manufacturer?
24 A. Yes.
25 Q. Then you say in your Answers to Interrogatories,
26 "For some new vehicles, Hendrick Honda of Easley
27 has displayed a preprinted dealer prepared
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Page 307

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3 supplemental sticker, which includes the asking
4 price for certain dealer installed additional
5 equipment and a total dealer asking price for the
6 vehicle." Now, that's the evidence we have of the
7 Hendrick Honda is this document. Is this the
8 supplemental that you're talking about?
9 A. Yes. It's where accessories are listed.
10 MR. SPEARS:
11 Let's mark that as Plaintiffs' Exhibit -- 11?
12 COURT REPORTER:
13 Twelve.
14 (EXHIBIT NUMBER 12 MARKED)
15 EXAMINATION RESUMED BY MR. SPEARS:
16 Q. Did you seriously have to give us a picture of a
17 supplemental? Do you not have the supplemental
18 sitting around somewhere?
19 A. We -- we could have gave you a supplemental, yeah.
20 Q. Plaintiffs' Exhibit Number 12 shows an adequate
21 representation, does it not, of what a Hendrick
22 Honda supplemental sticker would look like on a
23 new car, correct?
24 A. That is our sticker on the new car.
25 Q. And the supplemental sticker itself does not
26 include the doc fee?
27 A. Does not.
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Page 308

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3 Q. Agreed?
4 A. Agree.
5 Q. So there is no window sticker, either Monroni or
6 supplemental, manufacturer's or Hendrick Honda's
7 stickers, that displays on the price of the car on
8 the window sticker the doc fee, true?
9 A. That's true.
10 Q. In regards to certified used cars -- and by the
11 way, was Julie's car -- Julie Freeman, did she buy
12 a used car from you that was a certified Honda?
13 A. Is this the --
14 Q. That's it.
15 A. I believe it was. Let me just look here real
16 quick. Yes.
17 Q. She bought a certified car. Is Plaintiffs'
18 Exhibit Number 13, which I'm getting ready to mark
19 -- let me mark it.
20 (EXHIBIT NUMBER 13 MARKED)
21 EXAMINATION RESUMED BY MR. SPEARS:
22 Q. Is that the window sticker you would use prepared
23 by the dealership to go in a certified used car
24 sold by you?
25 A. That would be a sticker, yes, that we used back --
26 or we use currently.
27 Q. And that would go on that type of used car known
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Page 309

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3 as a certified used car, correct?
4 A. The ones that we have currently, yes.
5 Q. And Julie bought a certified used car?
6 A. Yeah. I'm just not sure if it was the same type
7 sticker.
8 Q. Well, this sticker -- this certified sticker
9 prepared by Hendrick Honda that goes on your
10 certified used cars and tells the price of the
11 car, nowhere in that window sticker does it
12 advertise the procurement price, right?
13 A. That's correct.
14 Q. And on regular used cars that are not certified
15 as Honda used cars, you also similarly do not
16 disclose the procurement price, true?
17 A. Well, and we don't disclose any price at all.
18 Q. That wasn't my question.
19 A. Oh, okay. Yeah, I see. No prices at all on that
20 --
21 Q. So you certainly don't disclose the fact that
22 there's going to be a \$299 procurement fee?
23 A. No.
24 Q. On any used car?
25 A. That's right.
26 MR. SPEARS:
27 Let's mark that as Plaintiffs' Exhibit 14.
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Page 310

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3 (EXHIBIT NUMBER 14 MARKED)
4 EXAMINATION RESUMED BY MR. SPEARS:
5 Q. On your certified used car here that we talked
6 about with Julie, you said that's the current
7 sticker. Did you use a prior sticker that we
8 don't know about?
9 A. Well, they're -- over the years they can change.
10 I'm trying to look and see. Yeah --
11 Q. But regardless of -- I'm sorry.
12 A. But they would be similar. It just --
13 Q. Regardless of the type of sticker that you put on
14 the used car that was certified, it would not have
15 ever disclosed the doc fee, would it?
16 A. I don't recall ever having one that disclosed the
17 doc fee.
18 Q. Now, do you find that the prices that you post in
19 the windows of your car are of any interest to the
20 people who walk your lot?
21 A. And you're talking about new cars or used cars?
22 Q. Any of them. If Joe Blow comes to your lot and
23 starts walking around, he might be looking at new,
24 he might be looking at used, but he's certainly
25 looking at something within his price range?
26 A. Uh-huh (affirmative).
27 Q. Do those window stickers in any way help him make
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Page 311

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3 a decision?
4 A. I think -- you want me -- I would rather one at a
5 time, new and used, because they're a little
6 different.
7 Q. Sure.
8 A. Okay. All right, let's say, for example, a MSRP
9 sticker or a Monroney label sticker --
10 Q. And you're referring to Number 9?
11 A. Yes. Yes. It -- I'm just looking at the first
12 page you have here. I think a guy that's wanting
13 a car that has good gas mileage would -- this
14 would provide good information for him. And then
15 below it, it has the government crash test
16 ratings. People looking for safety, that would be
17 good information for them. Over here, I think
18 it's helpful --
19 Q. That's page 2 of Exhibit 9?
20 A. Yes, uh-huh (affirmative). It's helpful that it
21 lists different features of the vehicle,
22 technical features, safety features, interior --
23 interior features, external features. And that
24 way, people that are interested in those type of
25 details could get information from that. I think
26 -- I think that would be helpful. And the smog
27 emissions for people interested in that, I think
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3 that's helpful. The pricing I think is helpful to
4 people that shop -- a lot of shoppers now a days
5 kind of have a payment or something in their head.
6 They go on the internet. They find out that this
7 many dollars equals so much a month and so it --
8 it's a good -- I think the Monroney label was a
9 good thing to have, and I'm glad we've got them.
10 And they give a lot of people a lot of information
11 based on -- you know, from all their lifestyles or
12 habits it's based on to what price range that they
13 might could afford.
14 Q. That's an excellent summation of what a Monroney
15 does. The Monroney here not only tells you if
16 you're interested it how much of the car is made
17 out of the United States and in the United States,
18 right?
19 A. Yeah.
20 Q. Some people care about that?
21 A. Some people want them just if they came from
22 Japan, yeah.
23 Q. I understand.
24 A. Yeah.
25 Q. But it also tell you, as you mentioned, for those
26 people who are interested, it advertises the crash
27 test ratings that the car has gotten/ does it not?
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78 (Pages 309 to 312)

Page 313	Page 315
1 2 3 A. Uh-huh (affirmative). It does, yeah. 4 Q. And that would be a strong plus for a person 5 interested in safety; would it not? 6 A. They -- that's primarily why it's there, for 7 safety ratings, yes, so they can see how it does. 8 Q. Well, if you are strongly interested in it, then 9 this car would be -- have quite an enticement on 10 here? 11 A. Yeah, because it's got five stars. 12 Q. That's as high as it gets, right? 13 A. Uh-huh (affirmative). 14 Q. So this advertises how safe the car is in crash 15 testing? 16 A. Well, it informs them is the way I look at it. 17 Q. And then it has side and front seat and the 18 ratings. It even tells you the risks of chest 19 injury; does it not? 20 A. Yes. 21 Q. It has rollover resistance? 22 A. Uh-huh (affirmative). 23 Q. All of those are safety ratings on this car, 24 right? 25 A. Uh-huh (affirmative). 26 Q. And if I were strongly interested in the safety of 27 a car I was buying for myself or one of my 28 29	1 2 3 A. That could be a factor. 4 C. That's why it's here, isn't it? 5 A. Yes, uh-huh (affirmative). 6 Q. Now, it also tells me the features. And if I'm 7 interested in features, this informs me as to what 8 all the features are, correct? 9 A. Uh-huh (affirmative). I think everything you just 10 said is pretty much what I just said, but -- but I 11 agree with you, it's a information -- a lot of 12 information. 13 Q. And if I'm an environmentalist, then I would be 14 encouraged by the small amount of smog emissions 15 that this car makes; would I not? 16 A. You would be interested in that, yes. 17 Q. And if I am working on a budget and I kind of 18 looked around and I know what a lump sum money 19 it's going to take to be amortized over 60 months, 20 then the advertised price tells me whether or not 21 it's within my budget or not? 22 A. Well, I don't look at it as an advertised price. 23 Q. I'm sorry. Is that not the price of the vehicle? 24 A. That is the price of the vehicle. 25 Q. Is it not posted in the window of the car? 26 A. It is. 27 Q. And don't people go around with knowledge of what 28 29
Page 314	Page 316
1 2 3 children, then this would be enticing for me; 4 would it not? It seems to be very safe. 5 A. I'm not sure a government rollover chart would be 6 enticing, but it would certainly be something that 7 -- the information that some people would want. 8 They'd be looking for that. If that wasn't on the 9 car, they would be asking the salesperson to 10 provide it for them, "Tell me about that." 11 Q. And I would certainly prefer to -- 12 A. It makes it easy -- it makes it easier to select a 13 vehicle. 14 Q. If I'm going through a vehicle selection process 15 and I'm interested in safety, this Monroni would 16 certainly encourage me more toward this car than a 17 car that one star; would it not? 18 A. Yeah. If that -- a one-star car versus a five- 19 star car? 20 Q. Yes. 21 A. Yeah. 22 Q. If I'm interested in safety -- 23 A. You would -- it would be something that -- that 24 you would be glad that you read that block before 25 you bought a car, yeah. 26 Q. And cause me to lean toward the purchase of this 27 car if I'm interested in safety? 28 29	1 2 3 they can afford, generally speaking? 4 A. That still has nothing to do with it being a 5 advertised price. 6 Q. Is this price on the windshield of the car? 7 A. That is the suggested price. 8 Q. Oh, I understand that. And it's posted in the 9 window of the vehicle? 10 A. Yeah. So suggested price is what the manufacturer 11 -- we can charge more or we can charge less. 12 Q. Oh, I know that very well. But you can also, from 13 your Plaintiffs' Exhibit Number 12 put your own 14 sticker right next to the Monroni, right? 15 A. Only if we add accessory to the car. 16 Q. Do you find that the Monroni is a far more 17 informative thing for the potential purchaser than 18 your supplemental form that goes in the window? 19 A. Well, the Monroni's bigger and has a lot more 20 information. 21 Q. Well, that's why I said -- 22 A. But -- but it's covering the whole car. We're 23 covering if a guy has mud guards -- a car has mud 24 guards. 25 Q. I mean that's what I meant. 26 A. Yeah. 27 Q. Isn't there a lot more information about the whole 28 29

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3 car straight from the manufacturer here on the
4 Monroni, Plaintiffs' Exhibit 9?
5 A. Well, again, there is more information because
6 there's so many more features.
7 Q. I know. Is it necessary for you to repeat all my
8 questions to answer them, or could you just say
9 yes?
10 A. I don't know if I could just say yes, because it's
11 not -- I mean it's not -- to me, it's -- you're
12 heading -- it's not relevant if I've got a mud
13 guard or I've got a total vehicle. It's --
14 Q. Well, which of these two stickers, the
15 supplemental or the Monroni, gives you the most
16 individual information about the entire car?
17 A. Well, this is a sticker that deals with the
18 entire car. This is (indicating).
19 Q. Then answer the question.
20 A. Then this is the entire car sticker and this is
21 the one about the mud guard (indicating) that's on
22 the car.
23 Q. And, of course, since we're here on the record,
24 nobody knows what you're talking about when you
25 say this.
26 A. Oh, the MSRP -- or the Monroni label.
27 Q. The Monroni gives far more information about the
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3 Q. -- features or any of that stuff?
4 A. No.
5 Q. It does not?
6 A. It does not. And that's not its purpose, no.
7 Q. I didn't say it was its purpose.
8 A. Okay. I'm with you.
9 Q. So will you work with me on that?
10 A. Okay.
11 Q. Does the Monroni tell the potential purchaser far
12 more of what they'd want to know about the car
13 than the supplemental?
14 A. The Monroni has more information than the
15 supplemental.
16 Q. So if I'm out looking at a car and I'm looking
17 from window to window, car to car, and I'm
18 comparing this car on your lot with that car on
19 your lot and possibly with other cars on other
20 lots, and I'm looking at their Monronis, then
21 aren't I going to utilize your window Monroni for
22 car-to-car comparison far more than I'm going to
23 use your supplemental car-to-car comparison?
24 A. I would think anybody that would look at a car
25 would use both. It wouldn't be --
26 Q. I'm happy with that.
27 A. Okay. Yeah.
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3 car than the supplemental?
4 A. The supplemental is -- is nothing to do with
5 information about the car except for the accessory
6 we add.
7 Q. So would you say yes to my question? The Monroni
8 gives far more information about the car than the
9 supplemental?
10 A. Well, my reluctance to say yes is that to me,
11 you're trying to compare a car with -- with all
12 kinds of options and everything and compare it to
13 a sticker that -- that we're just trying to put a
14 wheel lock or a mud guard on. And to me, I don't
15 understand the comparison. They don't have
16 anything --
17 Q. It's not necessary that you understand it.
18 A. Okay.
19 Q. Is there far more information shown on the Monroni
20 about the car than is shown on the supplemental?
21 A. Well, there's more information about the mud guard
22 on this sticker than there is the Monroni.
23 Q. The mud guard is a particular part of the car.
24 Does the supplemental have anything on there about
25 crash-worthiness or smog ratings or gas mileage
26 or --
27 A. No.
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3 Q. So you're saying that both the Hendrick car
4 supplemental window tag and the Monroni should be
5 utilized for a person who would comparison shop
6 the car?
7 A. You didn't let me finish my answer on the last
8 one, but -- but --
9 Q. You should use them both?
10 A. Well, if you're interested in -- let me look at
11 it and see what it says here. Yeah, if you're
12 interested in mud guards, then you should look at
13 it, yes.
14 Q. You're answering the questions you want to answer.
15 I want you to answer my questions. Okay?
16 A. Ask me your question.
17 MR. BECKER:
18 Objection.
19 (6:23 p.m. -- Mr. Martin reenters deposition.)
20 EXAMINATION RESUMED BY MR. SPEARS:
21 Q. Is it your position that a person who's going to
22 comparison shop window stickers should use both
23 the Monroni and the supplemental to comparison
24 shop with another dealership?
25 A. I just don't get it. I mean I don't even
26 understand why it's a question. It's a piece of
27 information that tells you you've got a mud guard.
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Page 321	Page 323
1 2 3 Q. That's just the supplemental. 4 A. Yeah. 5 Q. The Monroni is full of information? 6 A. A Monroni is full of information. I think 7 everybody should look at both of them. 8 Q. I agree. 9 A. And we -- I've said that three times, I think. 10 Q. No. 11 A. I have. 12 Q. Now, if you want to know about mud guards on this 13 car, you want to look at the supplemental. But if 14 you want to know the majority of information about 15 this car, it's on the Monroni, right? 16 A. Not the majority of the information about mud 17 guards is not on the Monroni. 18 Q. Forget the mud guards. Okay? 19 A. Okay. 20 Q. Don't you have cars that you just have the Monroni 21 on, new cars? 22 A. Yes. 23 Q. And that's if you haven't added anything to the 24 car? 25 A. That's right, yeah. 26 Q. And we already know that none of these stickers, 27 the supplemental nor the Monroni, have ever had 28 29	1 2 3 A. Uh-huh (affirmative), unless the other car had mud 4 guards on it and a supplemental. 5 Q. But if the other car is exactly the same as this 6 car, okay, and has everything on it that this car 7 has on it, both on the Monroni and the 8 supplemental, it's your window sticker and your 9 price that he would use to compare against their 10 window sticker and their price. Fair? 11 A. All right. Say that one more time. 12 Q. If the cars are identical -- 13 A. Right. 14 Q. -- it is your window sticker and your 15 supplemental, your Monroni and Number 9, your 16 supplemental and Number 12 that would be his best 17 comparative method for comparing your car to their 18 car? 19 A. I think people use both, if that's your question. 20 Q. I'm saying both. 21 A. Yeah. 22 Q. I'm saying both. 23 A. I think they use both. 24 Q. The Monroni and the supplemental? 25 A. Yes. 26 Q. And they rely on both of them to be accurate, 27 don't they? If you say it's got mud guards, he 28 29
Page 322	Page 324
1 2 3 disclosed on them the closing fee, correct? 4 A. That's correct. 5 Q. And you think these are valuable stickers because 6 they tell you about the safety, the economy, the 7 environmental safety of the car, and all the 8 features of the car, as well as the price, 9 correct? 10 A. Well, I think that it's a valuable sticker because 11 it gives you a lot of good information about 12 everything. 13 Q. And the supplemental gives you additional 14 information about anything that's been added to 15 the car? 16 A. That's correct. 17 Q. And it is the combination of both of these, 18 assuming both of these are on the car, that a 19 potential buyer would use as the best method for 20 comparing your car with some car on some other 21 lot? 22 A. Would that be the same thing as -- are you saying 23 that if a car on another lot didn't have a mud 24 guard, the buyer would need to know it? 25 Q. I'm just saying to compare all the features of 26 what your car offers versus what somebody else's 27 car -- he'd need the Monroni and the supplemental? 28 29	1 2 3 depends on the fact that it has? 4 A. Right. 5 Q. If you give me a cost of the mud guards, he 6 depends on that being the real cost, right? 7 A. Right. 8 Q. If you say it's crash-worthy at five stars, he 9 relies on that, right? 10 A. He -- yes. They look at that. 11 Q. So there's nothing on either one of these that 12 should be incorrect or misleading to the customer, 13 right? He should be able -- 14 A. He looking at them, I don't see anything that's 15 misleading. 16 Q. And there shouldn't be anything on there 17 misleading, should there? 18 A. Well, there shouldn't be. 19 Q. If I go across the street and I want to compare 20 your car with somebody else's car, I'll look at 21 the Monroni -- 22 A. Right. 23 Q. -- to see the size of your engine and how many 24 cylinders and how many valves and all that other 25 stuff, and I'll get that from your Monroni? 26 A. Right. 27 Q. And then I'll look at his Monroni and see how 28 29

Page 325

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3 many cylinders and how many valves, whether it
4 has side curtain air bags. All of that multiple
5 information here is on the Monroni that I would
6 compare to his car to see if it's got side air
7 bags and ABS and how many valves and how many
8 cylinders, right?
9 A. That -- if you're looking at the same car, a LX
10 Honda on one lot and the other lot, then they
11 should say the same. The price -- this price
12 should be the same.
13 Q. I'm not asking you anything about --
14 A. Yeah. This equipment should be the same.
15 Q. If I want to compare the equipment, I'm going to
16 have to go to the Monroni?
17 A. Compare the standard equipment?
18 Q. The equipment that's on this car is filled out on
19 the Monroni?
20 A. Right.
21 Q. Now I go over there and look at his car and
22 compare what his equipment is. Okay? This is my
23 gold standard for what's on this car, right? If
24 this car has got two cylinders and it says four
25 cylinders here, that would be a lie, right?
26 A. Well, I mean that wouldn't happen, but yeah, I
27 mean the -- whatever that says is what's on the
28
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Page 327

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3 stuff.
4 A. Yeah. Well, I believe that the Monroni is -- is
5 accurate.
6 Q. I know that.
7 A. And what somebody else might think, whether they
8 trust it or not, I don't know.
9 Q. Fine. So I am now in -- I have looked at your
10 Monroni and I'm going over to another dealership.
11 And I want to make sure, since you've got so much
12 stuff on your car, that I am not buying a car from
13 him for as much or more than you've got that's got
14 less stuff on it. So is it not true -- and here's
15 the question -- that your Monroni not just lists a
16 manufacturer's suggested retail price plus the
17 destination and handling, but it lists features,
18 it lists benefits, it lists just -- it lists
19 prices, it lists emission standards, it lists
20 crash test safety ratings, it lists gas mileage.
21 It lists all those things on the Monroni?
22 A. The Monroni is a --
23 Q. Yes, it does or --
24 A. It is a wide variety of information, including the
25 suggested price's information.
26 Q. Which could appeal to a wide variety of people,
27 some environmentalists, some interested in safety,
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3 car.
4 Q. And it's true and a person can rely on it when
5 he's comparing it to another car?
6 A. I just don't even know why you're asking that
7 question.
8 Q. I don't know why you're not answering it.
9 A. I don't -- it's I guess a manufacturer's --
10 Q. Do you understand it's not necessary that you need
11 to understand why I'm asking you. I just want to
12 know if a person comes in and sees what the
13 manufacturer has put on the car --
14 A. Right.
15 Q. -- should they be able to trust what the
16 manufacturer says on the Monroni as being
17 accurate, yes or no?
18 A. They -- they should -- if it says it's got a five-
19 star rating, they should be able to trust it has a
20 five-star rating, yes.
21 Q. That's one example?
22 A. Sure.
23 Q. Should they be able to trust the Monroni as being
24 accurate?
25 A. And what do you mean by that exactly?
26 Q. What it says, what's on it, how many valves, air
27 bags, crumple zones, body structures, all that
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Page 328

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3 some interested in performance, some interested in
4 gas mileage, and some interested in price, right?
5 A. I think all cars pertain to a wide variety of the
6 people.
7 Q. Did you understand my question?
8 A. Yes.
9 Q. The Monroni sticker appeals to a wide variety of
10 people and a wide --
11 A. Yeah. I keep thinking I've agreed with you ten
12 times, but I --
13 Q. No, not when you say all cars interest a lot of
14 people. That doesn't answer my question about the
15 Monroni providing a lot of information that would
16 be a vast interest to a lot of people, true?
17 A. Is a Monroni a vast interest to a lot of people?
18 Q. About a car that they may be shopping for?
19 A. I think that people -- all people are interested
20 in the Monroni.
21 Q. And the supplemental, some people are interested
22 in it?
23 A. If they're interested in a particular accessory.
24 Q. Right. Now, in advertising these cars, do you
25 have any form of co-op advertising with Honda,
26 incentives or monies or anything that jointly you
27 all do ads and they defray the cost?
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82 (Pages 325 to 328)

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3 A. They give us money for every car that's delivered,
4 dealer marketing money that we can spend wherever
5 we want to spend.
6 Q. How much per car?
7 A. Every car has a different amount. The higher
8 priced cars would be more than --
9 Q. Give me the range.
10 A. Eighty-five bucks to like a hundred and fifty
11 bucks, somewhere in that neighborhood.
12 Q. So the littlest, cheapest cars have a minimum of
13 \$85?
14 A. Right in that range. A Honda Fit would be cheaper
15 than Ridgeline truck.
16 Q. And it goes all the way up to a hundred and fifty
17 bucks, right?
18 A. Or there's a cutoff. I don't know exactly what
19 the cutoff is, but -- but that's close. That's
20 close.
21 Q. Somewhere between 85 and a hundred and fifty that
22 Honda of America gives you to advertise the cars
23 that you take delivery on, right?
24 A. They -- they give us an advertising credit and we
25 do -- we do with it what we please.
26 Q. Well, tell me how that works. They --
27 A. Well -- go ahead.
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3 you'll get your money in a short period of time.
4 Q. So every car you take delivery on, you're going to
5 get a credit on your next month's statement, if
6 that's fair, of between around \$85 and a hundred
7 and fifty dollars. In return for that credit, do
8 you have any obligations to Honda of America to
9 utilize or perform your advertising in a way set
10 to their standards?
11 A. Yes.
12 Q. Tell me about those covenants or standards. We
13 were all in Columbia yesterday or whenever it was,
14 Friday, when we heard about Toyotas.
15 A. Basically they have a -- some guidelines. Honda
16 don't like the hype type advertising, i.e., the
17 T.V. spots that we run. You know, don't run
18 prices, it's more image type stuff. They don't
19 like a lot of -- if anybody's ever seen Honda
20 commercials, they're pretty simple. They -- they
21 don't like, you know, the stress type advertising.
22 Q. Yeah, I heard that last week. Can you have a
23 Honda blow-out sale?
24 A. No.
25 Q. Who performs the function of going over your
26 proposed advertising and approving it on behalf of
27 Honda?
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3 Q. I'm going to stop. Tell me how that works.
4 A. Every time you get a car, you get a credit.
5 Q. A credit with Honda of America?
6 A. You get a credit to the dealership. You'll get
7 money.
8 Q. From who?
9 A. From Honda, yeah.
10 Q. There's a difference to me in having a credit at
11 Bi-Lo and getting a check from Bi-Lo. Do you get
12 a check?
13 A. You get -- you get the actual money.
14 Q. You get the money?
15 A. Yeah.
16 Q. And that money comes in how often?
17 A. I believe it's -- it all comes in -- it's based on
18 when the cars come in. The cars come in. The
19 money maybe will follow in the next statement, the
20 Honda --
21 Q. If you take the cars in on Thursday, the truck
22 delivers them on Thursday --
23 A. Yes.
24 Q. Then your next statement will come when?
25 A. Well, if it was Thursday the first of the month,
26 then you might get your Honda statement, you know,
27 at the first of the next month or something. But
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3 A. We have a set-up. I guess Honda has an office
4 somewhere in California that, for example, if we
5 -- we'd run an ad in a newspaper, which we don't
6 anymore, the display ads. We would -- we could
7 fax it to them or electronic mail them and they
8 would go over it and approve it or disapprove it.
9 Q. And what is the name of this place in California?
10 A. I don't -- Torrance, California.
11 Q. I know, but --
12 A. It's probably something like American Honda Dealer
13 Marketing Association or something like that.
14 Q. It's a part of American Honda?
15 A. Yes.
16 Q. Unlike what we ran into last week where a third-
17 party was --
18 A. Right. Exactly, yeah.
19 Q. Honda approves all your advertising, right, that
20 they contribute to?
21 A. That -- I don't -- I'm not -- this really I don't
22 think has anything to do with it. It would be if
23 we make a change on our website, we'll give Honda
24 what we've done. They'll look at it and if they
25 say it looks okay, then we're compliant.
26 Q. How about with your T.V. advertising?
27 A. If we send them an ad --
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Page 333	Page 335
1 2 3 Q. Wait a minute. Do you get your T.V. ads pre- 4 approved by Honda? 5 A. The ones we do without pricing and stuff, no. 6 Q. Well, what T.V. ads do you get approved by them? 7 A. We've never had one because we've never done any 8 pricing type ads. 9 Q. So because you don't do pricing ads, as you say, 10 you don't have to get approval? 11 A. That's -- well, that's where the compliance come 12 in. They have rules on how you price your cars 13 and things like that. And as long as you're not, 14 you know, jumping up and down and screaming, you 15 know, they're fine with it. And -- 16 Q. Let's stick to one topic. I'm going to ask you 17 specific questions. 18 A. Okay. 19 Q. If you can answer them yes or no, do. Okay? 20 A. Okay. 21 Q. Does Honda approve any of your television 22 advertisements? 23 A. No. 24 Q. Does Honda approve or review any of your radio 25 advertisements? 26 A. Do not do radio advertisements. 27 Q. Not now. You used to? 28 29	1 2 3 Q. You go on the -- what is the website? 4 A. It's Honda's website. 5 Q. What is the web address? 6 A. I don't know. 7 Q. WWW what? 8 A. I don't know. 9 Q. Well, is this a website through which you send 10 them your proposed ad and they send it back? You 11 scan your ad and send it to them and they make 12 corrections or approve it and notify you via e- 13 mail? 14 A. It's a Honda internal -- Honda interactive 15 network, not -- it's not set up really for the 16 public to go on and be able to get in there. 17 Q. Of course not. 18 A. Yeah. And if we would have an ad -- well, what -- 19 that wasn't what I was talking about, but -- while 20 ago. 21 Q. Let's go back. 22 A. Okay. 23 Q. Let's go back. 24 A. All right. 25 Q. Newspaper advertisements. 26 A. Okay. 27 Q. Does Honda pay you anything on that? 28 29
Page 334	Page 336
1 2 3 A. Years ago. 4 Q. Did they approve them then? 5 A. No. Back then it was a different program. 6 Q. Back then on television, did Honda pre-approve 7 your television ads? 8 A. We never ran television until '08. 9 Q. On your newspaper advertisement, what approval do 10 you get from Honda for your newspaper ads, or do 11 you get any? Maybe you don't do it. 12 A. Well, we'll -- no, we -- when we ran display ads, 13 they give us a guideline book where we can do it 14 our self. 15 Q. Have you got that guideline book? 16 A. On me, no, but we got it. You can pull it out of 17 the Honda network. 18 Q. And what is it called? 19 A. DMA Marketing is where I go on the Honda 20 interactive network to get it. 21 Q. Do you have a book or do you get this off the 22 internet? 23 A. Off the internet. 24 Q. You don't have a book? 25 A. Well -- 26 Q. A book that you carry around? 27 A. No. 28 29	1 2 3 A. For running it in the newspaper? 4 Q. Yes. 5 A. No. They just give us this money per car. 6 Q. They just give you that money per car and you can 7 spend it any way you want to? 8 A. Yes. 9 Q. Could you just not advertise and keep the money 10 and put it in your pocket? 11 A. They -- you would -- they would probably complain, 12 but that would be -- you could do that. 13 Q. Now, what is your habit and practice? Do you 14 normally utilize this credit for advertising or do 15 you normally not utilize it? 16 A. Well, we spend more money every month than they 17 give us. 18 Q. So you not only spend the money they give you, you 19 exceed the money they give you in advertising? 20 A. Yes. 21 Q. So in answer to my question -- 22 A. Okay. 23 Q. -- yes, you always spend the money they give you 24 and more for advertising? 25 A. Well, the dollar amounts are equal or more than 26 they give us, yes. 27 Q. If you like that phraseology better. Now, what do 28 29

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3 you spend it on? One of the things you spend it
4 on is newspaper ads, right?
5 A. We spend money -- we bought cars.com ads and we
6 get free line ads with it. So I don't know if you
7 could qualify that being a newspaper spending or
8 not. But we purchased cars -- cars.com and they
9 gave us free newspaper ads. It was kind of a
10 little --
11 Q. Who is we?
12 A. We being me, I guess.
13 Q. You?
14 A. Or Hendrick Honda.
15 Q. Hendrick Honda of Zaseley bought cars.com?
16 A. Cars.com. Well, we -- cars.com is a internet
17 company.
18 Q. I know.
19 A. Yeah.
20 Q. Did you buy it?
21 A. We pay them money to be listed on their sites and
22 part of the package was we get free line ads.
23 Q. Free line ads. What is a line ad?
24 A. It's a term for newspaper ads that's -- that are
25 -- display ads would be something big and bold
26 like you typically see. Line ads would be like --
27 individuals might put their cars in or some car
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3 Q. I understand. Now, do you do any advertising but
4 for that which you do through cars.com?
5 A. Do I do anything else but cars.com; is that what
6 you're saying?
7 Q. Do you advertise in the newspaper?
8 A. We -- the line ads, or the classified ads in the
9 automotive section of the newspaper is the only
10 newspaper advertisement with the exception that we
11 are listed in a dealer directory as a car dealer
12 in the Upstate. And we do nothing else with the
13 newspaper.
14 Q. You don't do television anymore, right?
15 A. We're doing television right now.
16 Q. Oh, I'm sorry; I thought you said you don't do
17 that anymore.
18 A. No. We didn't -- we started in 2008. We'd never
19 done it before is what I said.
20 Q. You don't do radio anymore?
21 A. Don't do radio anymore.
22 Q. The print advertising -- we talked about what you
23 do in newspapers. What other print advertising do
24 you do?
25 A. Currently or during the time period?
26 Q. Well, during the time period.
27 A. During the time period, we would do an occasional
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3 dealers --
4 MR. BECKER:
5 Classified.
6 WITNESS CONTINUES:
7 A. Classified, there you go.
8 EXAMINATION RESUMED BY MR. SPEARS:
9 Q. So you get things listed in the classified ads?
10 MR. BECKER:
11 He uses the phrase, "line ads" and "classified
12 ads" interchangeably.
13 EXAMINATION RESUMED BY MR. SPEARS:
14 Q. Well, I've seen some line ads that are not in the
15 classifieds. They're just by the sports section
16 or whatever. Now, are you talking about things
17 that are contained within the classified ads, the
18 want ads of a newspaper?
19 A. The classified ads in the automotive section.
20 Q. That's what you've acquired through the purchase
21 of a contract with cars.com, correct, or did you
22 buy the whole damn thing? Did you buy cars.com?
23 A. No, we did not. We're thinking about it.
24 Q. You bought a contract with cars.com?
25 A. Right.
26 Q. And with that, you get some ads --
27 A. Enticement to the contract, yes.
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3 trade magazine such as Auto Trader.
4 Q. I'm trying to figure out how you spend so much on
5 advertising. Why don't you just tell me what you
6 spent on advertising during the time period in
7 question?
8 A. I didn't come prepared -- I didn't have that
9 figured up.
10 Q. I don't want a number. I'm just going to say,
11 where do you spend your money? I mean you're
12 doing television ads now, but you didn't do it
13 then, right?
14 A. Right.
15 Q. You don't do radio now, but you used to do radio?
16 A. Uh-huh (affirmative).
17 Q. So you used to pay radio something to advertise
18 your cars?
19 A. Uh-huh (affirmative). Yeah, when -- let's see,
20 you want --
21 Q. No. I don't want --
22 A. You don't want to know how much?
23 Q. No.
24 A. All right.
25 Q. Now, newspapers. The only newspaper ads you do
26 but for a casual listing in auto dealers is
27 through cars.com, which appears in the personals,
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3 or in the classified section, right?
4 A. That and the dealer directory.
5 Q. And the dealer directory?
6 A. Yeah.
7 Q. How much does that cost?
8 A. A hundred and fifty bucks, something like that.
9 Q. A month?
10 A. Uh-huh (affirmative).
11 Q. So what other advertising do you do that we
12 haven't discussed?
13 A. Well --
14 Q. I mean so far I can account for a hundred and
15 fifty dollars that you spend in a month.
16 A. Well, cars.com is a --
17 Q. That's internet?
18 A. That's internet. Okay.
19 Q. How much does that cost you a month?
20 A. We purchase that. It's -- well, \$1,755 for
21 cars.com and the dealer directory is all one lump
22 thing.
23 Q. So I can take that hundred and fifty and throw it
24 out now because you've already paid for it?
25 A. It's included in the --
26 Q. It's in the 1,750?
27 A. Yeah. Okay. All right, what else do you want to
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3 Q. So on your television ads, do you ever mention
4 document fees?
5 A. We -- I think we answered this before.
6 Q. Maybe you did.
7 MR. BECKER:
8 We did. We went all through this.
9 EXAMINATION RESUMED BY MR. SPEARS:
10 Q. What's the story?
11 A. You know, well, the story is we don't advertise
12 price, we advertise fluff. So there's no need for
13 a document ad.
14 Q. You advertise fluff?
15 A. Well, you know, there's no payments. There's no
16 prices. There's nothing like that. We --
17 Q. You just advertise features?
18 A. We tell them to come on in. Huh?
19 Q. Features or gas mileage or something like that,
20 Honda special?
21 A. We ask them to go to our website.
22 Q. Do you ask them to come on your lot?
23 A. Huh?
24 Q. Do you ask them to come on your lot?
25 A. Yeah, and we let them know that we're only ten
26 miles from downtown Greenville so they can come in
27 our lot.
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3 know?
4 Q. Well, is that all you spend every month on
5 advertising?
6 A. No, no. We've got cars.com.
7 Q. I'm sorry: I thought that's what you just --
8 A. Oh, that is. That's cars.com. All right, we've
9 got Auto Trader.
10 Q. How much is that a month?
11 A. It's internet Auto Trader, not the magazine, but
12 it runs -- it varied. We recently -- during the
13 time period, we were spending around 32, three,
14 four hundred dollars a month on Auto Trader and
15 we've cut back on it now.
16 Q. What else? How else do you do ads?
17 A. Television. We are currently doing television.
18 Q. How much a month?
19 A. And it's about \$5,000.
20 Q. When did you start?
21 A. We started in -- somewhere in the neighborhood of
22 April-May of '08.
23 Q. So you did some of that in April to November of
24 '08?
25 A. Yeah.
26 Q. Which is in this time period?
27 A. Right.
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3 Q. And you ask them to go to your website in your
4 T.V. ad?
5 A. Right. Now, y'all have copies of these T.V. ads.
6 Q. I understand.
7 A. They're 15 seconds. Okay? So --
8 Q. And for that, you pay \$5,000?
9 A. That's right.
10 Q. Have we talked about all the co-op advertising
11 you've got that you do with Honda America?
12 A. Yes.
13 Q. And they pay you an amount each month --
14 A. Somewhere in there, yeah.
15 Q. -- and you exceed it each month?
16 A. Yes.
17 Q. You exceed what you receive in the cost of your
18 advertising and they approve your internet or T.V.
19 or whatever?
20 A. We -- they're available if we feel like we need to
21 use them.
22 Q. Well, you have to comply with their covenants,
23 right?
24 A. That's right.
25 Q. And to make sure that --
26 A. And their monitors.
27 Q. And to make sure that you comply with their
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3 covenants, you send them what you intend on airing
4 or publishing, right?
5 A. If -- if we feel -- we have a choice on that.
6 It's not a requirement that we send it to them.
7 All right, we can -- if we feel like we've got an
8 ad -- that's what I was talking about. We go in.
9 We pull up on the interactive network the
10 compliance manual or book or whatever you want to
11 call it, you know, sheets of paper, you know, and
12 we can read over it. And if we feel like we're in
13 compliance, then we don't have to see it. But if
14 we do something wrong or if something's out of --
15 a I's not dotted, then they -- they will -- they
16 have people monitoring us and they'll let us know.
17 Q. Do you advertise cars sometimes with just a hang
18 tag, don't you?
19 A. I don't consider that advertising.
20 Q. Do you ever put Plaintiffs' Exhibit 14 --
21 COURT REPORTER:
22 Fifteen.
23 (EXHIBIT NUMBER 15 MARKED)
24 EXAMINATION RESUMED BY MR. SPEARS:
25 Q. Do you ever put tags like this on any of your used
26 or new cars?
27 A. Yes, on our -- yeah. That -- I think that is one
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3 That would be a good deal.
4 Q. And that's it's unusually low?
5 A. I don't know if they'd look at it unusually low,
6 but I know they would think -- they would look at
7 it and feel like it's a good price, although
8 they'd still want to negotiate it probably.
9 Q. Of course they would.
10 A. Yeah.
11 Q. But when you put clearance and you put a price on
12 it, you're doing that to attract attention to this
13 car, right? It's got a special price on it?
14 A. Yeah, that's possible.
15 Q. That's why you do it, right?
16 A. That's not the only reason we do it, but that's
17 possible. That's a --
18 Q. I don't want possibilities.
19 A. If we -- we could just enter it onto our car or it
20 could just be, you know, "Hey, we got ten hang
21 tags. Let's go put some hang tags out," you know,
22 and it makes it festive.
23 Q. It could be just for festiveness?
24 A. Or from just a -- you know, yeah, make it -- hey,
25 there's something going on.
26 Q. So you may just --
27 A. Some people put balloons on cars, yeah. It's
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3 of our tags we might have sent you.
4 Q. It is.
5 A. Yeah.
6 Q. Would that ever go on a new car?
7 A. Could, more so used cars, but it's a possibility
8 on a new one.
9 Q. So a clearance tag could go on a new or used car?
10 A. Yes.
11 Q. And what do you mean when you're telling the
12 customer, clearance, and you put a price tag on
13 the car?
14 A. Well, that means that the price is \$24,000.
15 Q. Thank you so much. What does the term,
16 "clearance" mean when it's hanging from the
17 rearview mirror? Doesn't it imply something?
18 A. Implies that -- that maybe -- gosh, if it was on a
19 new car, could imply that we were trying to move
20 out the '08s to get to the '09s, and Honda let's
21 us use clearance at that time of the year.
22 Q. When you put clearance on a new car, aren't you
23 representing or implying to the customer that this
24 is a good deal on this car, it's especially low-
25 priced?
26 A. It's a clearance price. I would assume people
27 would think, yeah, that's -- let me look at that.
28
29

1
2
3 similar to me.
4 Q. What do you think the balloons are for? Why would
5 people put balloons on cars?
6 A. We're one of the few dealers that don't do it.
7 But I think it's the same reason, it makes it look
8 festive.
9 Q. Doesn't it imply that there's something special
10 going on there, a promotion or something?
11 A. Either -- it could or other reasons would be that
12 they just -- people going by the road would notice
13 your lot, you know.
14 Q. Well, a clearance tag -- have you ever been to a
15 clearance sale with your wife?
16 A. I'm not married.
17 Q. Have you ever been to a clearance sale?
18 A. Yeah -- I'm not sure. I'm sure I probably have,
19 but can I name you a clearance I've never been to?
20 No.
21 Q. Do you know what is meant by the term, "clearance
22 sale"?
23 A. Clearance would imply to me, you know, that you
24 want everything gone that's in that category.
25 Q. And to do that, you, the seller are willing to do
26 what to clear it out? What are you willing to do
27 generally? What are you implying to the purchaser
28
29

Page 349

1
2
3 that clearance means?
4 A. That it's one of the cars that you want to clear
5 out.
6 Q. Don't you feel like you're implying to the
7 purchaser that since it's a clearance car, this is
8 a good deal for the price?
9 A. I think that most people that would look at it
10 would hope that it's a good deal.
11 Q. Because it says clearance?
12 A. Yeah, but they -- once they look at it, they don't
13 know. They'll have to check it out. They'll have
14 to compare it to I guess they're -- like you said,
15 with all the other stuff.
16 Q. Well, what is the native color of this tag when it
17 -- I mean right here it's in black and white.
18 Isn't that --
19 A. Yeah. Normally they're like a yellow or green or
20 something like that. I would say it would be the
21 -- or something that's -- it wouldn't be black and
22 white.
23 Q. I know. What color is it normally.
24 A. It varies. I mean they've got them all.
25 Q. Well, what color do you use?
26 A. Well, we use a combination of a lot of different
27 ones, yellow, green; yellow, black, green, blue.
28
29

Page 350

1
2
3 You know, you name it. You know, we -- I mean I
4 don't know what color this one is. And --
5 Q. Listen a minute.
6 A. Let's just say it's yellow and --
7 Q. Is it fair to say that whatever color they are,
8 they are brightly colored?
9 A. It's fair to say.
10 Q. And is it fair to say that clearance appears in
11 big, bold type right there?
12 A. On this particular tag.
13 Q. And is it fair to say that the price is written in
14 large script?
15 A. It's -- I would say it would be written in normal
16 script, yeah.
17 Q. Does this page reflect the actual size of the
18 clearance tag?
19 A. I believe so.
20 Q. This isn't a blow-up, is it?
21 A. No.
22 Q. So that's really of the size of the tag you hang
23 on the rearview mirror?
24 A. That's -- that would be -- yes, that looks about
25 right.
26 Q. And that's really the size where you write the
27 price?
28
29

Page 351

1
2
3 A. On that particular car, that looks --
4 Q. And nowhere on this tag is document fee mentioned,
5 is it?
6 A. That's correct.
7 Q. Yet a document fee will be charged on that car,
8 won't it?
9 MR. BECKER:
10 Do you know if that's the actual size or not,
11 Mike?
12 MR. SPEARS:
13 No. You gave it to me and I've just asked him, so
14 now I know.
15 EXAMINATION RESUMED BY MR. SPEARS:
16 Q. Didn't you say that's the actual size?
17 A. I said it looked about what a size of one might
18 be.
19 Q. And there is no doc fee mentioned here, right?
20 A. No.
21 Q. And if they buy this car, they're going to pay a
22 doc fee, aren't they?
23 A. Well --
24 Q. Aren't they?
25 A. Are they going to pay 2,400 hundred --
26 Q. That's not what I asked you. I asked you, if they
27 buy this car, are they going to pay a doc fee?
28
29

Page 352

1
2
3 A. There will be a doc fee accounted in the final
4 deal.
5 Q. And it is not mentioned on this clearance tag, is
6 it?
7 A. That's correct.
8 Q. And that hangs in a bright color in the dealership
9 or on the dealership lot in the car, right?
10 A. Right. It hangs in the car.
11 Q. Oh, was Julie Freeman's car, the certified car,
12 was that advertised in the newspaper before she
13 bought it?
14 A. I have no way of knowing that.
15 Q. Now, if I ask you in front of the jury, was it or
16 was it not advertised in the newspaper, is your
17 answer going to be the same, "I do not know"?
18 A. Yes. I don't have -- there's no way I could --
19 how could I know that?
20 Q. I don't know.
21 A. Yeah.
22 Q. I mean do you not keep records of your ads? You
23 supplied us with a whole lot of them.
24 A. We supplied with -- everything that you all -- if
25 we got a record of this ad, you guys have got it.
26 Okay?
27 Q. So you don't remember?
28
29

Page 353	Page 355
1 2 3 A. No. 4 Q. Do you keep any of your archived internet ads? 5 A. What do you mean by that exactly? 6 Q. Well, you spend \$5,000 a month on television 7 telling people to look at the internet? 8 A. Right. 9 Q. People look at the internet. Are they going to 10 see any prices for cars? 11 A. Well, they're going to -- like I say, we have 12 special tabs that you turn on as far as that goes. 13 Q. If I look at your internet site, which I have, am 14 I going to be able to find out prices for cars? 15 A. On -- if you look at our internet prices on new 16 cars, you'll see MSRP and you'll see specials, and 17 on used cars, you'll see a price listing. If you 18 went on there today, that's what you would see. 19 Q. And where on the internet do you list the doc fee 20 as being included in the price of the car? 21 A. On our website. 22 Q. Where on there? 23 A. On the front page. 24 Q. And you're saying that it says the listed prices 25 include document fee? 26 A. Well, I mean you got a computer? Let's pull it up 27 and look at it. I don't know. 28 29	1 2 3 your document fee? 4 A. They do not, to my knowledge, have any limit or 5 cap. Honda America caps us; is that what you just 6 asked me? 7 Q. I did. 8 A. No. 9 Q. Honda America acknowledges and knows that you're 10 charging a document preparation charge, don't 11 they? Because they provide Plaintiffs' Exhibit 12 11. 13 A. Yeah, or Honda Finance, yes. 14 Q. Well, Honda Finance is part of Honda of America. 15 Now, do you have to tell them how to fill out a 16 form or is this their standard form? 17 MR. BECKER: 18 We've been over that. We've been over it ad 19 nauseam. Please -- 20 EXAMINATION RESUMED BY MR. SPEARS: 21 Q. I'm not going to go over the doc fee. I want to 22 know, is this the standard form that comes from 23 Honda? 24 MR. BECKER: 25 We've been over that. 26 EXAMINATION RESUMED BY MR. SPEARS: 27 Q. Well, say yes or no and then -- 28 29
Page 354	Page 356
1 2 3 Q. You don't know? 4 A. I mean I know in general, but if I got to go word 5 by word, I couldn't tell you. 6 Q. And when did you put that new statement on there? 7 A. This is back within the last couple years, you 8 know, whatever the -- 9 Q. Since the lawsuit? 10 A. Since the lawsuit, right. 11 Q. Prior to then, you didn't have that statement? 12 A. That's right. 13 Q. Do you video your closings with your customers? 14 A. Huh-uh (negative), no. 15 Q. Were you at the deposition where you heard Mr. 16 Taylor testify about that? 17 A. Uh-huh (affirmative), yes. 18 Q. But you do not do that, right? 19 A. No. 20 Q. You told me that the maximum set for you to be 21 able to charge a doc fee or procurement fee is 22 three ninety-nine set by Hendrick Automotive, 23 right? 24 A. I -- in our transition compliance, three ninety- 25 nine fifty I guess would be the maximum that we 26 could charge. 27 Q. What say, if any, does Honda of America have on 28 29	1 2 3 A. Yeah. That is the Honda form, yes. It's a -- 4 yeah. 5 Q. And if that's the Honda form and it has a place on 6 it for your document preparation fee, then Honda 7 knows -- Honda Finance at least knows that you're 8 charging it, correct? 9 MR. BECKER: 10 Object to the form. 11 EXAMINATION RESUMED BY MR. SPEARS: 12 Q. Well, don't they finance it? 13 A. I would assume that they know everything that's on 14 this whole sheet. 15 Q. And they frequently finance that; do they not? 16 It's on the installment contract. 17 A. Everything that's on the installment contract 18 minus the down payment would be the amount 19 financed, everything inclusive. 20 Q. And so Honda would know about it? And we're 21 talking about Plaintiffs' Exhibit 11, correct? 22 A. Honda would know about -- when you say it, what do 23 you mean by it? 24 Q. Everything that's being financed, including the 25 doc fee. 26 MR. BECKER: 27 Why don't we ask him if the form is submitted to 28 29

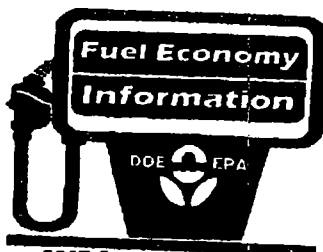
Page 357	Page 359
1 2 3 Honda? 4 EXAMINATION RESUMED BY MR. SPEARS: 5 Q. Is the form submitted to Honda? 6 A. Well, actually we send this form to Honda and they 7 send us the check back. 8 Q. Where do you get the form from, Honda? 9 A. Honda. 10 Q. So it comes to you from Honda. You fill it out. 11 You send it back to Honda fully filled out and 12 signed? 13 A. Uh-huh (affirmative). 14 Q. And they send you a check? 15 A. That's right. 16 Q. Any doubt that they know what's on the form? 17 MR. BECKER: 18 Object to the form. 19 EXAMINATION RESUMED BY MR. SPEARS: 20 Q. Do they send you a check for the amount shown? 21 A. Well, yes. The -- it would be the -- this right 22 here, amount financed. That's the check, or it -- 23 actually it's not a check. It's electronic. They 24 put it in our bank account. 25 Q. Wire transfer? 26 A. Yeah. 27 Q. And that number would be comprised of all these 28 29	1 2 3 4 SIGNATURE OF DEPONENT 5 6 7 I, DON LEE PENDLETON, hereby certify that I have 8 read the foregoing deposition and find it to be a true 9 and accurate transcription of my testimony, with the 10 following corrections, if any: 11 12 PAGE LINE CHANGE REASON 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 Signature end Date 29
Page 358	Page 360
1 2 3 numbers? 4 A. Yeah, with all the adds and the deducts. 5 Q. On Plaintiffs' Exhibit 11? 6 A. And actually it is the -- the very bottom line 7 here, too. 8 Q. Exactly. So those are what make up the total 9 shown there on Plaintiffs' Exhibit 11? 10 A. Uh-huh (affirmative). 11 Q. And you would get a wire transfer into your 12 account for that? 13 A. Uh-huh (affirmative). Right, for this amount. 14 Q. Okay. That's all I've got. 15 (OFF THE RECORD) 16 MR. BECKER: 17 I just want the record to reflect that on 18 Plaintiffs' Exhibit 8, Mr. Spears made some marks 19 on the exhibit in blue ink that are not part of 20 the original document. 21 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION WAS 22 CONCLUDED AT 7:03 P.M.) 23 24 25 26 27 28 29	1 CERTIFICATE 2 3 4 I, the undersigned, Karen A. Belanger, CVR, Notary 5 Public in and for the State of South Carolina, do 6 hereby certify that the foregoing deposition was taken 7 on the aforementioned date; 8 That the within deponent was sworn to tell the 9 truth, and that the foregoing is an accurate 10 transcription of the testimony taken under oath; 11 That all exhibits entered herein are attached 12 hereto (if requested by counsel) and made a part of 13 this deposition. 14 I further certify that I am neither counsel nor 15 solicitor to any of the parties in said suit, nor 16 interested in the event of the cause. 17 In witness whereof, I have hereunto set my hand 18 and seal this 4th day of March, 2009. 19 20 Karen A. Belanger, CVR 21 Notary Public for South Carolina 22 My Commission Expires: 4/18/2013 23

EXHIBIT 6

Compare this vehicle to others in the **FREE FUEL ECONOMY GUIDE** available at the dealer.

CITY MPG

30



HIGHWAY MPG

40

ACTUAL MILEAGE will vary with options, driving conditions, driving habits and vehicles condition. Results reported to EPA indicate that the majority of vehicles with these estimates will achieve between

25 and 35 mpg in the city and between
34 and 46 mpg on the highway

**2007 CIVIC
1.8 LITER 4-CYL ENGINE
5-SPD AUTOMATIC TRANSMISSION
MULTIPOINT FUEL INJECTION**

**Estimated Annual Fuel Cost
\$1204**

FOR COMPARISON SHOPPING, all vehicles classified as **SUB COMPACT** have been issued mileage ratings ranging from
11 to 34 mpg city and
16 to 40 mpg highway

see www.fueleconomy.gov

PARTS CONTENT INFORMATION

FOR VEHICLES IN THIS CARLINE
U.S./Canadian Parts Content: **55%**
Major Sources of Foreign Parts Content:
JAPAN 40%

NOTE: Parts content does not include final assembly, distribution or other non-parts costs.

FOR THIS VEHICLE
Final Assembly Point:
ALLISTON, ONTARIO, CANADA
Country of Origin: **U.S.A.**
Transmission: **JAPAN**

pad speed of 5 miles per hour, and a rear bumper of damage to the vehicle's body and safety systems and bumper means minor cosmetic damage that can be The stronger the bumper, the less likely the vehicle will bumper standard of 2.5 miles per hour.

**BUFFALO
BALTIMORE**

**434-010
METHOD: L10 WINSTON-SALEM**

**ORIG. DCR: 208373
REF.NO: 40001
HN CODE: HN-7261
EMISSION: 50 STATE**

GOVERNMENT CRASH TEST RATINGS

Frontal Star Rating Driver Passenger
★★★★★
★★★★★
based on risk of head and chest injury

Side Star Rating Fr Seat Rr Seat
★★★★★
★★★★★
based on risk of chest injury

Rollover Resistance
★★★★★
based on risk of rollover in the event of a single automobile crash

Government star ratings are part of the National Highway Traffic Safety Administration's (NHTSA's) New Car Assessment Program (NCAP)

see www.safercar.gov

HENDRICK HONDA EASLEY 000712



2007 CIVIC 4DR LX

VEHICLE NUMBER: [REDACTED]
ENGINE NUMBER: R18A1-2737501 EXT: NIGHTHAWK BLAC
CONTROL NUMBER: 655974 INT: GRAY

STANDARD EQUIPMENT AT NO EXTRA COST

* TECHNICAL FEATURES *

40hp 1.8-Liter SOHC 16-Valve
i-VTEC 4-Cylinder Engine
5-Speed Automatic Transmission
with Grade Logic Control
Front Disc Brakes
Electronic Brake Distribution (EBD)
Front MacPherson Strut Suspension
Rear Multi-Link Suspension
Variable-Assist Rack-and-Pinion
Power Steering
EPA-Certified Tier-2 Bin-5
ARB-Certified ULEV2
100K+ Miles - No Scheduled Tune-ups
(Under Normal Conditions)

* SAFETY FEATURES *

Driver's and Front Passenger's
Dual-Stage Airbags (SRS)
Driver's and Front Passenger's
Side Airbags
Side Curtain Airbags
Anti-Lock Braking System (ABS)
3-Point Seat Belts
Active Front Head Restraints
Side-Impact Door Beams
Front and Rear Crumple Zones
ICE Body Structure
Daytime Running Lights (DRL)
Remote Entry System
Security System
Immobilizer Theft-Deterrent System
ATCH System for Child Seats

* INTERIOR FEATURES *

160-Watt AM/FM/CD Audio System
with 4 Speakers
MP3/Auxiliary Input Jack
Air Conditioning
with Air Filtration System
Driver's Seat Height Adjustment
Fold-Down Rear Seatback
Front Center Console with Armrest
Power Windows and Door Locks
Driver's Auto Up/Down Window
Tilt & Telescoping Steering Column
Visor Vanity Mirrors
Front Map Lights & Cargo Area Light
12-Volt Power Outlet
Cruise Control
Floor Mats
Maintenance Minder System

* EXTERIOR FEATURES *

16" x 6.5" Steel Wheels
with Full Wheel Covers
P205/55 R16 89H All-Season Tires
Intermittent Windshield Wipers
Rear Window Defroster
Power Door Mirrors

Manufacturer's
Suggested
Retail Price **\$17,760.00**

Full Tank of Fuel No Charge

Destination and Handling 595.00

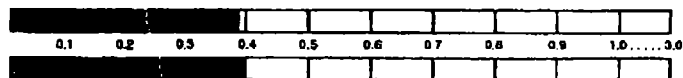
TOTAL VEHICLE PRICE
(Includes Pre-Delivery Service)

\$18,355.00

License and title fees, state and local taxes and dealer options and accessories are not included in the manufacturer's suggested retail price.

SMOG EMISSIONS INFORMATION

The Smog Index of this vehicle is: 0.39



The Smog Index of the average new vehicle is: 0.40

CLEANER

MORE POLLUTING

Note: The Smog Index (SI) indicates the relative level of smog-forming pollutants emitted by the vehicle.

The lower the SI, the lower the vehicle's emissions.

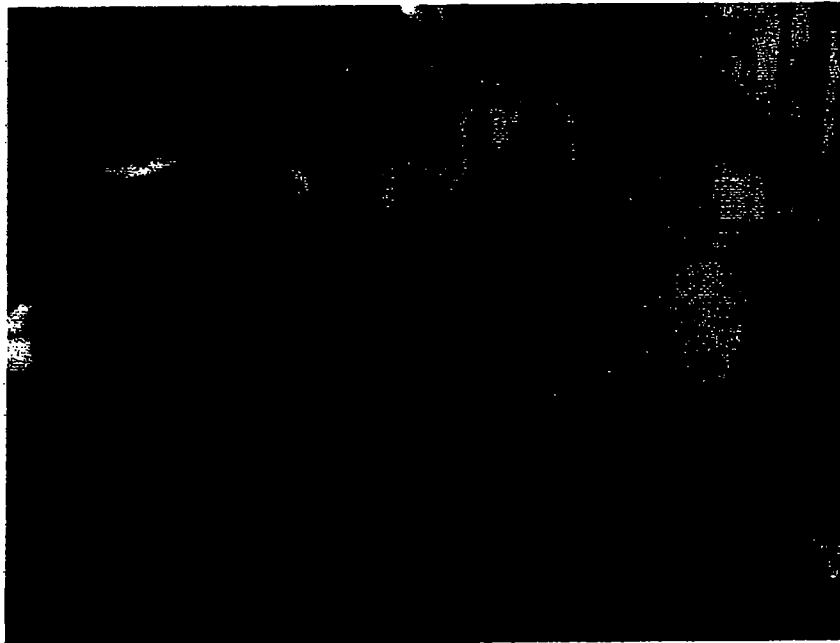
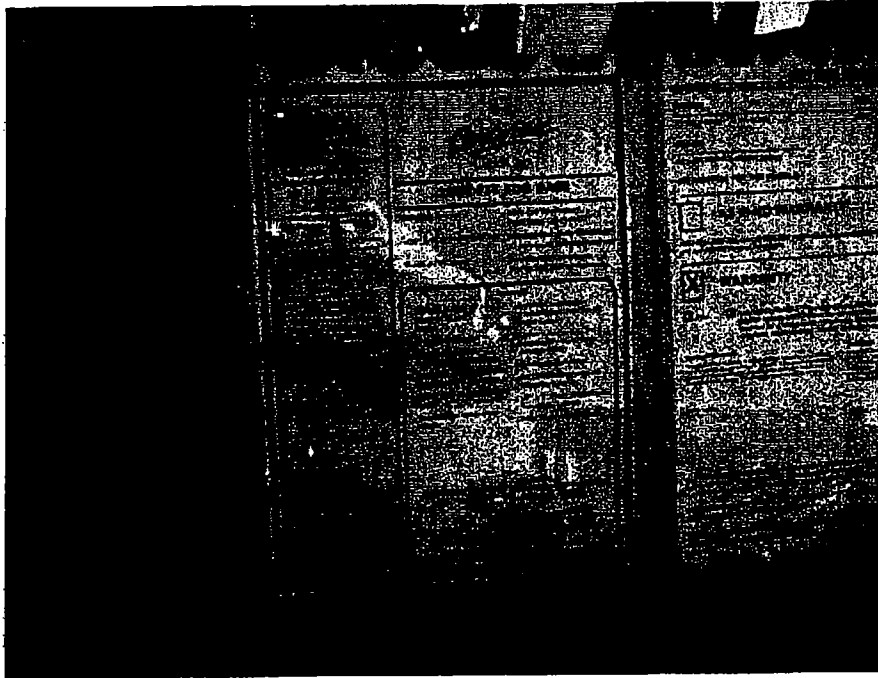
Information provided pursuant to California Title 13 CCR 1945

This vehicle is equipped with a front bumper of a type that has been tested a type that has been tested at an impact speed of 5 miles per hour, rest minimal damage to the bumper and attachment hardware. Minimal damage repaired with the use of common repair materials and without replacing require repair after a low-speed collision. This vehicle exceeds the current

DEALER: 208373

MORGANTON HONDA
1600 BURKEMONT AVENUE
MORGANTON NC 28655

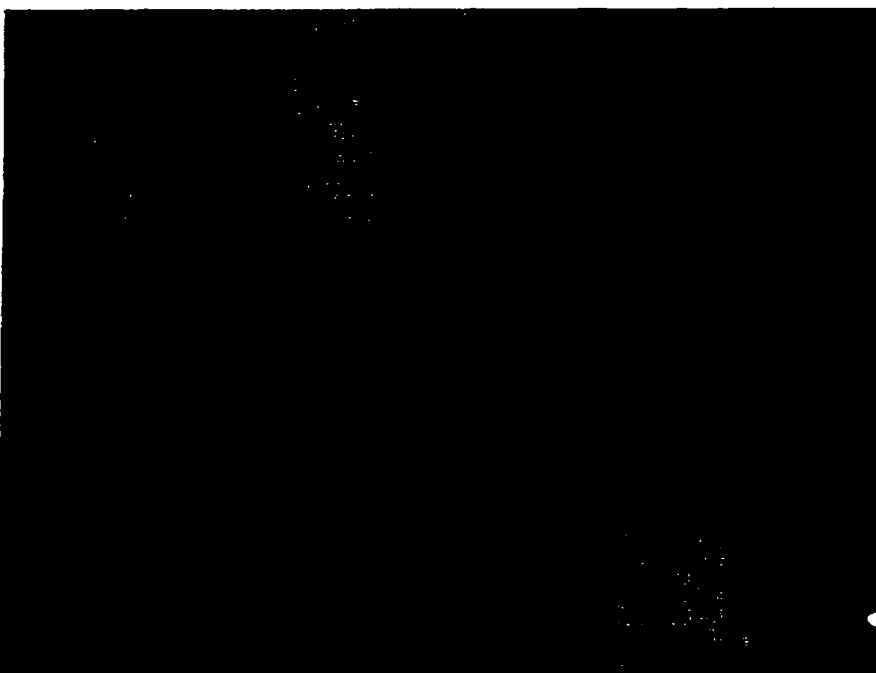
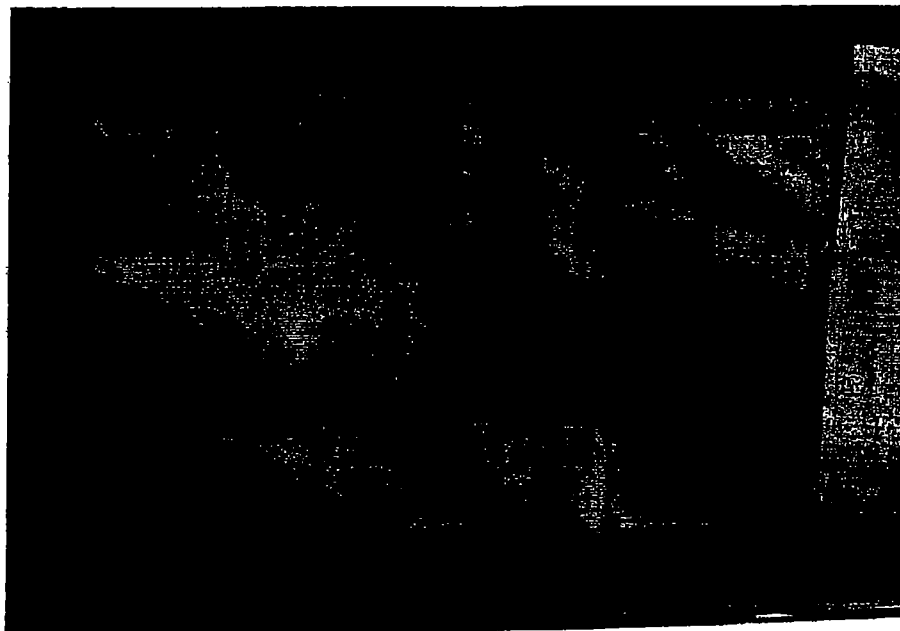
PORT OF
DELIVER
SHIP#:
ROW#:
TRANSP#:



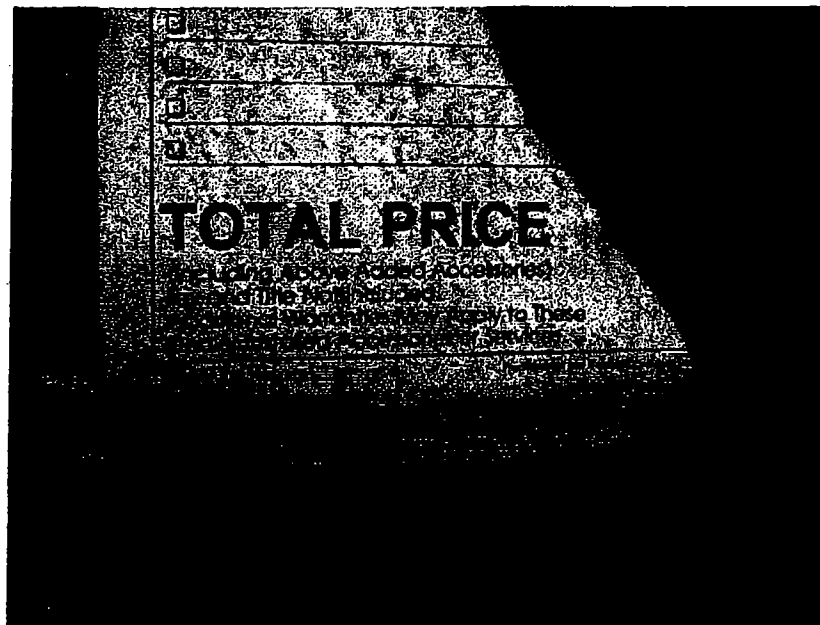
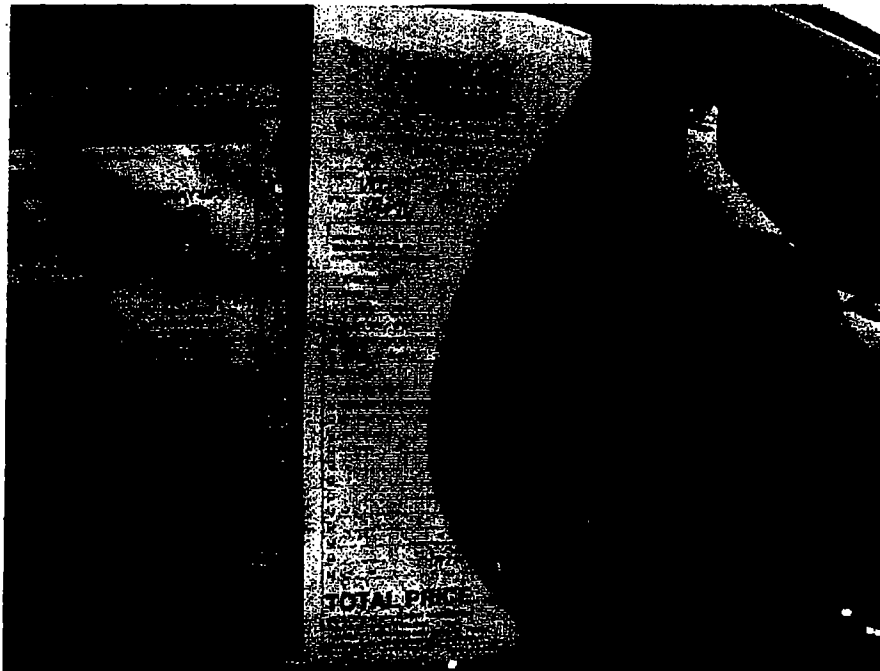
Honda Certified Used Car Window Sticker with pricing showing disclosure



EBIZAUTOS windows sticker for Used Cars No Pricing

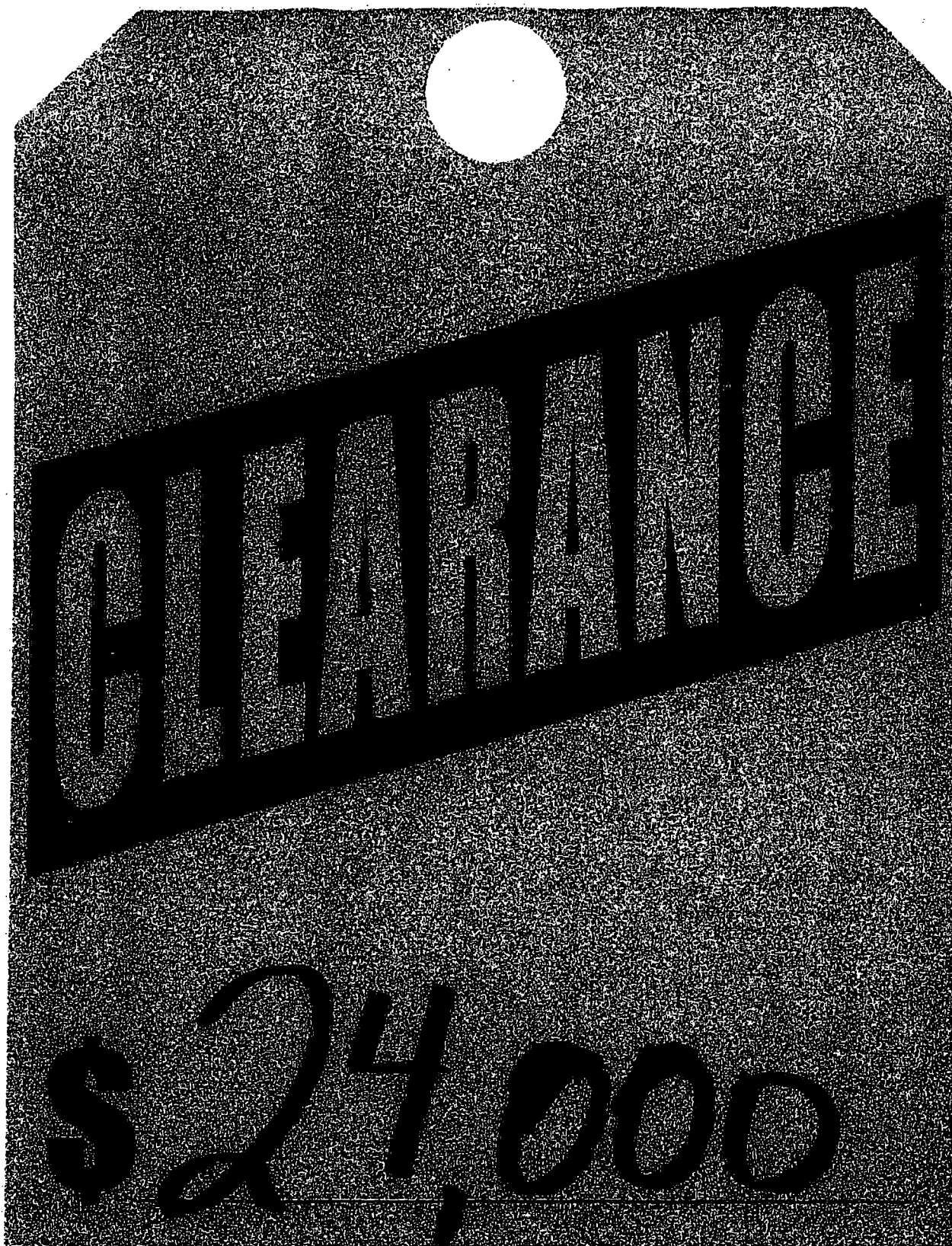


New Cars window sticker showing MSRP



Accessories Addendum Sticker showing MSRP; Accessories; MSRP with Accessories

EXHIBIT 7



HENDRICK_HONDA_EASLEY_000053

EXHIBIT 8

Page 1	Page 3
1 STATE OF SOUTH CAROLINA	1 APPEARANCES(Cont.)
2 COURT OF COMMON PLEAS	2
3 COUNTY OF Aiken SECOND JUDICIAL CIRCUIT	3 ATTORNEYS FOR DEFENDANT
4 HEATHER HERRON, ET AL,	4 TOYOTA OF GREENVILLE:
5 Plaintiffs,	4 BRADFORD NEAL MARTIN & ASSOCIATES, PA
6 Docket No.: 2006-CP-02-1230	5 BY: BRADFORD NEAL MARTIN, ESQ.
7 vs	5 75 Beattie Place, Suite 910, 9th Floor
8 DICK DYER & ASSOCIATES, INC., ET AL,	6 P.O. Box 10410
9 Defendants.	6 Greenville, SC 29603
10 DEPOSITION	7
11 WITNESS: JACK LESTER FRASHER, JR.	8 ATTORNEYS FOR DEFENDANT
12 DATE: Thursday, February 12, 2009	8 GALEANA CHRYSLER JEEP, INC., JLH
13 TIME: 10:17 a.m.	9 INVESTMENTS, LP, d/b/a HENDRICK HONDA OF
14 LOCATION: Law Offices of	9 EASLEY:
15 Richardson Plowden	10 HAYNSWORTH SINKLER BOYD, P.A.
16 1900 Barnwell Street	11 BY: R. DAVID PROFFITT, ESQ.
17 Columbia, South Carolina	11 1201 Main Street, 22nd Floor
18 TAKEN BY: Attorneys for the Plaintiffs	12 P.O. Box 11889
19 REPORTED BY: GINA M. SMITH	12 Columbia, SC 29211-1889
20 Certified Shorthand Reporter	13
21 Registered Professional Reporter	14 ALSO PRESENT:
22	15 MELANIE BLEASE
23	15 MELANIE S. OSBORNE
24	16
25	17 (INDEX AT REAR OF TRANSCRIPT)
26	18
27	19
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Page 5	Page 7
1 but I just wanted you to know. 2 MR. HARPOOTLIAN: That's fine. And those 3 are Bates stamped -- 4 MR. HAMM: Yes. 5 MR. HARPOOTLIAN: It's labeled Exhibit A. 6 MR. HAMM: Yes. And you can do it in any 7 fashion that you want. 8 MR. HARPOOTLIAN: Bates stamped, for the 9 record, LR-429 through LR-436. 10 MR. HAMM: Right. 11 Do you want to make that Exhibit 1? 12 MR. HARPOOTLIAN: Not yet. 13 MR. HAMM: Okay, that's fine. 14 MR. HARPOOTLIAN: I mean, I'll probably 15 put it in at some point, but that's not really 16 where I want to start. 17 MR. HAMM: That's fine. I just wanted you 18 to know why it is you're getting it now. 19 And I take responsibility for that. 20 MR. HARPOOTLIAN: Absolutely. I don't 21 want any doubt about that one. 22 EXAMINATION 23 BY MR. HARPOOTLIAN: 24 Q. Let me -- first of all, tell me your full 25 name, please.	1 since you're under oath, to answer those questions 2 truthfully. If you don't know, I don't know is a 3 perfect response. 4 If you think that -- and I may follow up 5 saying, well, if you don't know, who would know. 6 If you understand in the organization who that 7 might be, that would be helpful. 8 It's important for you to articulate your 9 answers yes or no verbally, because this young lady 10 is taking it down stenographically, and I believe 11 she's recording it, and from that she will prepare 12 a transcript which at some point will be furnished 13 to me and your attorney. 14 And you'll be asked whether you want to 15 read and sign it, which I'm sure you're going to 16 want to do. Okay? 17 MR. HAMM: Yes. 18 BY MR. HARPOOTLIAN: 19 Q. When you read and sign it, typically you 20 can't change your answer in the sense of if you 21 said yes today, then you can't go back six months 22 from now and say no, with some very limited 23 circumstances. Creative lawyers happen to think 24 you can do that, but I'm not one of them. 25 So, likewise, during this process, your
Page 6	Page 8
1 A. Jack Lester Frasher, Jr. 2 Q. And you are a doctor? 3 A. Doctor of Optometry. I'm not practicing. 4 I'm licensed. I keep my 20 hours continuing ed a 5 year, but I'm in the automobile business. 6 Q. And what's your position with the 7 Defendant, Land Rover, or Overland, Inc., d/b/a 8 Land Rover? 9 A. I'm the president and stockholder. 10 Q. Have you ever had your deposition taken 11 before? 12 A. Maybe once many, many years ago. Nothing 13 to do with anything. 14 Q. What kind of case was that? 15 A. I don't even remember. I'm talking so 16 long ago. It just seems like as I watched this the 17 other day -- 18 Q. Everything looked familiar? 19 A. Yeah, a little bit, you know, but nothing 20 that I can recall. I couldn't begin to tell you. 21 Q. I don't think I drew as big a crowd as 22 Louis here today, and this should be a little 23 different, sort of. 24 Let me first of all explain to you, I'm 25 going to ask you some questions. We expect you,	1 lawyer may object, and all he's going to say is I 2 object or I object just to the form. He's not 3 going to give an objection in which he states why 4 he's objecting because that would be contrary to 5 the rules, and Mr. Hamm knows that, we've 6 discussed. 7 So -- where's Becker? Is Becker here? 8 MR. HAMM: No. 9 BY MR. HARPOOTLIAN: 10 Q. I was going to instruct him today. 11 But Steve was going to be an example for 12 him, to show him how to do it right. 13 But -- so, I mean, this is a fairly simple 14 process. You can't stop and ask your lawyer 15 questions, except under very limited circumstances. 16 I don't think those are going to come up today. So 17 we have an understanding? 18 A. Sure. 19 Q. That would be a yes? 20 A. Yes. 21 Q. See, it's important that you say yes or 22 no. 23 A. Okay. 24 Q. Now, let's talk a little bit about 25 Overland, Inc., d/b/a Land Rover.

Page 9	Page 11
1 Did you start it? Are you the creator of 2 it? 3 A. Yes, my wife and I. 4 Q. And what's your wife's name? 5 A. Victoria C. Frasher. 6 Q. Okay. And are y'all from here, from 7 Columbia? 8 A. Greenville. She was a military brat, and 9 she was in Greenville when I met her. 10 Q. And you're from Greenville? 11 A. Yes, other than school and four years as a 12 baby while my dad was in dental school, but, you 13 know -- 14 Q. And where did you go to school? 15 A. I went to Clemson to undergrad. 16 Q. What year did you get out? 17 A. '73. I went to optometry school -- '72, I 18 guess, I went to optometry school. 19 Q. I was there. I got out in '71. 20 A. Really? 21 Q. Yeah. 22 A. '72 to '76 in Chicago. 23 Q. And you went to optometry school? 24 A. Optometry. 25 Q. And when you got out of optometry school,	1 Q. Are there other little Land Rovers? 2 A. We have Jaguar Land Rover Asheville. 3 Q. Asheville. North Carolina? 4 A. Right. 5 Q. Anywhere else? 6 A. No. 7 We have a motorcycle business in 8 Greenville. 9 Q. What's the name of that? 10 A. Touring Sport BMW. 11 Q. BMW motorcycles? 12 A. Yes. 13 Q. Any other? 14 A. Brand? 15 Q. Yeah. 16 A. We added over the years Ducati, Aprilia, 17 and Vespa scooters. 18 Q. That business doing well, motorcycle 19 business? 20 A. Yeah, most -- I mean, it's doing okay. It 21 had a little spurt during the fuel scare with the 22 scooters, but it's doing okay. 23 Q. Better than the car business? 24 A. Yes. 25 Q. Anything's doing better than the car
Page 10	Page 12
1 what did you do? 2 A. Well, I opened cold. 3 Q. Where? 4 A. Greenville. 5 Q. And did you practice medicine up there? 6 A. Full time 20 years. 7 Q. Until when? 8 A. Around '98. I phased down. A buddy of 9 mine, a colleague, took over my practice, and I 10 worked less and less because the business that -- 11 the automobile business challenged me timewise. 12 Q. And did you go into some other business? 13 A. Well, I was already in the business that 14 I'm in now. 15 Q. Car business? 16 A. Right. 17 Q. In Greenville? 18 A. Right. 19 Q. And what was the name of that dealership? 20 A. Land Rover of Greenville. 21 Q. Do you still have that? 22 A. Yes. 23 Q. And there's Land Rover of Greenville, Land 24 Rover of Columbia? 25 A. Right.	1 business, isn't it? 2 A. Yes. 3 Q. Now, this entity Overland, Inc., does it 4 own all those dealerships or are they owned by 5 other entities? 6 A. No. Touring Sport was -- we actually 7 opened it earlier. It's a different corporation. 8 Q. And do you have -- and Overland, is it you 9 and your wife or anybody else? 10 A. Just us. 11 Q. And these other -- as to the other Land 12 Rovers up in Greenville, is that owned by Overland 13 also? 14 A. Right. Yes. 15 Q. And the motorcycle dealership, that's 16 in -- where is that, Greenville? 17 A. Greenville. 18 Q. And who's that owned by? 19 A. You mean -- I mean, it's still my wife and 20 myself -- 21 Q. Different corporation? 22 A. -- only stockholders. 23 Right, different corporation. 24 Q. And the one in Asheville? 25 A. That is a d/b/a, Jaguar Land Rover

Page 13	Page 15
1 Asheville, but it's with Overland, Inc. 2 Q. So all these entities are owned by 3 Overland, which the stockholders are you and your 4 wife? 5 A. Other than the bike dealership, right. 6 Other than the motorcycle dealership is not 7 Overland, Inc. 8 Q. No, but it is another entity, which is -- 9 A. Right. 10 Q. -- owned by you and your wife? 11 A. Yes. 12 Q. Now, have you looked at the 30(b)(6) 13 Deposition Notice? 14 A. Yes. 15 Q. Did they show that to you? 16 Let me make that an exhibit, if I could. 17 Mark that, please. 18 (DEPO. EXH. 1, 30(b)(6) Deposition Notice, 19 was marked for identification.) 20 BY MR. HARPOOTLIAN: 21 Q. Going to -- this would be Exhibit 22 Number 1. You are the person most knowledgeable 23 regarding the charging of administrative fees 24 and/or processing fees as described in the lawsuit? 25 A. Yes.	1 Q. Which is when did y'all start doing it? 2 A. Right. 3 Q. When did y'all start doing it? 4 A. January 25th was the first documentation 5 fee -- 6 Q. What year? 7 A. '06 -- that we charged in Columbia. 8 Around that time frame is when we finally decided, 9 you know, we were going to do it. 10 Q. Okay. And how many years do you 11 contend -- 12 MR. HAMM: Dick, for the record, the only 13 named Defendant in this or any lawsuit is Land 14 Rover Columbia. 15 MR. HARPOOTLIAN: I understand that. 16 MR. HAMM: I just wanted to make sure. 17 MR. HARPOOTLIAN: I understand that. I'm 18 just -- if there was some difference, I'd want to 19 know why. 20 MR. HAMM: That's fine. I just wasn't 21 sure if you were aware of that. 22 MR. HARPOOTLIAN: I am. 23 BY MR. HARPOOTLIAN: 24 Q. What is your understanding this lawsuit's 25 about?
Page 14	Page 16
1 Q. And then there's a series of topics A 2 through P, and you've reviewed these, I assume, 3 with somebody, your lawyer or somebody else, and 4 determined you're the person most knowledgeable 5 about each one of these? 6 A. Yes, I believe so. 7 Q. Okay. Alrighty then. 8 Now, tell me, then, when we say -- and we 9 use definitions in here of administrative fees 10 includes those fees referred to in the Amended 11 Complaint often referred to as administrative fee 12 or recording and processing fee, a closing fee, or 13 dealer documentation closing fee. I mean, are we 14 speaking -- we understand what we're talking about 15 here? 16 A. Yes. 17 Q. When did you start doing that? When did 18 the -- let me ask you this: The Columbia Land 19 Rover and Greenville Land Rover, do they operate 20 differently, or do I need to ask you about each one 21 separately, or do they do the same thing at the 22 same time? 23 A. Well, that's our intent. And, you know, I 24 would think certainly the question you're getting 25 ready to ask me, they --	1 A. Well, the lawsuit is about closing fees, 2 documentation fees and the charging of them. 3 Q. And what -- what -- you said you started 4 in January of '06. Why? What brought that about? 5 A. Well, you know, the General Assembly 6 authorized it. 7 Q. When did they authorize it? 8 A. Several years ago, 2000 or so. 9 Q. They authorized it in 2000. Why did 10 you -- 11 A. We were aware of this for several years, 12 and I didn't think we needed to do it for the 13 longest. And I think you've been furnished 14 information with some conversations. 15 But it's -- almost a year before we did 16 start charging, we had pretty much decided we were 17 going to. Business, you know, there were slight 18 profitable years, slight losing years. 19 As costs kept increasing and the 20 requirements kept escalating, it just was something 21 we had felt we had to do, so -- to recoup some 22 of -- to recoup some of our costs. 23 Q. And to make additional monies? 24 A. Well, to not in effect lose and have no 25 recovery of what we felt we were spending that we

Page 17 1 normally in the old days, so to speak, did not have 2 to spend. 3 There's just a lot of things that are 4 required today and things that we do to try and 5 give a legitimate experience that, again, costs 6 money, so -- 7 Q. Well, did you do any cost analysis on -- 8 first of all, how much did you charge in '06 when 9 you began doing this? 10 A. 225. 11 Q. Okay. And did you -- was there any 12 accounting or cost analysis of why it should be 13 225? 14 A. Well, there was no official study or 15 anything like that. We didn't hire anyone to do a 16 study, but, you know, just knowing the business, 17 watching our expenses and seeing the types of 18 things. 19 We did -- I think maybe you were furnished 20 something with a list of some of the items that do 21 cost us. And we just decided this was a reasonable 22 fee, it would not be a hardship on customers. It 23 hasn't appeared to be that way. At the same time 24 it would -- might recoup, you know, most of our 25 costs, some of our costs.	Page 19 1 Q. -- but you charge 225? 2 And when you did that initially, you 3 called it what, a documentation fee or a closing 4 fee? 5 A. I believe initially that we called it a 6 documentation fee. You know, the application that 7 we received from the Department of Consumer Affairs 8 referred to several names. That was one of them, 9 and I believe that's what we charged it 10 initially -- or called it initially. 11 Q. They called it a closing fee, did they 12 not? 13 A. Who? 14 Q. Department of Consumer Affairs. 15 A. Well, no. The application that they send 16 to us, the only correspondence we have with them 17 refers to closing, refers to documentation fees, 18 administrative -- you know, several things. 19 So we didn't know that -- and again, until 20 recently -- that there was a preferred wording. If 21 there was, we'd certainly use it. We've certainly 22 tried to follow the law. 23 MR. HARPOOTLIAN: Let me have that marked, 24 please? 25 MR. HAMM: What are you referring to?
Page 18 1 Q. Costs for what? 2 A. Well, I mean, again, I think you've seen 3 the things, but one simple thing is the, you 4 know -- the Car Fax. We subscribe to that so that 5 we can be sure that we get a history on the car so 6 we can represent it properly before the purchase. 7 Q. What do you call this thing when you put 8 it on the form or you -- 9 A. We've called it documentation fee. Early 10 on we've called it closing fee. You know, based on 11 advice of our counsel just -- 12 Q. Okay. I guess what I'm asking is, first 13 of all, y'all submitted a form to the Consumer 14 Affairs folks -- 15 A. Right. 16 Q. -- and you asked for or you said you were 17 going to charge how much? 18 A. Well, I don't really know the wording, but 19 I know that we're authorized to charge up to 350. 20 Q. 350, okay. And yet you charge how much? 21 A. 225. 22 Q. 225. So you could charge up to 350 under 23 what you filed with the Department of Consumer 24 Affairs -- 25 A. Yes.	Page 20 1 MR. HARPOOTLIAN: I'm referring to -- and 2 I'll hand you a copy of it. It's LR-01. Is that 3 your -- 4 (DEPO. EXH. 2, South Carolina Department 5 of Consumer Affairs Motor Vehicle Dealer Closing 6 Fees Form, LR-01, was marked for identification.) 7 BY MR. HARPOOTLIAN: 8 Q. You've been handed Exhibit Number 2, I 9 believe. Have you seen this document before? 10 A. Yes. 11 Q. And did you sign it or somebody else sign 12 it? 13 A. That's my signature. 14 Q. And let's look at it. It's the South 15 Carolina Department of Consumer Affairs Motor 16 Vehicle Dealer Closing Fees form. 17 Do you know how you came to get one of 18 these? How did you get it? Did you call Consumer 19 Affairs? Did your lawyer do it? Do you know -- 20 A. No, someone in my office did it way back. 21 I think we actually -- I'm doing this from memory. 22 I think we applied for it the year before we did it 23 and then again for '06 when we did it, and -- 24 Q. So is there a form for '05? 25 A. There may be. No, I mean, I'm just

1 telling you we never did it in '05. We had planned
2 on doing it. And, again, I had -- I just was
3 not -- I was doing everything possible to not
4 ever -- we like to be straightforward in the way we
5 do business, and I was trying to be as
6 straightforward as possible, and so when we did it,
7 we made sure that we did that, but we did not.

8 Q. And this says -- this form was filed on.
9 it looks like, 12/20/05. It says, will not exceed
10 350 prior to July 1, '06. Is that right?

11 A. That's right.

12 Q. Okay. So between this date and July 1,
13 '06, you can charge 350. Is that your
14 understanding? Up to.

15 A. Sure. Yes.

16 Q. Now, it says here -- if you look, it says,
17 disclosure of closing fees notice. This
18 dealership -- I'm going to publish this so we can
19 make sure we understand what we're talking about.

20 This dealership charges closing fees as a
21 means of reimbursing it for certain overhead costs
22 such as documents retrieval and document
23 preparation. It is a charge that's permitted but
24 not required by law. The full cash price charged
25 at any dealership depends on many factors including

1 certain overhead costs such as documents retrieval
2 and document preparation. Okay.

3 Now, my question to you is: How did you
4 determine 225 as a means for reimbursing for
5 certain overhead costs such as documents retrieval
6 and document preparation?

7 A. We basically -- I had our people just, you
8 know, come up with a list of the items that are
9 involved in each transaction. And we have a
10 computer system that requires, you know, that it be
11 entered into that. There's just all sorts of fees
12 involved with it.

13 And so we -- we just listed a bunch of
14 them -- and you really have that information, I
15 think -- but, you know, from compliance with all
16 the different governmental things, and, you know,
17 preparing documents for moving a vehicle from one
18 ownership to another, dealing with the Department
19 of Motor Vehicles. There's just numerous things.

20 And we just analyzed it as best we could.
21 No official study, just simply tried to estimate
22 how much time people were using, how much expense
23 in the forms and documentation. We spend probably
24 six, \$7,000 a month in Columbia just on the
25 computer system support.

1 all products and services bought with the vehicle.
2 The closing fee you put as 350.

3 Now, what was your understanding, based on
4 filling -- when you filled this form out and signed
5 it, what your closing fee to be composed of?

6 MR. HAMM: He's just struggling -- tell
7 him where you were reading.

8 BY MR. HARPOOTLIAN:

9 Q. Just says, disclosure of closing fees
10 notice.

11 MR. HAMM: I'm just pointing him to it.
12 He didn't see what you're --

13 THE WITNESS: I was not following along.

14 BY MR. HARPOOTLIAN:

15 Q. This dealership charges, do you see that?

16 A. Yeah, okay.

17 Q. That's the paragraph. Why don't you just
18 read it to yourself again so I don't have to
19 publish it again. Just let me know when you're
20 done.

21 A. Right.

22 Q. Now, it says, it is a charge that is
23 permitted but not required by law.

24 A. That's right.

25 Q. It says it's a means of reimbursing it for

1 Q. I guess now -- you're talking about
2 Exhibit B to the --

3 A. Right.

4 Q. -- Second Revised Supplemental Answers to
5 Revised Interrogatories For Plaintiffs, right?

6 A. And that represents some of the items,
7 yes.

8 Q. In 2005, was there a meeting in which this
9 list was generated? Was this list generated?

10 A. I have not really -- to be honest, I
11 didn't recall this list. This is another document
12 that I saw.

13 Some of the items are very familiar
14 because we obviously tried to figure what, you
15 know -- what should we charge.

16 Q. What I'm asking you is: In 2005, before
17 you decided to charge 225, asked for 350, did
18 somebody generate this list then or is this
19 generated in response to the lawsuit?

20 A. I am not sure. I'm not aware of -- I
21 would assume this might be a response, because ours
22 was more of an informal study. That would be my
23 speculation, but I can't assure you.

24 Q. Well, let me see what your Interrogatory
25 says.

Page 25

1 MR. HARPOOTLIAN: And these
2 Interrogatories are sworn to.
3 MR. HAMM: Yes. We have given --
4 MR. HARPOOTLIAN: Okay. We got
5 verifications today. So let's see where Exhibit B
6 is referred to.
7 MR. HAMM: I'm not sure what you're
8 looking for, Dick.
9 MR. HARPOOTLIAN: I'm looking for --
10 there's an Exhibit B, which is on the list on the
11 Interrogatories, and I'm assuming it's referred to
12 somewhere on your Responses.
13 MR. HAMM: It is.
14 MR. HARPOOTLIAN: That's what I'm looking
15 for.
16 MR. HAMM: If we find it, we'll be happy
17 to tell you, Dick. Eleven.
18 MR. HARPOOTLIAN: So let's -- do we have
19 this in -- let's make it an exhibit.
20 (DEPO. EXH. 3, Response to Interrogatory
21 Number 11, was marked for identification.)
22 BY MR. HARPOOTLIAN:
23 Q. So what we have here is in your Response
24 on Number 11. It says, describe why you charge the
25 administrative fee including in this description

Page 27

1 don't know. I would assume this was -- you know,
2 as a result of -- at least presenting it would be a
3 result of the lawsuit, but I don't know.
4 Q. So you're the person designated most
5 knowledgeable about how the administrative fee was
6 composed?
7 A. Right.
8 Q. And you can't tell me when this list
9 was --
10 A. Not this piece of paper, not this exact
11 order.
12 Q. Did you put this piece of paper together?
13 A. No.
14 Q. Do you have a copy of it in your
15 dealership in your files?
16 A. No.
17 Q. Okay. So I think we can assume, then, it
18 was not composed by your dealership and was a
19 response composed by your lawyer to the
20 Interrogatories. Does that make sense?
21 MR. HAMM: Objection.
22 BY MR. HARPOOTLIAN:
23 Q. Or in conjunction with you.
24 A. No, that's an assumption that's incorrect,
25 because basically we responded to the lawsuit. And

Page 26

1 what the fee covers, how you came up with it, and
2 why the fee is broken into a separate category from
3 the sticker price on the sales invoices.
4 Are you reading along there with me?
5 A. Yes.
6 Q. Response: Beginning on January 25, '06,
7 at the time of Plaintiff Heather Herron's purchase
8 in February of '06, Defendant Land Rover charged a
9 closing fee/recording and processing fee permitted
10 by statute and properly registered with the South
11 Carolina Department of Consumer Affairs.
12 The amount of the fee is related to
13 certain expenses, including expenses for document
14 preparation and retrieval, storage and other costs
15 associated with transferring title to vehicle sold,
16 a more complete listing attached as Exhibit B
17 hereto.
18 The closing fee, recording and processing
19 fee is listed as a separate category from the sales
20 price on the buyer's order if required.
21 Now, having read that, this Exhibit B, was
22 this something prepared in '05, before you
23 submitted that, or '06, before you decided what to
24 charge, or is it something that was drawn up --
25 A. I told you -- I told you what I know. I

Page 28

1 certainly we have counsel, but we prepared any
2 information from our dealership. When I say we, I
3 pay people to do this. I mean --
4 Q. I understand that.
5 Who did you pay to do this?
6 A. Well, I mean, I've got an office with a
7 controller in it and other ladies, and just -- we,
8 you know -- I just said gather the information we
9 need to help us make an intelligent decision.
10 As far as this sheet, I can't -- like I
11 said, I can't tell you for sure whether this was --
12 Q. Well, prior to filing Exhibit Number 2,
13 were there -- was there -- I mean, this is a large
14 list in Exhibit B. Did anybody put numbers on
15 those? Did anybody say for a year it costs us X
16 number of dollars to do preparation of logs, manual
17 and electronic; it costs us X to do receipt of
18 monies; X for administratively processing new or
19 used vehicles? Did anybody --
20 A. There were discussions regarding that, and
21 I think you've been -- if you look back, there's
22 probably an e-mail where the number was really
23 going to be higher. And I think it was 289 or
24 something like that. And that was what we thought,
25 based on just discussions and trying to dig into

7 (Pages 25 to 28)

Page 29	Page 31
1 what we were actually paying to help a transaction 2 occur. 3 But, you know, the -- we were just simply 4 trying to do what was authorized. And, you know, 5 this had been authorized for a long, long time, and 6 we just tried to go in at an amount that we could 7 feel really good about and be very, very 8 comfortable and not put a hardship on our 9 customers. It was authorized and we simply, you 10 know, decided we needed to charge it. 11 Q. Why did you ask for 350? 12 A. Again, that was probably early in our 13 discussions, and I was not doing physically every 14 piece. So that was what was authorized, because I 15 think the feeling was that it could be as high as 16 that. 17 But then when it came right down to the 18 decision-making, we just decided that we wanted to, 19 you know, hold it to a minimum, and that was it. 20 Q. Did you call around to see what other 21 people were charging? 22 A. I did not, although I think that -- 23 Q. Did somebody do that? 24 A. -- I think some calls were made. And 25 there's some data that shows some estimates from	1 manager, basically stating that it will be 289 2 after, you know, our discussion, blah, blah, blah. 3 And nearly a year later when I finally 4 decided to begin charging it, I just said, no, I'm 5 not comfortable. We came to 225 and let's do that. 6 Q. Well, this Gary Palmer, did he do any 7 analysis, to your knowledge? 8 A. I don't know. 9 Q. What are centres guides, C-E-N-T-R-E-S, 10 guides? 11 A. Sales guides, salespeople. Centre is the 12 term used by Land Rover. We have a Land Rover 13 centre. It's spelled R-E because Land Rover's 14 British, and that's just one of their standards, 15 that your salespeople are not salespeople, they are 16 sales guides at a Land Rover centre. 17 Q. Salespeople are called centres guides? 18 A. Sales guides. 19 Q. What's a centres guide? 20 A. Would be the same thing. They work in a 21 Land Rover centre, so I assume that would be the 22 same thing. 23 Q. Are these people that work for you or do 24 they work elsewhere? 25 A. Well, they work in our dealership like a
Page 30	Page 32
1 back -- probably back in '05 that -- just to -- 2 basically we're coming up with a figure that we 3 think is right, but at the same time let's make 4 sure we're not way off base. That was the purpose 5 of that. 6 Q. I guess what I'm saying is, is there a 7 document in existence in which you sat down and 8 figured out what the cost of these items was? 9 A. I don't believe so. 10 Q. Was there a meeting, or meetings, where 11 people recorded anything about those discussions? 12 A. I don't believe so, but there were 13 discussions. And this was -- I had an outside 14 consultant at the time. 15 Q. Who was that? 16 A. It's in that information about where -- 17 the e-mail that shows the disclosure. 18 Q. What's his name? 19 A. Gary Palmer. 20 Q. And who's he with? 21 A. I don't know the name of the company. 22 Q. And he was the one that helped you come up 23 with the -- 24 A. Well, I just noticed there was an e-mail, 25 when reviewing documents from him to our office	1 salesperson would. 2 Q. Now, Mr. Palmer, Gary Palmer, had an 3 e-mail at your -- from Land Rover. He worked for 4 you? 5 A. For -- he worked as a consultant. And for 6 two months or so he worked with us officially and 7 at the time was, you know, just considering 8 actually, you know, working for us full time, and 9 we were considering it. 10 Q. And these e-mails were sent to Land Rover 11 in Asheville? 12 A. Well, like I say, we probably did 13 everything regarding this documentation fee, 14 closing fee simultaneously. 15 Q. Did you do that also in North Carolina, 16 then? 17 A. Oh, yes. 18 Q. Do you have to file a form in North 19 Carolina? 20 A. That's a good question. I don't know. I 21 should know, but I don't know. 22 Q. And the 289 that he talks about here and 23 the 225, is that a fee, then, you charged in 24 Columbia, the same fee in Greenville and the same 25 fee in Asheville?

Page 33	Page 35
1 A. Yes. 2 Q. And are any of those entities, that is, 3 the dealerships, are they all the same size, same 4 volume? 5 A. Very similar. Very similar. Year to year 6 it can vary, but, yeah, our markets are very 7 similar in size. 8 Q. And the amount of revenue generated is the 9 same? 10 A. I wish it were consistent, but it's kind 11 of up and down, teetering around where I told you. 12 We'll have a good year in one, or a reasonable 13 year, and we'll have a bad year in the other. 14 Q. Same size building in each one of them? 15 A. Pretty much. The buildings are -- I would 16 say all of them are generally similar, but not the 17 same and not the same size, but in general. 18 Q. Same number of salespeople? 19 A. Pretty much. There may be one less in one 20 store, you know, but we only employ three to four 21 sales guides. 22 Q. In each store? 23 A. In each store. 24 Q. And the cost of filing documents and doing 25 business in North Carolina is the same as it is in	1 returns for each one of those entities, the costs 2 would be the same, what you've -- expressed costs 3 in each one of them? 4 A. It would be very close. 5 Q. Well, very close plus or minus 10 percent? 6 Plus or minus -- 7 A. I don't know. 8 Q. Well, when you came up with this document 9 fee, again, did you determine that this fee was 10 proper for Columbia individually, being proper for 11 Greenville individually, being proper for Asheville 12 individually? 13 A. I believe so. But again, in the interest 14 of consistency and what I was comfortable with, I 15 know that the cost would be equal or higher than 16 the fee we're charging. There's no doubt about 17 that. So we simply -- that was a number I was 18 comfortable with as far as recouping part of our 19 expenses. 20 Q. Did somebody sit down and -- did you ever 21 see a figure or were you ever in a meeting where 22 there was a figure that told you what the annual 23 administrative processing new or used vehicles were 24 for -- by the dealership, the dollar amount? 25 A. The dollar amount once we started
Page 34	Page 36
1 South Carolina? 2 A. I don't know that I can answer that 3 accurately. 4 Q. Well, when you did this analysis, did you 5 look at that? 6 A. Well, yes, but again, I wouldn't want to 7 say exactly the same because the states are 8 different, and, you know, one's more of a stickler 9 on how you title the vehicle and that sort of 10 thing. So I don't want to answer that. 11 Q. Well, was this number, because -- was this 12 number that you came to, the 225 or the 289 or the 13 350, was that something you looked at for each 14 dealership or did you look at it for all the 15 dealerships owned by this entity? 16 A. We looked at everything in the Land Rover 17 dealerships pretty much. Even though we have 18 Jaguar in Asheville, it's primarily Land Rover 19 business. It's very similar for the reason that I 20 mentioned, the market size. 21 Q. But, I mean, did you look at it in the 22 aggregate or did you look at them individually? 23 A. We looked at them individually, and, like 24 I said, they're very similar. 25 Q. And so if we looked at your income tax	1 charging? 2 Q. No -- well, yes, before -- well, in '05. 3 A. You mean planning? 4 Q. Right. 5 A. No. 6 Q. Did anybody give you a number for what it 7 costs you to do truth-in-lending compliance? 8 A. I think that's more of those general 9 discussions we had, estimates. 10 Q. Well, if you answer yes or no, then you 11 can explain. 12 Did anybody ever give you a dollar 13 number -- 14 A. I don't remember. 15 Q. -- by dealership? 16 A. I don't remember. 17 Q. Well, you've been designated the person 18 most knowledgeable about how these numbers were 19 come up with, how they were determined, and you 20 can't tell me whether you got a dollar number for 21 these individual items you've listed -- 22 A. You didn't say the individual items. You 23 said one item. 24 Q. Well, any of them. 25 A. Okay. Certainly then we figured based on

Page 37 1 estimates for the dollar expense, but I would 2 challenge you to remember what was done in 2005. 3 Q. Sir, I'm not under oath here -- 4 A. I understand. 5 Q. -- testifying, and I haven't been 6 designated as an expert, as the person most 7 knowledgeable. 8 A. Right. 9 Q. So if you'll answer the questions and not 10 attempt to argue with me. This is not a medical 11 malpractice deposition. I understand your 12 position, but if you'll answer the question -- 13 MR. HAMM: I object. 14 BY MR. HARPOOTLIAN: 15 Q. -- I would appreciate it. 16 Sir, did you or did you not have a dollar 17 amount for preparation of logs, manual or 18 electronic, before you determined what amount to 19 charge for the administrative fee? Yes or no and 20 then you can explain your answer. 21 A. You said "I don't know" is an answer. 22 Q. You don't know? 23 A. I don't know if -- 24 Q. Who would know? 25 A. I don't know that anyone would know exact	Page 39 1 Q. Well, how many people do you have 2 receiving monies in a dealership? 3 A. I would think that you could involve the 4 sales guide. You could involve the office manager. 5 You could have maybe someone else involved in that, 6 but in general, two, I would think. 7 Q. That would be the person selling the car? 8 A. Yes. 9 Q. Of which you said you had probably four 10 per dealership? 11 A. Uh-huh. 12 Q. And then the person who actually receives 13 the money, the cashier -- is that a cashier? 14 A. It could be the same person. We have a -- 15 I mean, the sales guides in our dealership deal 16 directly with the customer. There's not much 17 switching off. 18 And so it could be that they took the 19 check and then hand it over to the office manager 20 in most situations. 21 Q. So were you considering the sales staff 22 and the office manager or just the sales staff? 23 A. I would think anytime anyone's involved, 24 it's costing you money. 25 Q. I'm asking you back in '05 when you did
Page 38 1 numbers, because I said there was not anything that 2 was an official study. 3 Q. What I'm asking you is: Did you have an 4 exact number for preparation of logs, manual or 5 electronic, in 2005, before you came up with the 6 number? Was there an exact number? 7 A. Exact number, I would say no. 8 Q. Well, if it wasn't exact, how was it 9 presented? It cost us about 10,000? It cost us 10 about five? 11 A. I would think so. 12 Q. Was that written down somewhere? 13 A. I don't think so. I don't know. 14 Q. What about receipt of monies? 15 A. Receipt of -- 16 Q. I'm sorry, it's your phrase, receipt of 17 monies. 18 A. We're going down the list? 19 Q. Yes, sir, we are. 20 A. I think that's somewhat of a general term. 21 There's personnel involved. We pay our people. So 22 that's one form of it. 23 The other thing is just the paperwork 24 that's involved in receipt of monies. So, again, I 25 would think it would be a general amount.	Page 40 1 this analysis to determine that amount, what did 2 you -- 3 A. Certainly two. 4 Q. I'm sorry? 5 A. Two people. 6 Q. Two people for each transaction? 7 A. Right, minimum. 8 Q. And so all four people, all four 9 salespeople, would be involved in the receipt of 10 money? 11 A. Yes. 12 Q. And the -- you called her the -- he or she 13 the office manager? 14 A. Right. 15 Q. Now, what percentage of their salaries did 16 you allocate? 17 A. I don't know. 18 Q. Have you ever thought about allocating a 19 percentage of their salaries? 20 A. To that exact task? 21 Q. Yes. 22 A. No. 23 Q. They do more than that, right? 24 A. Obviously. 25 Q. Did you allocate their whole salary to

Page 41	Page 43
1 this when you started doing the addition? 2 A. Of course not. 3 Q. Of course not. 4 So how did you determine what -- when you 5 went down this list, which didn't exist at the 6 time, but these are the factors you considered, how 7 much -- what do you pay a salesperson a year? 8 A. It varies dealership to dealership. 9 In our case, we start sales guides with a 10 salary and then they earn flat fees as they, you 11 know, sell more, produce more. 12 Q. Did you allocate just part of the flat 13 salary or did you allocate part of the fees or -- 14 A. I think I just told you we did not 15 allocate anything. 16 Q. So when you went to come up with this fee 17 and you were considering receipt of monies, how 18 much of that -- I mean, how did you figure out what 19 that was in approximate numbers? 20 A. I think this is a very difficult thing to 21 answer accurately, and I don't know that anyone 22 could. 23 Q. I'm not asking you how you would do it 24 now. I'm asking you what you did before you did 25 the fee. Did you do that? Did you go through and	1 Q. No. 2 A. The reason I'm asking is because there are 3 so many documents -- there are so many documents 4 that you are signing that we have to prepare for 5 the bank, for the DMV, for the Truth of Lending and 6 these -- 7 Q. Who does it? Who does it? Who prepares 8 them, the sales associate or somebody else? 9 A. In some cases you may have a sales guide, 10 a lead sales guide or a sales manager that helps 11 generate that. An office manager in some of our 12 dealerships is fully capable of doing that. 13 That can vary. We like to keep the 14 salesperson involved as long as possible so they 15 can communicate full understanding, no mysteries. 16 Q. So did anybody attempt to estimate what 17 percentage of or what piece of a sales associate's 18 time or the office manager's time -- 19 A. Yeah, we tried to estimate that, but 20 again, it was in discussions, and we didn't hire 21 anyone to really do a formal study on that. We 22 just simply, you know, did our best estimates. 23 Q. Well, your best estimate for that was 24 what? 25 A. I don't know that.
Page 42	Page 44
1 allocate some portion of the sales staff salaries 2 or salaries plus bonuses -- 3 A. We went through and decided what we felt 4 our costs would be without -- I mean, did we 5 allocate, no. You won't see that we allocated, 6 accountingwise, a portion of each person's salary. 7 If we did that on everything, every task like this, 8 I mean, my God, I mean, what are you looking for, 9 an accounting nightmare? 10 Q. I'm looking for how you reached the number 11 of 225. 12 A. Like I said -- 13 Q. Did you guess at it? Did you just pull it 14 out of some orifice? What did you do? 15 A. I think we guessed at it. 16 MR. HAMM: Objection. Asked and answered. 17 BY MR. HARPOOTLIAN: 18 Q. I'm sorry, I didn't hear your answer. 19 A. I think it's a best estimation. 20 Q. When you say best estimation, you've given 21 us a list of things you've considered, and I'm 22 asking you how you estimated them. 23 Administratively processing new or used 24 vehicles, what does that mean? 25 A. Have you bought a car?	1 Q. Was it written down somewhere? 2 A. I don't think so, and I know it was a long 3 time ago. 4 Q. Well, there's one, two, three, four, five, 5 six, seven, eight, nine, ten, 11, 12, 13, 14, 15, 6 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 separate 7 elements that went into coming up with that fee. 8 A. Well, there's more than that. I mean, as 9 I'm sitting here -- 10 Q. There's more than that? 11 A. Certainly. 12 Q. 30? 40? 50? 13 Now, when you're going through and 14 considering how to come up with this \$225 number, 15 there has to be an addition of these elements, 16 correct, to get to 225 or 350 or 450, or whatever 17 the number is? Don't you have to add it up? 18 A. You're adding up time and you're adding up 19 materials and you're adding up, you know, a number 20 of different factors. So I don't know how you add 21 different items. I mean -- 22 Q. Well, the way you add different -- 23 A. Maybe you need to restate that. I'm not 24 real sure -- 25 Q. How do you get -- I mean, if each one of