THE STATE OF SOUTH CAROLINA

In the Supreme Court

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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. III

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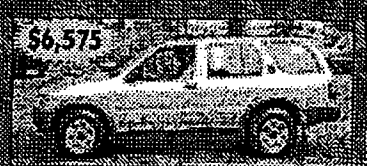
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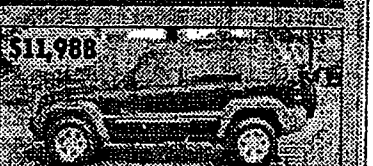

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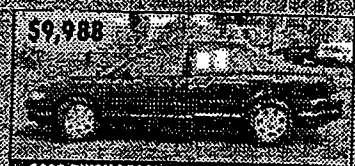

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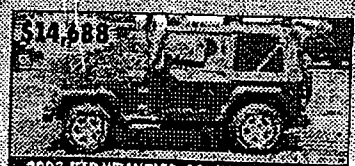

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EXHIBIT U

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF AIKEN

HEATHER HERRON, et al.,
Plaintiffs,
vs. CASE NO. 2006-CP-02-1230
DICK DYER & ASSOCIATES, INC., et al.,
Defendants.

DEPOSITION OF: NATALIE R. ARMSTRONG
DATE: June 29, 2009
TIME: 10:05 AM

LOCATION: Law Offices of
Richardson, Plowden & Robinson, PA
1900 Barnwell Street
Columbia, SC
TAKEN BY: Counsel for the Defendant
Galeana Chrysler Jeep, Inc.

REPORTED BY: TERRI L. BRUSSEAU,
Registered Professional
Reporter, CP, CRR

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ALSO PRESENT:
Scott C. Rhodes
Katie Lyall

(INDEX AT REAR OF TRANSCRIPT)

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STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent waives reading and signing of this deposition.

* * * * * * * * * * *

NATALIE R. ARMSTRONG

being first duly sworn, testified as follows:

EXAMINATION

BY MR. BECKER:

Q. Good morning, Miss Armstrong. As you know, I'm James Becker and I represent Galeana Chrysler Jeep, Inc. in this lawsuit. Have you ever had your deposition taken before?

A. No, I haven't.

Q. Have you ever been at a deposition before?

A. I've attended as a law clerk.

Q. Okay. Well, let me -- just so there are no misunderstandings, let me go through the same general instructions I usually do with any

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witness, understanding of course that you are an attorney, is that correct?

A. That is correct.

Q. When were you admitted to the bar?

A. 2007.

Q. You understand you are under oath?

A. I do.

Q. You understand a transcript is being made of your testimony here today?

A. I do.

Q. Just two important instructions. If you'll remember to please answer audibly with a yes or a no or explanation rather than a nod or shake of the head --

A. Okay.

Q. -- so the Court Reporter has no confusion about what your testimony is. Second instruction would be please try and remember to let me finish my question before you begin your answer and likewise I'll do my best to let you finish your answer before I begin my next question. That will also make the transcript much easier to read in the future.

A. Okay.

Q. If at any time you'd like to take a

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break, will you please let me know so that we can accommodate you?
A. I will.
Q. Are you under the influence of any alcohol, drugs or other medication that might influence or affect your ability to hear and understand and respond to my questions today?
A. No.
Q. Okay. Is there any reason why you believe you can't hear, understand and answer my questions honestly and competently?
A. No.
Q. If I ask you a question that you don't understand for any reason, you should ask me rather than your attorney for a clarification or explanation of the question, do you understand that?
A. I do.
Q. Then if you answer a question, I will assume you understood the question and the answer is truthful and based on your own personal knowledge, is that fair?
A. That is fair.
Q. If your attorney objects to a question I ask, that you should answer the question unless

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your attorney expressly instructs you not to answer the question.
A. Okay.
Q. You understand that if we do take a break in the deposition, you should not discuss this case or your testimony with your attorney or with anyone else unless you and your attorney are attempting to determine whether to assert a privilege and refuse to answer one of my questions.
A. Okay.
Q. Do you understand that?
A. I do.
Q. What is your full name, please?
A. Natalie Reneesha Armstrong.
Q. And what is your current address?
A. 221 Granby Crossing in Casey, South Carolina.
Q. Are you married?
A. No.
Q. What are your parents' full names and where do they live?
A. Laverne and Alonzo Moody and they live in Williston, South Carolina.
Q. Do you have any relatives in Richland County?

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A. Yes, a brother.
Q. What is his name?
A. His name is Jonathan Armstrong.
Q. And where does he live?
A. He lives off of Decker Boulevard.
Q. All right. And what does he do for a living?
A. He is a supervisor for Baker Distribution.
Q. Is that a business here in Richland County?
A. It is.
Q. Do you have any other relatives in Richland County?
A. No, not that I can think of right now.
Q. Do you have any other siblings?
A. Yes.
Q. Where do they live?
A. Atlanta, Aiken and here in Columbia.
Q. Okay. You've already mentioned your brother who lives here in Columbia.
A. Oh, I have a stepbrother who lives here in Columbia as well, I'm sorry.
Q. What is his name?
A. His name is Christopher Moody.

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Q. And you have another sibling that lives in Aiken County?
A. I have two. My older brother lives there and his name is Nathan Armstrong and my sister lives there and her name is Nicole Armstrong.
Q. Let me ask you briefly about your education. Where did you attend high school?
A. South Aiken High School in Aiken, South Carolina.
Q. And when did you graduate from there?
A. 1997.
Q. Then you attended the University of South Carolina?
A. Yes.
Q. And did you receive a BS degree in 2001?
A. Yes.
Q. What is that degree in?
A. Biology.
Q. Then you attended the -- I take it you completed your studies and got a BS in biology from USC?
A. Yes.
Q. You next attended the USC School of

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Public Health?
A. Yes.
Q. And did you receive a master's in public health?
A. I did.
Q. Was that in December 2003?
A. It was.
Q. And then who knows, maybe you took a wrong turn, you went to law school like so many others of us here. We all took that wrong turn but --
A. I believe it was a left.
Q. Here we are nevertheless and you went to the University of South Carolina School of Law, is that right?
A. Yes.
Q. And you got your JD in May of 2007?
A. Yes.
Q. Where do you -- where are you currently employed?
A. At the South Carolina Attorney General's office.
Q. And you've been employed there since August 2007?
A. Yes.

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Q. What are your current -- what is your current job title and duties?
A. My title is assistant attorney general and I am in the prosecution state grand jury section so I prosecute various crimes throughout the State of South Carolina.
Q. Have you had that position since you first started there in August 2007?
A. Yes.
Q. Who is your immediate supervisor?
A. It was Jennifer Evans, who recently passed away, and now it's Susan Porter.
Q. And does she report directly to the Attorney General?
A. Yes or to the deputy attorney general, John MacIntosh, who then reports to the attorney general.
Q. I see. Now, from May 2006 to June 2007 you were employed at Lewis and Babcock, is that correct?
A. That's correct.
Q. What were your -- what was your job title and duties there?
A. I was a law clerk. I did various research projects, law clerk type activities.

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Q. Were you working there in the summer of 2006?
A. Yes.
Q. Were you a full-time employee during that summer?
A. Yes.
Q. Do you remember were you a full-time employee there on August 12th, 2006?
A. Yes.
Q. When did you start back, move to part-time in 2006?
A. Once the school year started.
Q. Do you recall when that was?
A. I don't recall.
Q. Probably would have been close to mid August of 2006?
A. Um-hum.
Q. Right?
A. Yes.
Q. Did you begin working at Lewis and Babcock the summer after your 1L year or 2L year?
A. 2L year.
Q. So you worked as a law clerk for Gurgle, Nichols and Solomon before going to Lewis and Babcock?

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A. That's correct.
Q. Did you start there in the summer after your 1L year?
A. Yes.
Q. Did you continue to work there during the 2L year of law school?
A. Yes.
Q. Did you work anywhere in between August 2004 and May 2005?
A. No, that was my first year of law school and I didn't work.
Q. All right. And then prior to that you were a law clerk or assistant at the Rutherford law firm from November 2003 to August 2004?
A. That's correct.
Q. Was that before you entered law school?
A. It was.
Q. What did you do after you finished at the USC School of Public Health in December 2003?
A. I was at the time working for Dr. Stephen Lloyd, I believe. I think I left there to work for the Rutherford law firm.
Q. What did you do at the Rutherford law firm?
A. Just various runner type activities.

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Sometimes I answered the phone, sometimes, you know, I had people fill paperwork out until the lawyers got there, just little administrative activities.

Q. And how about at Gurgle, Nichols and Solomon, were your activities -- was your responsibility -- you were a law clerk there, is that right?

A. Right. I did a lot of research projects there and wrote various memos, more legal-based activities I guess.

Q. At Gurgle, Nichols and Solomon, did you work principally for one attorney or did you work for a number of different attorneys?

A. I principally worked for Carl Solomon.

Q. At Lewis and Babcock, did you work for one particular attorney or for different attorneys?

A. We were assigned an attorney, my attorney was Peter Protopapas, but I would do various projects for other attorneys if they asked.

Q. Have you ever been a plaintiff or a defendant in any civil action other than this one?

A. No.

Q. Have you ever filed a Workers' Compensation claim?

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A. No.

Q. Have you ever filed a claim for unemployment?

A. No.

Q. Have you ever been arrested for any reason?

A. No.

Q. Have you ever been convicted of any crime?

A. No.

Q. All right. I don't want to ask you what discussions you had with your attorney but I do want to ask you what preparation you took for today's deposition. Can you tell me what you did to prepare?

A. I met with Brady very briefly this morning, that's pretty much it.

Q. What time did you meet?

A. About 8:45.

Q. And where was that meeting?

A. At Lewis Babcock.

Q. How long did it take?

A. Well, we're friends so we were just kind of hanging out for a little while until we came here.

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Q. All right. Was anyone else there?

(Off-the-record conference.)

THE WITNESS: What was the question?

BY MR. BECKER:

Q. Was anyone else -- did anyone else meet with you?

A. No. I mean, I spoke to other people in the firm but, no, Brady and I were the only two people in his office.

Q. Did you review any documents?

A. Yes, the complaint, some interrogatories and I believe there was an affidavit.

Q. All right. An affidavit that you had signed?

A. Yes.

Q. Are there any other documents that you reviewed to prepare for the deposition?

A. No.

Q. Is there anything else you did to prepare for today's deposition?

A. No.

Q. So the affidavit you read was one you had prepared, is that right?

A. Right.

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Q. Prior to buying this automobile in August 2006 from Galeana, had you purchased a home?

A. No.

Q. Had you purchased another car?

A. Yes.

Q. Had you entered into any other transactions for any type of significant items such as a home or a car?

A. No.

Q. Entered into any other significant contractual arrangements?

A. Does student loan count?

Q. Well, I guess they do, yeah.

A. Other than that, no.

Q. Okay. So prior to buying the car from Galeana in August 2006, you had entered into student loans before?

A. Um-hum.

Q. Was that for both your undergraduate and master's and law school education?

A. Yes.

Q. How much in total in student loans had you entered into?

A. Oh, I don't know. I don't know. I can't recall.

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Q. Is it more than 10,000 dollars?
A. Yes.
Q. Less than a hundred?
A. I don't know. At that time I don't know.
Q. But those were fairly significant loans I take it?
A. Yeah.
Q. And you were a law student at the time?
A. Yes.
Q. You had completed your second year of law school?
A. Yes.
Q. So I take it then that at least by that time in your life you were aware that in any substantial transaction such as a purchase of a car there would be written documents containing terms that describe the agreement?
A. Yes.
Q. And it's the responsibility of both parties to read and understand those documents?
A. Yes.
Q. Before signing them?
A. Yes.
Q. Would you agree that if you're doing a

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transaction that is a major purchase like buying a car and you don't understand something, then you can ask questions and obtain any knowledge you may lack?
A. Yes, I understand that.
Q. Would you agree too that if you don't like the terms of the transaction, you're free to walk away and buy a car or whatever it is some other place?
A. Yes.
Q. All right. I'm going to show you a document we're marking as Exhibit 1.
(DFT. EXH. 1, Affidavit & Notification Of Sale Of Motor Vehicle, was marked for identification.)
BY MR. BECKER:
Q. This is an affidavit and notification of sale of a motor vehicle that we obtained from the South Carolina Department of Motor Vehicles. It indicates that on July 17, 2000, you purchased a 1996 Honda Civic from Midlands Auto, I think that's broker. Do you recall that transaction?
A. Yes.
Q. And is that your signature that appears on the affidavit and notification of sale?

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A. Yes.
Q. Do you recall -- how old were you when you purchased this car?
A. Let's see, 19.
Q. All right. You took title in your own name?
A. Yes.
Q. Did you have any assistance in making the purchase from anyone else?
A. Well, the car that I had before this one was in my parents' name and it had been totalled so, I mean, they gave me the money from that car so I would say that I had assistance from my parents.
Q. When you bought this car?
A. Yes.
Q. You had a car before that?
A. Right, but it wasn't my car, it was my parents' car.
Q. In your parents' name, okay. So you used the insurance proceeds from a car titled in your parents' name to buy the car that's the subject of Exhibit 1?
A. Yes.
Q. All right. Did anyone go with you when

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you bought the car?
A. Yes.
Q. Who was with you?
A. Drelton Carson.
Q. When you bought this car from Midlands Auto brokers?
A. Yes.
Q. Who is Mr. Carson?
A. He is my boyfriend. I'm sorry, earlier I said I was 19 but clearly I was 22.
Q. So you were 22 years old, you were I guess at the -- obtaining your Master's degree at that time?
A. No, I don't think --
Q. Or just about to start?
A. Yeah. I don't think I actually graduated from undergrad yet.
Q. So you had cash from the insurance proceeds of the car titled in your parents' name and was it you and Mr. Carson who shopped for the car?
A. Yes.
Q. Did anyone else provide any assistance to you, whether monetary or otherwise, in making the purchase of this car, this Honda Civic?

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A. I don't think so.
Q. Do you know whether you paid a closing fee when you purchased this car?
A. I don't remember.
Q. Okay. Do you remember how much you paid for it?
A. I don't.
Q. Do you remember how much you got from the insurance proceeds from the other car?
A. I don't.
Q. Did you finance this car in any way?
A. No.
Q. So you had enough money from the insurance proceeds to pay cash for this car?
A. Yes.
Q. Do you remember much at all about this transaction?
A. No.
Q. Okay. Did you negotiate over the purchase of this car?
A. Yes.
Q. What were you negotiating?
A. The price.
Q. Anything else?
A. Not that I remember.

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Q. Did you buy the car as is or did the dealer agree to make any changes or improvements to the car as a part of the purchase agreement?
A. I don't remember.
Q. Do you still have documents from the sale of that -- from the purchase of that car?
A. I don't.
Q. And do you recall whether or not you paid a closing fee when you bought that car?
A. I don't recall.
Q. All right, let's move forward a little bit to the summer of 2006 and I want to ask you what caused you to sort of get into the market for a new car in the summer of 2006?
A. At the beginning of August of 2006 I wrecked this car and totalled it in Hilton Head, South Carolina.
Q. Oh, goodness. You were in Hilton Head when that occurred?
A. Um-hum.
Q. All right. Did you receive insurance proceeds from that accident?
A. I did.
Q. Did any litigation ensue over that accident?

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A. No.
Q. How did that accident occur?
A. I was -- I hit somebody in the rear.
Q. Okay. How did the other accident occur when you bought the -- car you had that was titled in your parents' name was wrecked, how did that accident occur?
A. Somebody hit a deer.
Q. I see. So when you had the accident in the 1996 Honda Civic, you hit somebody in the rear?
A. Um-hum.
Q. And it totalled that car?
A. (Witness moved head up and down.)
Q. Who was the insurance with?
A. I don't remember.
Q. But you did get insurance proceeds for the value of the car?
A. Um-hum.
Q. Do you remember how much that was?
A. I don't.
Q. Did I ask you did any litigation ensue over that accident?
A. No.
Q. So it was worked out among the insurance companies?

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A. Right.
Q. Were you at fault in that accident?
A. Yes.
Q. Do you recall the name of the other vehicle, the owner of the other vehicle?
A. I don't recall.
Q. And do you recall the name of the insurance company that you had at the time?
A. I don't remember.
Q. So that happened -- that accident occurred in early August of 2006?
A. Correct.
Q. Were you injured in any way?
A. I just had burns on my arm from the air bag and that was it.
Q. And that was it? But otherwise you weren't hurt at all?
A. Right.
Q. Was anyone in the other car physically injured?
A. No.
Q. Did you discuss your need for a new car among the staff at Lewis and Babcock?
A. No, I didn't.
Q. Before you bought the car, was anyone

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else at Lewis and Babcock aware that you were in the market for a new car and would be buying a new car?
A. Yes, everyone there was aware that I was in the market for a new car.
Q. Did you discuss your plans to buy a new car with Mr. Thomas?
A. Not specifically. I don't really remember.
Q. Did you discuss your plan to buy a new car with Mr. Protopapas?
A. I don't remember.
Q. Do you think you would have discussed your plans to buy a new car with Mr. Lewis?
A. I don't remember.
Q. Prior to your accident and your plans to start looking for a new car, did anyone at Lewis and Babcock ask around if any employees were looking to buy a new car?
A. No.
Q. Did anyone at Lewis and Babcock suggest to you that you visit Galeana or any other particular dealer?
A. No.
Q. Prior to going to Galeana, did you look

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for cars at any other dealerships?
A. Yes.
Q. Which ones?
A. Car Max. I did a lot of on-line searching as opposed to going to particular dealerships just to save time I guess. I don't remember all of the sites that I went to.
Q. But you do remember Car Max?
A. I do remember physically going to Car Max, yes.
Q. Okay. Did you go to any other dealerships, physically go to any other dealerships?
A. Not that I remember.
Q. Now, you mentioned you did some on-line searching. Do you remember any of the on-line sites that you would have visited prior to going to Galeana?
A. I visited Galeana's site. I think it was like a general auto trader site and they referred you, you know, you just put in what you like and what you want and then they would list out, you know, who had what and what you were looking for.
Q. All right. Was that called Auto

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Trader?
A. I don't remember the name of it.
Q. When did you first start looking on-line?
A. Immediately.
Q. Immediately after the accident?
A. I mean, the next day.
Q. Yeah, sure. I guess your car was towed away from Hilton Head and you needed something to drive, right?
A. My parents were down there so I ended up riding back with them and if I recall correctly I got a rental car the next day.
Q. Did you -- sorry, I forgot what my question was going to be. Oh. Well, you started looking on-line at a variety of different sites?
A. Um-hum.
Q. Okay. Did you keep notes or print copies of any of that Internet research you were doing?
A. I may have made notes but I don't -- I don't think I kept the copies.
Q. Did you keep the notes you may have made?
A. No.

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Q. Tell me about what you were looking for, what was kind of -- what was your objective shopping for a new car?
A. Because I had a sedan both times before, I wanted like a small truck SUV type vehicle just so that I feel somewhat safer and not be so low to the ground so that's what I was looking for.
Q. All right. Sort of a SUV type vehicle?
A. (Witness moved head up and down.)
Q. Was there any particular SUV type vehicle that was of more interest to you than others?
A. Not initially.
Q. So you just knew you wanted an SUV type vehicle?
A. Right.
Q. You started looking on-line. Did you go to Car Max before you went to Galeana?
A. Yes.
Q. After you first visited Galeana, did you go to any other dealerships?
A. No.
Q. And just thinking back over it, other than Car Max, can you remember physically going to

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any other dealerships before you went to Galeana?
A. I just don't remember.
Q. Would you have possibly gone to Milton Ruben Chrysler Jeep in Augusta, Georgia?
A. Well, not physically but my cousin worked there and so I would speak to him about what -- no, we did go there. We did go there. I had a cousin that worked there and he was trying to find me something because he knew that my rental car period was kind of running out so...
Q. Okay.
A. So I may have gone there.
Q. All right. What is your cousin's name who worked there?
A. Selwyn Brown.
Q. Does he still work there?
A. I don't -- I don't know.
Q. Do you know where he lives now?
A. He's -- he lives in Aiken or North Augusta.
Q. But you don't know where he works now?
A. I don't.
Q. How do you spell his name?
A. S-E-L-W-Y-N, Brown, B-R-O-W-N.
Q. All right. What age man is he?

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A. I'm sorry?
Q. What age is he?
A. I don't know, he's probably ten years older than me.
Q. And you're not sure where he works today?
A. Yeah, I don't know.
Q. But you believe he lives in the Aiken, Augusta area?
A. Yeah.
Q. Well, what first led you to Galeana?
A. There was an ad in The State paper advertising Jeep Libertys and so I saw that ad and that prompted me to go to the Web site, which is where I saw the particular Liberty that I purchased and then from the Web site I went to the dealership.
Q. Was there anything that prompted you to narrow your search to a Jeep Liberty?
A. Not -- not really. I mean, the price was enticing so, you know, that -- I just -- I had never driven a Liberty, I didn't know much about it, I just went to see it.
Q. Were you -- other than getting -- when you first started, you were thinking about just an

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SUV and no other requirements?
A. Correct. Well, price.
Q. Price. What was your price range?
A. I just didn't want to have high car payments so I didn't particularly have a specific price range.
Q. All right. So you were motivated as much by keeping your monthly payment at a place that was comfortable for you?
A. Right, because I was still a student.
Q. Yeah. Back up just a minute. When you went to Car Max, what did you do?
A. I think that we just looked at cars there.
Q. Was anyone with you?
A. If there was, it would have been DJ Carson.
Q. How many times did you go to Car Max?
A. I don't know, I think just once.
Q. Did you meet with any particular salesman?
A. Not that I can remember. I mean, someone always approaches you at any car dealership but I don't remember a particular salesman.
Q. Did you test drive any vehicles at Car

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Max?
A. I don't think so.
Q. Did you see any Jeep Libertys at Car Max?
A. I don't remember.
Q. Did you see any vehicles that you liked at Car Max?
A. Yes, there were a few.
Q. What vehicles were those?
A. I don't know, they were trucks, like SUV's, maybe like a Blazer or an Explorer or something like that.
Q. Okay. But you don't remember any particular vehicle?
A. Um-um.
Q. All right.
A. No.
Q. Did you make an offer on any cars at Car Max?
A. No.
Q. And I believe you said you didn't test drive any cars at Car Max?
A. I don't think so. I don't remember test driving any there.
Q. It's my understanding that there were

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several other people that were involved when you ultimately went to Galeana and started looking around and one of those was Lindsay Valek?
A. Okay.
Q. Who is Lindsay Valek?
A. She was a friend of mine. She worked at Lewis Babcock when I worked there.
Q. What did she do?
A. I went over to -- after I had saw the ads for the Liberty and decided to go over to Galeana, I just mentioned that I was going over there and she told me that she had -- that she knew someone that worked over there and to ask for this particular person.
Q. Who was that person you were instructed to ask for?
A. I don't remember because they weren't there when I got there.
Q. All right. What did Lindsay Valek do at Lewis and Babcock?
A. I believe she was a paralegal.
Q. Is she still there today?
A. No.
Q. Do you know where she is?
A. No, but I talk to her all the time. I

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don't -- I can't remember where she works. I know, I just can't remember right now.
Q. You say you talk to her all the time. How is that, over the phone or on-line?
A. Yeah. Text messages or e-mail.
Q. Facebook?
A. Not -- not Facebook.
Q. Are you in Facebook?
A. I am.
Q. But you don't talk with Lindsay over Facebook?
A. No.
Q. I'm not in Facebook and have no idea how it works. My kids do and they tell me they talk to people on Facebook. How that occurs I don't really know. If the questions seem strange, that's the reason. Okay. You all talk via text messages and telephone?
A. E-mail.
Q. E-mail?
A. Yes.
Q. Does Lindsay live here in Columbia?
A. Yes.
Q. All right. Other than recommending that you contact her friend when you went to

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Galeana, did Lindsay Valek play any role at all in your subsequent visits and purchase negotiations with the people at Galeana?
A. No.
Q. Did you talk to her at all over the several days that you were looking at a car and making -- deciding to make a purchase at Galeana?
A. No. I just told her that her friend wasn't there.
Q. I see.
A. That was it.
Q. Now, I understand another person who was involved with you is Drelton Carson?
A. Correct.
Q. Tell me a little bit about Mr. Carson. What is his full name?
A. Drelton Avone Carson, Jr.
Q. And what's that middle name?
A. It's A-V-O-N-E.
Q. Where does he live?
A. He lives here in Columbia.
Q. Do you know the address?
A. Actually, it's 110 Oak Glenn Drive in Blythewood.
Q. And where does he work?

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A. At the Richland County solicitor's office.
Q. What does he do?
A. He's an attorney.
Q. How long has he been an attorney?
A. About two and a half years.
Q. Is he older or younger than you?
A. He's older.
Q. Where did you first meet him?
A. In undergraduate at University of South Carolina.
MR. HAMM: Can I interrupt, I just missed. What was his first name?
A. Drelton.
MR. HAMM: Spell that for simple people.
THE WITNESS: D-R-E-L-T-O-N. We call him DJ if that helps.
MR. HAMM: Thank you very much.
THE WITNESS: Sure.
BY MR. BECKER:
Q. So he was with you when you bought the Honda Civic?
A. Yes.
Q. And he was also involved with you when

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you bought the Jeep Liberty from Galeana?
A. Yes.
Q. What kind of car does he have?
A. He has a Honda Accord now.
Q. Do you know where he bought it?
A. Um-hum, yes, Midlands Honda.
Q. When did he buy that car?
A. When?
Q. Uh-huh.
A. I think it was September, maybe -- shortly after I bought my car.
Q. What kind of car did he have before you bought your car?
A. A Chevy Tahoe.
Q. Do you know where he bought that car?
A. Yes.
Q. Where?
A. The Chevrolet dealership in Harbison. I don't -- can't remember the name of it. Really big dealership.
Q. Did you go with him when he purchased the Chevy Tahoe?
A. Yes.
Q. Did you go with him when he purchased the Honda from Midlands Honda?

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A. Yes.
Q. Did he pay a closing fee when he bought the Chevy Tahoe?
A. I don't -- I don't know. I wasn't a part of that part.
Q. Did he pay a closing fee when he bought the car from Midlands Honda?
A. I don't know.
Q. Was Mr. Carson with you each time you went to Galeana?
A. No, he wasn't with me the first time. He was only with me the day that I actually purchased the car.
Q. When you signed the paperwork agreeing to buy it?
A. Right.
Q. I also understand that your father was involved in the transaction, is that correct as well?
A. Well, I mean, I drove the car to let him look at it because he knows a lot about cars but other than that, I mean, he wasn't involved in -- he wasn't with me.
Q. Right. He never came to Galeana?
A. Right.

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Q. Did he speak with the personnel at Galeana over the phone at some point during the transaction?
A. I don't remember.
Q. What is your dad's current address?
A. 324 Wimpy, W-I-M-P-Y, Road in Williston, South Carolina.
Q. What does your dad do?
A. He owns a trucking company called Moody's Trucking and he drives one of the trucks.
Q. Is that a long-haul trucking?
A. No. No, it's short, usually from Charleston to Atlanta, that's it.
Q. All right. So that's why you wanted him to look at your car?
A. Right.
Q. Well, that makes sense. Well, let's move on. I want to go through every visit you made to Galeana and when it occurred and who was with you and who you met with and what you discussed. Before --
MR. THOMAS: Actually, before we get into that, is it okay if I take a break?
MR. BECKER: Yeah, sure. Let's take a five-minute break.

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(A recess transpired.)
BY MR. BECKER:
Q. Okay, we're back on the record. Miss Armstrong, a couple of things from the first hour or so I kind of want to go back and follow up on before I forget about them. Mr. Carson, you say he bought a Tahoe from the Chevrolet dealership out in the Harbison area. What kind of car did he own before that?
A. I don't know. I don't know that he did. I don't know.
Q. We also talked about Facebook. Are there any other social networking sites that you're a member of?
A. No.
Q. Not a member of MySpace or linked in or any of those?
A. No.
Q. Back to Lindsay Valek, did she -- did she ever come to the dealership with you or for you?
A. No.
Q. Did she make a call to anyone at the dealership before you went there?
A. I don't -- I don't think so. I'm not

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sure.
Q. But to your memory she was never there at the same time you were?
A. No.
Q. I believe you testified that you had told Lindsay Valek that you were going to go to Galeana, is that right?
A. Yes.
Q. Tell me again what first prompted you to say I'm going to go visit Galeana's dealership.
A. I saw an ad in the paper for -- the ad said that there were a number of Jeep Libertys available for 11,999 or 998 or something like that and so from there I went to the Web site and the ads were there on the Web site too so then I went to the dealership to physically see the vehicle.
Q. Is that ad you're referring to the one in your affidavit?
A. I believe it's one of the ones in my affidavit.
Q. And that was in where? You saw that ad in The State newspaper?
A. Right.
Q. And you saw that before you went to Galeana?

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A. Yes.
Q. Well, let's -- before you went to Galeana for the first time, did you see or respond to any TV ads for Galeana?
A. I don't remember. I don't remember any TV ads.
Q. Okay. Before you went to Galeana for the first time, did you see or respond to any radio ads for Galeana?
A. I don't remember.
Q. Before you first went to Galeana, did you see any billboards for Galeana?
A. I don't remember.
Q. Before you went to Galeana the first time did you receive any direct mail from Galeana?
A. I don't remember.
Q. Well, let's look at your affidavit then. This will be marked as Exhibit 2 to your deposition.
(DFT. EXH. 2, Affidavit of Natalie Armstrong, was marked for identification.)
BY MR. BECKER:
Q. All right, you see Exhibit 2 there?
A. Yes.
Q. Is that your signature on the second

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page?
A. Yes, it is.
Q. Look then at the -- I want to look at the ads that you were referring to, they're marked as Exhibit B, is that right?
A. Yes.
Q. Look at the first ad in exhibit B which has the Bates Number 04559 at the bottom. Is that the ad that you saw in The State newspaper before you went to Galeana the first time?
A. I believe it is. It looked very similar to this.
Q. What had made you -- had anything before this made you focus on a Jeep Liberty?
A. No.
Q. Now, look at these next two ads, pages -- the next two pages in Exhibit B of your affidavit. Where did you see -- let's concentrate first on this first one, 04583, also Galeana 26 is the Bates labels on it. Where did you first see this ad?
A. I don't know. I don't remember. I remember seeing the ad that looked very similar to this first one in the paper.
Q. Okay.

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A. These other two I can't remember where I saw them.
Q. Okay. So you're saying that as far as the ads that are Bates numbered Galeana 26 and Galeana 28, you don't know where you first saw those?
A. Right.
Q. Did you provide these ads to your attorney?
A. I did not.
Q. So you didn't have -- you didn't have a copy of these ads in your possession before the date of your affidavit which is November 11th, 2008?
A. Correct.
MR. THOMAS: Object to the form.
BY MR. BECKER:
Q. Did you have a copy of the first ad in Exhibit B which is Galeana 2 in your possession before November 11th, 2008?
A. I don't remember.
Q. Well, I can represent to you that it does not appear to be among the documents that you turned over to your attorney so does that help you remember whether or not you would have had a copy

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of it in your possession, in your own personal possession prior to November 11, 2008?
A. Yeah, I don't think so. I just don't remember.
Q. Okay. Where were you when you signed this affidavit?
A. I believe I was at the law firm, Lewis Babcock.
Q. Did you come by the Lewis and Babcock office to sign it?
A. Right. Correct.
Q. Did you participate in the drafting of the affidavit?
A. Yes.
Q. And who were you communicating with in participating in the drafting of the affidavit?
A. Brady Thomas.
Q. Was there any particular event that occasioned your participating in the drafting of this affidavit?
A. I'm not sure I understand what you're asking.
Q. Well, what was your understanding of why you were being asked to prepare and sign the affidavit?

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A. I don't -- I don't know, they're my lawyers in this matter and they told me that they needed this information so I gave it to them.
Q. Okay. Let's move on then to -- other than what you've referenced in this affidavit, are there any other newspaper or print ads that you saw before you went to Galeana and that induced you to go to Galeana?
A. There could have been, I just don't remember.
Q. And do you have a copy of any of those ads that you may have saved?
A. No.
Q. All right, our records indicate that you came to the dealership on four different days before you drove home with the vehicle.
A. Okay.
Q. The first was on Thursday, August 10th, came back in on Friday, the 11th, also again on Saturday, the 12th, and then finally on Monday, the 14th. Does that sound about right to you?
A. I don't remember. I thought I only went twice so I don't know.
Q. Okay. Well, we'll talk about what you remember and obviously that's all you can testify

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to. Let's talk then about what you do remember.
A. Okay.
Q. What day do you believe it was when you first went to Galeana?
A. I can't remember the specific date or dates but I remember going to look at the vehicle and I took it for a test drive.
Q. Well, let's back up a little bit. You have a visual memory of what the Galeana premises looked like, right?
A. Yes.
Q. Who -- were you by yourself the first day you went?
A. I was.
Q. Was it a workday?
A. Yes.
Q. What time of day was it?
A. I think it was lunchtime.
Q. And was anyone with you?
A. No, I was by myself.
Q. Tell me about sort of when you first drove up on the lot. Were you in your rental car?
A. I was.
Q. And do you remember kind of where you parked or what caught your attention or anything

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like that?
A. I believe there's only one entrance so I drove in the entrance and I went around to the left and actually the Libertys were kind of lined up right there in the front so if I parked and then they were facing me and they all had like the little ads in the -- hanging from the rearview mirror and so I just got out and went and kind of browsed them.
Q. Did you ask for anybody in particular?
A. When I went inside I did. I asked for the person that Lindsay had said that she knew and I believe they indicated that he wasn't there and a guy named JJ or Jay or something like that ended up helping me.
Q. How long did you look around on the lot before you first went inside?
A. Not very long. A few minutes. Not very long.
Q. Before you went inside, did you look at any other vehicles other than the Libertys that were lined up in a row?
A. I don't remember. If there was anything else lined up right there with the Libertys, then I probably looked at it because

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that's where like all the sales cars were so I don't remember. I remember specifically going to look at the Liberty.
Q. Okay. When you say sale cars, what do you mean?
A. I mean that they had this ad in the windshield of the vehicle which like all the other ones didn't.
Q. And tell me again where was it in terms of how the dealership's situated.
A. Where was the vehicle?
Q. Yeah, the vehicles that you were looking at.
A. Right when you turn into the entrance, they would have been right on your left.
Q. Okay.
A. Like lined up in parking spaces facing the dealership.
Q. If you're facing the dealership from the street, did you drive in on the right side or the left side of the big building up front?
A. Well, when you drive in, you kind of -- the building is kind of right there so you either have to go around to the left or around to the right and I went around to the left.

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Q. And the Libertys were facing the street or facing the building?
A. Facing the building.
Q. Okay. And where did you park?
A. Facing the Libertys.
Q. In front of the building or on the left side of the building?
A. It really wasn't the side yet because I hadn't gone down far enough so it was kind of in front.
Q. Were you interested in any particular color?
A. Initially I was, I wanted black and they didn't have that available in that price.
Q. What was your second choice color?
A. There wasn't one.
Q. What color did you buy?
A. Navy blue.
Q. Do you still have the car?
A. I do.
Q. So you wanted black, price was important but you were most interested in what the monthly payment was going to be?
A. (Witness moved head up and down.)
Q. Is there anything else that was of --

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other than a Jeep Liberty that you were shopping for at that time?
A. Like I said, I was just looking for like a small SUV, not the brand or type of vehicle didn't matter, I just wanted it to be a good car and to not be a sedan and not a Ford.
Q. And not a Ford?
A. Yes.
Q. Why is that?
A. My family's just always been big GM people.
Q. All right.
A. So it's just, I don't know, something that was instilled in me a long time ago, never been able to change it.
Q. Does your dad buy GM trucks?
A. Yes. I don't know what all of his trucks are.
Q. Yeah, okay. Was there a particular car there in that lineup that struck your fancy when you first pulled up?
A. Yes.
Q. Which one was it?
A. The one that I purchased.
Q. Okay. What about it struck your fancy?

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A. Really the price. It already had window tinting, it didn't have very many miles. That's pretty much it.
Q. Now, did you know the mileage on it before you first went inside?
A. Yes.
Q. How did you know that?
A. Well, the car -- they weren't locked, the vehicles weren't locked so when you opened the door, the mileage shows.
Q. Okay. So you actually got in at least one car before you went inside, opened the door and looked inside?
A. Yes.
Q. How many cars did you open the door and look inside before you first went inside the building?
A. I don't know, probably all of them or any that I was interested in.
Q. While you were out there doing that did any dealership employee come up to speak to you?
A. I don't remember. There was a CD player. Some of them had tape decks so I do remember that about this particular one was that it was a CD player.

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Q. And that was attractive to you?
A. Yes.
Q. Anything else about the car that made you want to sort of focus on it?
A. Not that I can remember.
Q. Well, so then what happened -- what happened next after you decided you kind of liked this car, what did you do next?
A. I went inside and asked for whatever the person's name was that Lindsay recommended, he wasn't there but JJ was there so I asked him if I could -- if he could tell me more about the car or if I could take it for a test drive.
Q. Okay. Before we move on to what happened inside, let me ask you again, describe for me all of the stickers or displays of written information that were on the car.
A. There was the like big ad in the window that -- it just had like was and now and then it had two prices, like the old price and the 11,995 or whatever it was in the now blank and that was hanging from the rearview mirror and I think the letters were in red if I remember correctly.
Q. So it had a sticker hanging from the rearview mirror?

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A. Right.
Q. Showing through the windshield?
A. Right.
Q. That said was a certain price and now a certain price?
A. Right.
Q. Okay. And do you remember the old price, the was price?
A. I don't. I would guess if I answered something so I'm just going to say I don't remember.
Q. Do you remember what the now price was?
A. Yes.
Q. What was that?
A. 11,999 or 8 or 5.
Q. 11,990 something?
A. Yes.
Q. Was there any other sticker on the car, any other price sticker?
A. I don't think so. It was just the thing with the warranty that said there was a warranty included.
Q. All right. Well, let me show you what we'll mark as Exhibit 3 to your deposition.
(DFT. EXH. 3, Buyers Guide As Is-No Warranty/Warranty, was marked for identification.)

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BY MR. BECKER:
Q. This copy has been reduced just slightly but does this look like the --
MR. HAMM: Excuse me, have you identified this as a hearing exhibit?
MR. BECKER: This is Exhibit Number 3, it's a buyers guide.
BY MR. BECKER:
Q. Do you have it, Miss Armstrong?
A. I do.
Q. Does this look like the other sticker that was on the car?
A. Yes, looks very similar to this.
Q. Where was it situated on the car?
A. I believe it was just on the window, maybe on the driver's side passenger window, I'm not sure.
Q. All right.
A. I mean driver's side rear window, I'm sorry.
Q. And so other than the price sticker hanging from the rearview mirror with the now and was prices and this that we've marked as Exhibit 3, were there any other stickers on the car when you

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first saw it?
A. I don't think so.
Q. All right. So --
A. I don't remember seeing this second page of Exhibit 3. That wasn't on the car.
Q. Right. That is actually the back side of the document.
A. Okay. Then I wouldn't have --
Q. It's a double-sided piece of paper. Yeah. You asked for the person that Miss -- when you first went in the building, you asked for the person that Miss Valek had recommended to you and you -- who did you speak to when you did that?
A. Like a receptionist type person.
Q. Man or a woman?
A. Woman.
Q. Remember her name by any chance?
A. No.
Q. Remember what she looked like?
A. No.
Q. What did she say to you?
A. That he wasn't there and she could get someone else to help me.
Q. Okay. And did she do that?
A. Yes.

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Q. And how long did that take?
A. A matter of seconds.
Q. And the person who did start helping you was named JJ?
A. Yes.
Q. Do you know any -- his other name or whether he has another name?
A. I don't. He gave me a card, I just don't remember -- I remember JJ, I don't remember his --
Q. Right.
A. -- real name.
Q. Do you remember what he looks like?
A. Not really.
Q. Well, what did you tell JJ when he introduced himself and gave you his card?
A. That I was interested in one of the Jeep Libertys that you guys have advertised outside. And I think -- I actually think that he told me that he was -- he usually only dealt with new car sales but that he'd help me because he wasn't doing anything or he was available and so he helped me.
Q. All right. And what happened next?
A. We went outside and maybe -- I don't

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know. At some point we went for a test drive. We took the car for a test drive.
Q. Before you went outside did he ask for any information about you or did he write anything down?
A. I don't -- I don't remember.
Q. So you do remember going outside with him. You told him you were interested in the Jeep Libertys out there?
A. Um-hum.
Q. And you wanted to go look at those. He told you that he didn't normally handle used car sales but that he had time and would help you?
A. Yes.
Q. Okay. So you went outside?
A. Yes.
Q. What happened then?
A. I showed him the one that I liked. I think he told me maybe a little bit about the car and asked me if I wanted to take it for a test drive.
Q. Okay. And did you?
A. Yes.
Q. Was anyone else with you?
A. No, it was just he and I.

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Q. And where did you drive?
A. Down 26 and I think that we got on the interstate and went down 26 a ways and then came back on like a frontage road.
Q. All right. How long did that test drive take?
A. Ten, 15 minutes. Not very long.
Q. Were you driving?
A. I was.
Q. Was he in the car with you?
A. Yes.
Q. Where was he sitting?
A. In the passenger seat.
Q. All right. What happened after that?
A. I think that was it for the day. I indicated that I was interested and that I would come back if I decided to purchase.
Q. Okay. Did he give you anything to take with you, did he --
A. I think just the card, just a business card.
Q. All right.
A. That's it.
Q. Did he ask for your name and contact information?

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A. Yes.
Q. Did he get that from you?
A. Yes.
Q. Did you give him your phone number and address?
A. Yes.
Q. So then you left?
A. Yes.
Q. Now, I think you said that was lunch. Was it lunchtime that first time you went to the dealership?
A. It was during the day. It was during -- before five o'clock.
Q. Okay.
A. It was during business hours.
Q. And do you remember what day of the week that was?
A. I don't.
Q. We'll get into this but it looks like from the paperwork the day you actually signed the deal, committed to buy the car, was the 12th, which is a Saturday.
A. I know that was on the weekend.
Q. All right. So the visit you do remember prior to that was during the day, before

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evening, and you met with JJ?
A. Yes.
Q. Did you meet or talk with any other Galeana employees on that first meeting?
A. Not that I can remember.
Q. Other than of course the lady who was the receptionist?
A. Right.
Q. Okay. After you went home, what did you do? What did you do next in terms of purchasing a car?
A. I went back to the dealership on a different day when DJ could come with me.
Q. Did you – well, let's back up a minute. When you got back, did you call DJ?
A. Yes. Well, he was supposed to meet me there for the test drive but he got held up in court so he couldn't come.
Q. And just so we're sure, DJ is Drelton Carson?
A. Yes.
Q. So the first time you went there he was supposed to come with you?
A. Right.
Q. But he got held up in court?

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A. Right.
Q. Okay. So after you did the test drive and left Galeana, did you call him? Did you call DJ?
A. At some point.
Q. Yeah. What did you tell him?
A. That I test drove a Jeep Liberty. He asked me like all the technical stuff, like how many miles it has and stuff like that and I told him whatever it was that I knew and he said that he'd go back with me that weekend.
Q. Okay, he said he'd go back that weekend?
A. Um-hum.
Q. Did you and he discuss it any further before the two of you went back?
A. Yeah, I'm sure we did.
Q. Do you recall those conversations?
A. Mostly pricing, how much would insurance be, things like that.
Q. All right. So in between the time that you left after the first visit and the time you went back for the second visit, did you speak with any personnel at Galeana over the telephone?
A. I don't know. I may have spoken with

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JJ. I'm not sure. I don't remember.
Q. Okay. But you do remember going back a second time?
A. Yes.
Q. When was that? When did you go back the second time?
A. The day that I purchased the vehicle.
Q. Was that that Saturday?
A. Yes.
Q. Tell me about that. Did JJ know you were coming back?
A. I don't know. I think so. I think I called him to see if he was available and that to let him know that we were on our way up there.
Q. All right. And that was a Saturday?
A. Yes. I say yes because that's what's on the paperwork. I just know it was the weekend.
Q. It was the weekend, all right. Well, it was – had to have been a Saturday because I don't think they're open on Sunday.
A. Okay.
Q. Yeah.
A. Okay.
Q. So tell me what time of day did you get to the dealership?

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A. It was after noon, I guess.
Q. After noon?
A. Yes.
Q. What had you done on that date before going to the dealership?
A. I don't -- I don't remember.
Q. Did you go to the office on that day?
A. No.
Q. Did you sleep late that day?
A. Probably.
Q. Did you go out for breakfast that day?
A. I don't remember.
Q. At the time where were you living?
A. In The Rapids apartments right off of Huger Street in downtown Columbia.
Q. Was anyone else living there with you?
A. DJ was.
Q. He was? Okay. Was anyone else living there?
A. No.
Q. Have you ever had a subscription to The State newspaper?
A. Yes.
Q. When have you had one?
A. I can't recall. I've had several

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subscriptions, one being at that apartment.
Q. Okay. So you believe you would have gone there about noontime or a little after noon?
A. Yeah.
Q. And was JJ there?
A. Yes.
Q. Did you ask for him when you got there?
A. Yes.
Q. Did you look around the lot at all before you asked for JJ?
A. To make sure that that -- the car that I liked was still there, yes.
Q. And DJ was with you?
A. Yes.
Q. You and he drove there. Did you all drive in his car or in your rental car?
A. In my rental car.
Q. So tell me about what happened that day when you -- you got there, it was probably a little after noon, DJ was with you and you asked for JJ?
A. Right. I don't -- I think DJ drove the car that day to make sure everything was okay and then I told JJ that I wanted to take the car so that my dad could look at it and he set me up to do that so I did that. My dad looked at the car and

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said that the only thing that he saw was some corrosion on the battery and make sure that they got that taken care of, which we did, and decided to buy the car.
Q. Okay. So that was on that Saturday?
A. Yes.
Q. Did you and DJ drive the car over to Aiken?
A. Yes.
Q. And your dad took a look at it?
A. Yes.
Q. Tell me about sort of the inspection of the car that your dad made.
A. It was very cursory. He just kind of made sure that it had good tires. He looked under the hood. I have no idea what he was looking at but he did look under the hood and he only made comments to me about the corrosion. Well, not so much to me but to DJ about the corrosion on the battery.
Q. Okay. Was there anything else about the car that your father thought was --
A. No, he thought it was fine. He thought it was small because he couldn't really fit into it.

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Q. Really?
A. He's a very tall man.
Q. Did it fit you okay?
A. Yes.
Q. And did you like the car?
A. Yes.
Q. Did you want to buy it?
A. Yes.
Q. Before you took the car to Aiken, did you have to sign any paperwork of any kind?
A. I think so. They had to take -- get a copy of my driver's license and a copy of DJ's driver's license and I think there may have been a form or something that we filled out, I'm not sure, but it wasn't -- I don't really remember.
Q. But you know that you got permission to drive it over to Aiken?
A. Right.
Q. And bring it back?
A. And they had to change the license plate tag I remember that.
Q. They did?
A. Yes.
Q. Is there anything else that happened before you were given permission to drive it over

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to Aiken?
A. Not that I can remember.
Q. And it was just you and DJ who drove in it over to Aiken?
A. Right.
Q. Had -- tell me about had any discussion about price of the car occurred before you took it over to Aiken?
A. I don't remember if it was before or after but there was discussion about price with JJ who told us that he -- we needed to speak to the sales manager or his manager, which we did, tried to negotiate it with him. But I don't remember if it was before or after the trip to Aiken.
Q. Did you ultimately speak with that sales manager?
A. Yes.
Q. On how many different occasions did you speak with that sales manager?
A. From my recollection just the once.
Q. Just that one day?
A. Right.
Q. When you were finally deciding to buy the car --
A. Right.

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Q. -- before you spoke with the sales manager, had you had any other discussions with JJ about the price?
A. Just that's what the price was and that it was pretty much solid, it was nonnegotiable, that the other Libertys were selling like hotcakes so this was a great price and basically if we didn't buy it, somebody else would.
Q. Okay. Let me show you what we'll mark as Exhibit 4 to your deposition.
(DFT. EXH. 4, Sales Order, was marked for identification.)
BY MR. BECKER:
Q. This is a -- it's also marked Galeana 5 with the Bates label. Do you recall seeing this -- when do you recall or do you recall seeing this during the negotiations about the vehicle?
A. I don't. I don't recall this document.
Q. Do you recall seeing it at all or when you saw it?
A. I don't. I'm assuming that -- I don't remember.
Q. Well, let me ask you this: Is that your signature down there on the bottom?
A. It is.

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Q. Okay. So at least at some point you agree you signed it?
A. Right.
Q. Correct? But as to when you may have first seen it, you just don't recall?
A. Right. Yeah. I don't. Maybe in the finance office. Looks like some of the finance documents.
Q. But you're just not exactly certain when you first saw it?
A. Right.
Q. Take a look at this next document.
MR. HAMM: Was the buyer's order or whatever that document, is that Exhibit Number 4?
MR. BECKER: Yes.
(DFT. EXH. 5, Used Vehicle Delivery Report, was marked for identification.)
BY MR. BECKER:
Q. This next document is marked as Exhibit 5 and this is entitled a used vehicle delivery report. Miss Armstrong, is that your signature there in the middle of the page?
A. Yes.
Q. Is any of the handwriting on that yours?

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A. No.
Q. Other than your signature?
A. Right. Correct.
Q. And then finally let me show you what we'll mark as Exhibit 6 to your deposition.
(DFT. EXH. 6, Privacy Notice, was marked for identification.)
BY MR. BECKER:
Q. This is entitled privacy notice. Is this your signature there at the bottom of the page?
A. Yes.
Q. There where the date is written in, is that your writing?
A. Yes.
Q. And is that your writing where Natalie Armstrong is printed underneath your signature?
A. Yes.
Q. Do you believe that you would have dated this any other day than the date you actually signed it?
A. I don't think so.
Q. All right. So we're there on the second day you've been there, you took it to Aiken and you came back?

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A. Right.
Q. Your father took a look at it and you came back, right?
A. Correct.
Q. What did -- what happened next?
A. I notified JJ that I wanted to purchase the car.
Q. Okay. And what was his reaction?
A. Okay. He took me to the finance office.
Q. And who did you meet with there?
A. I don't remember. Yeah, I don't remember. I had given JJ I believe my information before I left so they had already informed me how much my payments would be and everything before -- before I actually signed anything to purchase the car.
Q. So let's back up a minute then. At least before you left to drive to Aiken --
A. Right.
Q. -- you and JJ had discussed price and financing?
A. Well, he just asked if it was okay to go ahead and run my credit and so I said yes and signed whatever I needed to sign to do that.

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Q. Okay.
A. So I'm assuming that's how they figured out what my payments would be.
Q. Okay. And did he tell you all that before you went to Aiken?
A. No.
Q. He didn't?
A. It was either on the way back or once I got back but it wasn't before I left. That's just my recollection.
Q. Right. I understand. And that's all we're after, is what your recollection is of what happened. So when you got back and you told JJ you wanted to buy the car, at least by the time you told him you wanted to buy the car you kind of new what the monthly payment would be?
A. Right, or an estimate.
Q. An estimate, okay.
A. Right.
Q. So based on that estimate, you told him you wanted to buy the car?
A. Yes.
Q. Now, you mentioned that you had spoken with Mr. -- the sales manager, right?
A. Yes.

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Q. When did you speak to him?
A. It was the same day that we purchased the car. I don't remember at what point in the day but when we asked JJ about it, he said you need to speak to this person. And he was sitting behind like a big desk and DJ and I both walked over there and DJ tried to negotiate the price with him and he said that there was no negotiation, it's pretty much written in stone, they're not budging on the price but that he would give us some floor mats or something like that so...
Q. Some floor mats?
A. Right.
Q. What else did the sales manager say?
A. That's pretty much it, that the price was 11,995 as advertised and that there was nothing he could do to negotiate as far as the pricing.
Q. Did he -- well, you said he did offer to give you some floor mats, new floor mats?
A. After – yes, after several attempts to negotiate the price. Or DJ was the person negotiating, not him.
Q. How long did that conversation take?
A. Not very long. He was very dismissive, the sales manager was, so not very long, five or

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ten minutes.
Q. Other than that one conversation with him, did you ever have any other conversations with the sales manager?
A. Not that I can remember.
Q. Did that occur before you went and met with the finance man?
A. Yes.
Q. Okay. Was that after -- did the conversation with the sales manager take place after you told JJ you wanted to buy the car?
A. I don't remember. I don't remember.
Q. All right. But other than that one conversation you didn't have any other conversations with the sales manager?
A. Right.
Q. Now, after you told JJ you wanted to buy the car, you went in and spoke with a finance manager, is that correct?
A. Right.
Q. Do you remember his name?
A. I don't.
Q. Tell me about that. What happened -- just as best you can recall it what happened in that meeting with the finance man?

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A. He was printing out the paperwork when we got in there and we just kind of chitchatted for awhile. We talked about the warranty, which I actually declined. We talked about that for a little while because he thought that it was not a good idea for me to decline the warranty. And when he gave me the paperwork, on Exhibit 2, this sheet, the one marked Galeana Number 7 and asked me to review everything, he explained the GAP waiver. I asked him about the 199 admin fee. He said that it was just for paperwork processing, that that was standard in their dealership and that everybody paid it. We just -- we went down and I asked about every single charge and number on the document.
Q. Okay.
A. And he explained everything.
Q. Okay. Well, let's move to that since you brought that up. I've got a maybe little bit cleaner copy of that that I was planning to make an exhibit in your deposition.
(DFT. EXH. 7, Purchase Agreement, was marked for identification.)
BY MR. BECKER:
Q. I'm handing you what's been marked as Exhibit 7 which is also part of the deposition

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that's attached to Exhibit 2.
A. Okay.
Q. This is what we sometimes call a final buyer's order.
A. Okay.
Q. In which you agree to purchase the car on the terms specified here. Did you sign this -- I know the copy is bad but do you recall signing this document?
A. Yes. Yes, I do.
Q. And is that what you believe to be your signature on those two places down at the bottom?
A. Yes.
Q. Now, you say that the finance man went down everything, all the numbers listed on the right-hand side, correct?
A. No, I asked about all the numbers.
Q. Oh, you did.
A. Right.
Q. All right. So you asked him about all the numbers?
A. Right.
Q. And what they were for?
A. Right.
Q. And how he arrived at the totals?

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A. Right.
Q. Okay. Had you looked at any other papers before this?
A. There were -- there were several pieces of paper that I had to complete.
Q. Before you started going over this or after?
A. I don't remember the order.
Q. All right. Let me show you one other document that we'll mark as exhibit -- this will be Exhibit Number 8 to your deposition.
(DFT. EXH. 8, Document entitled Galeana Automotive Group 1, was marked for identification.)
BY MR. BECKER:
Q. This is a two-sided document entitled -- well, it says Galeana Automotive Group 1 at the top of the first page. And like I said, this has been marked as Exhibit 8 to your deposition. First of all, take a look over on the back page. Is that your signature --
MR. THOMAS: Have you produced this?
MR. BECKER: You know, Brady, I'm glad you pointed that out. I don't think it has been produced.
MR. THOMAS: Do you mind if I take two

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seconds?
MR. BECKER: No. Please go ahead.
(A recess transpired.)
BY MR. BECKER:
Q. Miss Armstrong, before the break you and Mr. Thomas had a conference to discuss Exhibit Number 8, is that correct?
A. Yes.
Q. Did you discuss anything else other than Exhibit Number 8?
A. No.
Q. Well, when we brought up Exhibit 8, we were talking about your meeting with the finance manager, is that correct?
A. Correct.
Q. Do you recall him using a document or Exhibit Number 8 in his discussions with you?
A. Yes.
Q. So you do recall him going over this document with you?
A. Yes.
Q. Was it before or after you reviewed Exhibit Number 7 or do you know?
A. I think it was before.

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Q. Okay. Describe for me as best you can what you recall your discussion with the finance manager to be about this document.
A. I think we just discussed the warranty options. I had actually spoken with my dad about the warranty and he -- because he has several mechanics advised me not to get a warranty and so I didn't and I think this was just him explaining to me the difference in the payment, the monthly payment price and the terms of the warranty.
Q. Do you see there under the column entitled basic, do you see how the different columns go across, there's preferred, value, basic and economy?
A. Yes.
Q. Was he offering you a set of warranties under the basic column, is that what he was doing?
A. Yes. From what I remember, yes.
Q. Okay. And what was your understanding of the comprehensive mechanical breakdown coverage that's the first thing listed there under the basic column?
A. That the warranty covered six years or a hundred thousand miles, parts and labor, and that it included rental car coverage and towing

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coverage.
Q. And it also included what they call total loss protection?
A. Right.
Q. Do you see that?
A. Yes.
Q. All right. And that's where if you had a total loss like you had had previously, it would pay the difference between the actual cash value of the vehicle and the balance owed on the loan, whatever that might be?
A. Right.
Q. Was that of interest to you?
A. I think that that was the whole GAP waiver thing.
Q. That is, that's what you call GAP insurance coverage.
A. Yes.
Q. That was of interest to you?
A. Yes.
Q. Is that something you wanted?
A. Yes.
Q. But I believe you said your father had discouraged you from buying any other extended warranty?

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A. Right.
Q. For the mechanical operation of the vehicle?
A. Right.
Q. Well, I guess -- do you remember the finance man's name?
A. I don't.
Q. Did the finance man tell you that if you bought all of the basic coverage that you'd have a payment -- 72 payments at $256.80 a month?
A. Yes.
Q. Did you -- you didn't want to take that, though, is that correct?
A. Correct.
Q. Why not? Other than your father telling you you didn't need the mechanical?
A. That was it, just he already pays mechanics so...
Q. All right. Were you trying to get your monthly payment lower than he was offering here with the basic coverage?
A. No, I actually don't think that was the issue. I just -- I just don't -- I think my dad was just like you don't need it.
Q. All right. But I believe you said you

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did want the total loss protection, the GAP coverage?
A. Right.
Q. Now, I believe we had already talked about the back side of Exhibit Number 8. If you'll turn over there. It appears that you signed this document on 8/12/06, is that correct?
A. Yes.
Q. And if you look up there at the top where it talks about the custom payment option, it looks like you declined everything but what was called the total loss protection and that's marked accept, do you see that?
A. Yes.
Q. And was it that way when you signed it?
A. Yes.
Q. And that's what you -- that is what you bargained for?
A. Yes.
Q. Now, let me show you next what's been marked as Exhibit Number 9.
(DFT. EXH. 9, DaimlerChrysler GAP Waiver Addendum, was marked for identification.)
BY MR. BECKER:
Q. This is entitled the DaimlerChrysler

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GAP Waiver Addendum. So you understood that you were buying the GAP insurance, is that right?
A. Yes.
Q. Which protects you in the event of a total loss, it would pay the difference between the value of the vehicle and the loan balance?
A. Correct.
Q. And did you sign this document? If you look there in the sort of just up from the bottom on the left-hand side, is that your signature on this document?
A. Yes.
Q. Do you know what you paid for this insurance?
A. Yes.
Q. How much?
A. 377 dollars.
Q. Do you know what it usually sold for at that time?
A. I don't.
Q. Do you know if you got a discount or not on the cost of this insurance?
A. I don't.
Q. Were you negotiating to get a cheaper price for it if you could?

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A. I don't think so.
Q. Do you recall one way or the other?
A. I don't.
Q. Next let me just show you Exhibit Number 10.
(DFT. EXH. 10, Affidavit & Notification Of Sale Of Motor Vehicle, was marked for identification.)
BY MR. BECKER:
Q. This is a affidavit and notification of sale of motor vehicle. It appears to have been completed on August 12, 2006. Do you -- is that -- and again, I know this copy is bad but does that appear to be your signature on the bottom of that document?
A. It does.
Q. You would agree you would have signed a document like this on that day?
A. Yes.
Q. Now, going back to Exhibit 7, before you signed that document did -- I believe you told me that you -- let's go back over this again. You told me you asked the finance man about all of the numbers listed on the right-hand side of this document, is that right?

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A. Right. I had never had to finance a car so I knew the price of the car was 11,995 and then to see like the total at 18,000, that kind of scared me so I asked a lot of questions about all the numbers.
Q. Okay. That makes sense. And you were -- you had finished your second year of law school at that time?
A. Yes.
Q. And you knew that you didn't have to buy this car if you didn't want to?
A. Yes.
Q. Right? You knew that if any part of the deal was unacceptable to you, you could get up and walk away and never come back, is that right?
A. Right.
Q. Would you have bought a car if the terms of the transaction were not acceptable to you?
A. No.
Q. So I take it that as you went through and asked about all the numbers that appeared on this document, the explanation that you received was satisfactory to you?
A. I don't know about satisfactory. I

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know that he explained things to the best of his knowledge and there was -- I was told that there was no room for alterations or negotiations so...
Q. But you knew you didn't have to buy this car if you didn't want to?
A. Right.
Q. And you were satisfied enough with the explanation you got to go ahead and commit to buy the car?
A. Yes.
Q. Now, tell me about the -- you mentioned earlier that he pointed out the admin fee or you asked a question about it.
A. Right.
Q. Is that right?
A. Yes.
Q. What did you ask?
A. What was that for.
Q. Okay. And what did he say?
A. He said that it was for paperwork and administrative things. And I said, well, isn't the paperwork like the license and title, like doesn't that fee cover that? And he said, no, this is for in-house paperwork that has to be done. Everybody has to pay it and it's standard practice.

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Q. Is there anything else he said about that line called admin fee?
A. Not that I can remember.
Q. Was Drelton -- was DJ, Drelton Carson, in with you when you were talking to the finance man?
A. I think so. He was in and out.
Q. Did you talk with anybody on the telephone while you were talking to the finance man at Galeana?
A. Yes, I spoke with my father.
Q. Anyone else?
A. Not that I can remember.
Q. So as you were talking about Exhibit Number 7 with the finance man, DJ was in and out you believe, is that right?
A. Right.
Q. And you spoke with your father over the telephone?
A. About the warranty thing, yes.
Q. Okay. Oh, so did you -- as you and Mr. -- as you and the finance man were going through Exhibit Number 8, did you take time to go call your father about some of this warranty stuff?
A. Yes, I did.

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Q. About how many times do you think you might have called your father during those negotiations?
A. Once or twice. Not many.
Q. And you didn't call anybody else during those negotiations?
A. No.
Q. But DJ was in and out of the room?
A. Right. But he was there.
Q. So he did participate in the negotiation too?
A. With the sales manager?
Q. With the finance man.
A. Right. There was no real negotiation, it was just kind of a Q and A, like what is this charge, what is this number, but there were no negotiations. Everything was kind of written in stone at that point. All negotiations were over.
Q. Well, I understand. Okay. But was DJ there as you spoke with the finance man?
A. Yes.
Q. So he heard the explanations of all the numbers on this -- on the left-hand side of Exhibit 7 as well?
A. Yes, I'm assuming so. I can't speak

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for him but...
Q. Do you recall if he asked any questions?
A. He may have.
Q. And DJ is a lawyer too? Was he a lawyer at the time?
A. He was not.
Q. Was he a law student?
A. He was not. He was a law clerk for Judge McMann. He was not a lawyer yet.
Q. Oh, okay, but he had completed law school?
A. Yes.
Q. He was just waiting for the results of the bar?
A. Right.
Q. Did he clerk for Judge Knox McMann?
A. He did.
Q. So he had finished law school -- well, he was probably studying for the bar right about then, wasn't he?
A. Right. His clerkship was longer than the average because of the death of Judge Westbrook so he started when the Judge started, which added on another six months to his clerkship where it's

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usually just 12 months, his was like 18.
Q. All right. But on August 12, 2006, DJ had finished law school and was actually clerking for a State Court judge?
A. Yes.
Q. And he was with you as you got the explanation for all the numbers on Exhibit 7?
A. Yes.
Q. Did you understand that you were buying a certified -- factory certified used car?
A. Yes.
Q. Was that something that was important to you?
A. I don't know. It just I guess was one of the factors that went into me buying the car but I don't know that when I arrived on the lot I was looking specifically for a factory certified used car.
Q. Okay. Did that play a role in your decision not to accept the comprehensive mechanical breakdown coverage that the finance man was offering you?
A. No, I actually just relied on my dad for that.
Q. Did your dad know that you were buying

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a factory certified preowned vehicle?
A. I don't know.
Q. He may have known that?
A. Yeah.
Q. You just don't know?
A. Right.
Q. Did there come a time when you negotiated to have the windshield replaced?
A. Was that this car? I think so.
Q. Was that before you bought it?
A. I don't remember. I forgot about that actually.
Q. But do you recall Galeana replacing the windshield on the vehicle?
A. Yes.
Q. And they -- did you bring the car back at some time for them to replace the windshield?
A. Yes.
Q. But you don't remember when that agreement was -- the agreement to replace the windshield was negotiated?
A. I don't.
Q. What about a new spare tire cover, do you recall an agreement to provide a new spare tire cover?

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A. Yes.
Q. And did you all reach that agreement before you purchased the car?
A. I don't -- I don't know that it was an agreement, it was just JJ -- I don't know, he just said, you know, I'm going to try and get you a tire -- a spare tire cover and I said okay. I mean, there wasn't any negotiation, it was just kind of something that he threw in.
Q. All right. Was that before or after you spoke with the sales manager?
A. I don't -- I don't remember. I feel like it was after I even purchased the car.
Q. Did it need a new spare tire cover?
A. I didn't have one. It didn't need one.
Q. But it didn't have one?
A. Right.
Q. And JJ got you one?
A. Yeah. We were in the service -- the service area and they're displayed on the wall and he asked me which one did I like. And of course they didn't have my first three options so I ended up with something that I actually didn't even want but...
Q. But you took it?

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A. But I did take it. Never turn down free stuff.
Q. Sure. All right. Is there anything else about your discussions with the finance man that you recall at all?
A. No, I think I've told you everything.
Q. What happened after you finished your discussions with the finance man?
A. They gave me the keys.
Q. And did you drive away in the car that day?
A. Yes.
Q. Did you have to come back after that?
A. Yes.
Q. What for?
A. The windshield.
Q. Anything else?
A. Not that I can remember.
Q. Did you have the money for your down payment on that Saturday?
A. Yes, I wrote a check.
Q. Did you have money in the account for that check or did you have to come back because -- and I'll go through these with you but I'm just trying to see what you recall. Are you sure you

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didn't come back on Monday to bring the check?
A. I don't know. I don't remember. I could have.
Q. Could have been? Okay. Well, let's look at these documents then.
(DFT. EXH. 11, Receipt, was marked for identification.)
BY MR. BECKER:
Q. All right, I'm going to hand you what's been marked as Exhibit 11, Miss Armstrong. This is a receipt for 2500 dollars. I know that's not your handwriting up there on the receipt, is it?
A. No.
Q. Well, let's look then at Exhibit 12. Does that help refresh your recollection about whether or not you came back on Monday to bring a check?
A. It doesn't.
(DFT. EXH. 12, Used Car Inspection Sheet, was marked for identification.)
BY MR. BECKER:
Q. Let me show you what's been marked as Exhibit 12. This is a document entitled used car inspection sheet.
A. Okay.

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Q. It looks like this was originally dated on 7/11/06 but down there at the bottom where it says reviewed by purchaser and there's a line out to the right of it, is that your signature there?
A. Yes.
Q. And just to the right of the signature is a place where the date has been filled in 8/14/06. Is that your handwriting?
A. Yes.
Q. So do you think you would have dated it on a different day than the date you were actually signing it?
A. No.
Q. So does that help refresh your recollection maybe about coming back on the 14th to --
A. I really don't remember coming back but obviously I did. I'm not saying that it didn't happen, I just --
Q. Sure. And like I say, I'm just trying to maybe refresh your recollection about what happened and sometimes seeing a document helps do that so... There's one other document that appears like it may have been signed on the 14th and I'll hand you what's been marked as Exhibit 13.

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(DFT. EXH. 13, Certified Pre-Owned Vehicle Inspection Checklist, was marked for identification.)
BY MR. BECKER:
Q. This is entitled certified pre-owned vehicle inspection checklist, it's two pages. Actually, the original is all one page, 11 by 14 inches, but we've copied it in this manner.
A. Okay.
Q. If you look on the -- what is the second page of Exhibit 13.
A. Yes.
Q. Over there on the right-hand side in the customer signature block, is that your signature there?
A. Yes.
Q. Is that your handwriting where the date is filled in, 8/14/06?
A. No.
Q. Do you think you would have signed it with that date as 8/14/06 if it wasn't showing the date that you actually signed it?
A. I don't know. I didn't write that date.
Q. Okay.

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A. So I don't know.
Q. Okay. But we do know from Exhibit 12 that where the date's filled in beside your signature that is your handwriting?
A. That is my handwriting, yes.
Q. And you did understand you were buying a certified pre-owned vehicle?
A. Yes.
Q. Now, if you look back at Exhibit 12, the note says replaced driver's visor and replaced evaporator canister hose. Does that help refresh your recollection? Do you think you may have noticed something about the vehicle after you left on the 12th and came back and wanted them to fix on the 14th?
A. Right. That must -- I must have.
Q. And did they do that?
A. Yes. Apparently from this document. I don't really know what the evaporator canister hose is.
Q. All right.
A. So I'm assuming that they did it.
Q. This next exhibit I'm going to show you is being marked as Exhibit 13 to your deposition. Sorry, it's being marked as Exhibit 14.

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(DFT. EXH. 14, Disclosure of Closing Fees Notice, was marked for identification.)
BY MR. BECKER:
Q. I'm going to show you what's been marked as Exhibit 14 and I want to ask you when you first -- you went in the dealership building on at least two occasions?
A. Yes.
Q. Is that right?
A. Yes.
Q. Do you recall seeing the document that's been marked as Exhibit 14 on the wall in the dealership?
A. No.
Q. Is it possible that it could have been posted there but you just didn't notice it?
A. I guess that's possible, yes.
(DFT. EXH. 15, Document entitled Notice - Closing Fees, was marked for identification.)
BY MR. BECKER:
Q. Let me hand you what's been marked as Exhibit 15. On the occasions when you were in the dealership, did you see a notice like the one marked as Exhibit 14?

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A. No.
MR. HAMM: Is this 14 or 15?
MR. BECKER: Excuse me, 15.
BY MR. BECKER:
Q. Let me back up. On those occasions when you went in the dealership, did you see a notice like the one marked as Exhibit 15?
A. No.
Q. Anywhere inside the dealership?
A. No.
Q. All right. Is it possible that it could have been posted there and you just didn't see it?
A. It's possible.
Q. On how many occasions was the administrative fee explained to you at Galeana?
A. Just the one time in the finance office.
Q. Were there any other conversations that you had with any other employee about the -- what they called the administrative fee?
A. No.
Q. Have you described your conversation with the finance man about the administrative fee as much as you can recall about that?

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A. I have.
Q. I believe you said that you still own the car?
A. I do.
Q. Do you like the car?
A. Sometimes.
Q. Have you had it serviced at Galeana since you bought it?
A. Yes.
Q. Have you had it serviced anywhere else?
A. Yes.
Q. Where else have you had it serviced?
A. Wal-Mart, Precision Tune. I think those are probably the only two places other than --
Q. Other than Galeana?
A. Well, I mean, I've had bodywork done.
Q. Did you have another accident?
A. Yes.
Q. When did that occur?
A. Last August coming back from Hilton Head, the solicitors conference, but it -- the tire blew out and it caused some damage to the front end so it wasn't a accident per se.
Q. You weren't hurt, were you?

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A. No.
Q. And no one else was?
A. No.
Q. So were you able to get it repaired correctly?
A. Yes.
Q. About how many times do you think you've had it serviced at Galeana since you bought it?
A. Oh, three or four maybe.
Q. Have they been -- have they treated you right when you took it back for service?
A. Yes. It was usually just for like maintenance type service, oil change.
Q. All right. Now, when you bought the car, were the personnel at Galeana that you worked with, were they courteous to you?
A. Yes.
Q. Were they polite and respectful?
A. Yes, except for the sales manager. I didn't think he was very polite.
Q. Other than the sales manager, did you feel like you were treated well by everyone else?
A. Absolutely.
Q. Did they try to coerce you in any way?

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A. No.
Q. Did they try to mislead or deceive you in any way?
A. Not that I can -- not that I could tell.
Q. Would you shop at Galeana again?
A. Well, yes, sure.
Q. All right. Tell me when you first had an idea that there might be something about the transaction that would induce you to become a plaintiff in a lawsuit against Galeana about the transaction.
A. After being around the law firm and talking to the lawyers, I heard about this lawsuit so I asked what was the grounds for it and then I indicated that I had actually just purchased a car so that was pretty much it.
Q. So you had heard discussions about this lawsuit around the office at Lewis and Babcock?
A. Right.
Q. Again, I'm not -- I don't want you to tell me the substance of any of these discussions and I'm not asking you to do that.
A. Right.
Q. But I do want to try and understand how

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it is that you came to become -- be a plaintiff in this lawsuit. So I believe I heard you say you heard discussions about it and you told someone that you had purchased a car?
A. Right.
Q. Right? And that you had paid a closing fee?
A. Administrative fee.
Q. Uh-huh.
A. Yes.
Q. Who was that person that you told that?
A. I don't remember. I mean, it could have been Brady, it could have been Peter, I'm not sure. It could have been a paralegal, I don't really remember.
Q. All right. Well, who then did you discuss with your becoming a plaintiff in the lawsuit?
A. With Brady.
Q. Did you -- about how long did that discussion take?
A. Oh, it wasn't very long at all actually, I just -- I had -- because I had recently purchased the car, still had all the paperwork and everything in the car, which I was driving so I

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just went and got it and gave it to Brady.
Q. Okay. And did he review that paperwork?
A. Right. He --
Q. As best you know?
A. Yes.
Q. Did you agree to become a plaintiff in the lawsuit on that same day?
A. I don't know if it was that same day. Yeah, I don't know if it was the same day or not but I did at some point agree to become a plaintiff.
Q. Okay. Who did you reach that agreement with?
A. With Brady, the firm.
Q. Yeah. Did you sign a written agreement?
A. A fee agreement?
Q. Yes.
A. Yes.
Q. When did you sign that written fee agreement?
A. I don't remember.
Q. Do you know the terms of that fee agreement?

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A. I don't.
Q. Do you know how long the agreement is?
A. I don't.
Q. Do you know who the other attorneys are that represent you in this lawsuit, who have appeared as counsel of record?
A. I do but if you ask me to name them, I couldn't.
Q. You've seen their names before?
A. Yes.
Q. But sitting here today you can't state who those other attorneys are?
A. Right.
Q. So sitting here today you know that Lewis and Babcock and Brady Thomas are your attorneys in this matter?
A. Yes.
Q. During the course of this litigation have you ever had discussions with Mr. Lewis, Cam Lewis, about the litigation?
A. I may have but I don't -- I don't remember.
Q. Have you ever had discussions with any other attorney besides Mr. Thomas about this litigation, any other attorney at Lewis and

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Babcock?
A. Oh, possibly. I don't really remember.
Q. Okay. Did you agree -- well, yeah, you were one of the original plaintiffs. Did you read the complaint before it was filed?
A. Yes.
Q. Did you participate in the drafting of the complaint?
A. Actually, no.
Q. When you agreed to become a plaintiff in this suit, were you aware of Section 37-5 -- is it 207?
MR. THOMAS: 2307.
BY MR. BECKER:
Q. 37-2307 of the consumer protection code, the closing fee statute?
A. Yes.
Q. You were aware of it?
A. After it was explained to me, yes.
Q. But I mean at the time you agreed to become a plaintiff, were you aware of that statute?
A. Yes.
Q. Have you read that statutory section?
A. Yes.
Q. Well, then describe for me in your own

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words what do you believe that Galeana did wrong in this transaction?
A. Improperly charged me administrative fee.
Q. Okay.
A. That wasn't advertised or -- wasn't put on any type of notice of administrative fee until I signed the contract.
Q. Is there anything else about the transaction that you contend is improper?
A. Just what is listed in the complaint.
Q. Well, what else is listed in the complaint?
A. I can't remember everything that's listed there.
Q. Of course today right now you're here as a fact witness so I want to know from your standpoint as the purchaser of the car, other than the charging of the administrative fee is there anything else about the transaction that you contend was improper or wrong?
A. Other than the administrative fee?
Q. Yes, ma'am.
A. I don't think so.
Q. Okay. As a result of what you contend

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Galeana did wrong in this transaction, how have you been harmed?
A. I've paid a fee that I didn't necessarily have to pay.
Q. Other than paying that fee, in what other way have you been harmed?
A. Just any -- anything else that's listed in the complaint.
Q. Yeah, I understand that but, I mean, I'm talking about how you -- how you believe that you have been harmed, if there is another way.
A. Right.
Q. I'm asking. I don't -- because as you know, this is my only chance to get to talk to you about -- and to discover if there is some other way that you've been harmed, I need to know what that is.
A. Okay. That -- that would be it.
Q. Okay. So other than paying the fee which you contend was improper, you have not been harmed in any way by what you contend Galeana did wrong?
MR. THOMAS: Object to the form of the question. Go ahead and answer.
THE WITNESS: No.

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BY MR. BECKER:
Q. Okay. Do you have any -- as a lawyer, do you understand what a conspiracy is?
A. Yes.
Q. Do you prosecute criminal con conspiracies in your role with the Attorney General's office?
A. I have never had occasion to prosecute criminal conspiracy.
Q. But you know what a conspiracy is?
A. Generally, yes.
Q. Well, it's described various ways but let me take a stab at it. It's concerted or coordinated action between two or more persons with the goal and intent to cause harm to a person or business.
A. Right.
Q. Does that sound about right?
A. It sounds fair.
Q. Okay. Do you have any personal knowledge or other evidence of any conduct of any employee of Galeana and any employee of any other dealership to engage in a conspiracy to either charge or increase closing fees at any dealership?
MR. THOMAS: Object to the form of the

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question. Go ahead and answer.
THE WITNESS: I leave evidentiary things to the lawyers.
BY MR. BECKER:
Q. I'm sure you would and I don't blame you for that but what I -- again, what I'm asking for is what is your -- your lawyers may have other knowledge or information that you may not be aware of.
A. Right.
Q. But I need to know what information you have, what personal knowledge or other information that you would have that you know of your own personal knowledge --
A. Okay.
Q. -- that would implicate any of Galeana's employees in a conspiracy to charge or increase closing fees with employees of some other dealership. And if you don't have any, then just tell me but I need to know what you would know of your own personal knowledge.
A. Nothing.
Q. Okay.
A. And that's speaking, you know, if you're referring to my personal knowledge outside

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of what my lawyers have told me or what evidence they have and I personally have no knowledge.
Q. Right.
A. Yes.
Q. Right. Yeah, I'm just looking for what you would know.
A. Right.
Q. In fact, to put it in concrete terms, have you ever overheard a conversation between an employee of Gal -- any employee of Galeana and any employee of another dealership in which they were talking about and conspiring together about charging or increasing closing fees?
A. No.
Q. Have you ever seen any communications, e-mail or other documents, in which employees of Galeana and employees of some other dealership were discussing together a plan to charge or increase closing fees at any dealership?
A. No.
Q. Have you ever heard anyone describe that they heard such a conversation between employees of Galeana and employees of some other dealership in which those two dealership employees conspired together to charge or increase closing

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fees at any dealership?
A. No.
Q. Are you aware of whether or not there is any such evidence anywhere at all?
A. I'm not sure.
Q. Okay.
A. I don't know.
Q. All right. Do you know who the other named plaintiffs in this lawsuit are?
A. No. Do I know them personally?
Q. Well, I'm first asking do you know who they are?
A. No, I've only seen their names.
Q. Okay. Can you list their names?
A. I cannot.
Q. Do you know any of them personally?
A. I do not.
Q. Have you ever met with any of them?
A. No.
Q. Have you ever spoken over the telephone with any of them?
A. No.
Q. Have you ever corresponded in writing or by e-mail with any of them?
A. No.

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Q. Now, I understand that you -- you understand that you have appeared as a plaintiff in this lawsuit on behalf of yourself and all others similarly situated, is that right?
A. Right.
Q. Okay. So you understand that you are involved in this litigation as a representative of a group of people, correct?
A. Yes.
Q. Who do you understand those people to be?
A. Other people who purchased a vehicle and was charged an administrative or -- and/or closing fee that wasn't properly advertised or properly noticed.
Q. Okay. Do you know how many people that might be?
A. No.
Q. Is there any -- have any other understanding of who might belong to this group of people that you represent?
A. Can you re -- I don't understand what you're asking.
Q. Well, other than the group you just described to me, is there any other aspect or

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criteria or qualification for being in the group that you understand?
A. Not to my understanding.
Q. What do you understand your duties as the representative of that group to be?
A. To -- I don't know, to just -- I'm not sure. Are you asking me what do I want from the lawsuit or?
Q. Well, no, no, and I'll get to that but I'm asking you right now what do you understand your duties, if any, as the representative of this group? What do you understand those duties to be?
A. Just to tell, you know, my story, you know, just what happened to me and hopefully be representative of others that were in similar situations.
Q. Okay. Anything else?
A. Not that I can think of.
Q. If this case were to be tried to a jury, would you be able to get off of work for the trial?
A. Yes.
Q. You obviously -- are you getting off of work to appear here today for the deposition?
A. Yes.

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Q. Are you taking vacation time?
A. Yes.
Q. Does your employer know that you are a plaintiff in this lawsuit?
A. Yes.
Q. Have you discussed it with your employer?
A. Yes. I discussed it with him when I started.
Q. Huh?
A. Or before I started in my interview.
Q. I see. Okay. So this -- the fact that you're a plaintiff in this lawsuit was a subject of discussion with your employer before you started work?
A. Right, just to make sure there were no conflicts or anything like that.
Q. I see. And did the Attorney General's office determine that it wouldn't be a conflict for you to be employed there?
A. Right.
Q. Would your -- well, let me ask you this: Since you left Lewis and Babcock in the -- you worked there through studying for the bar, is that right?

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A. Well, probably until June maybe I had to -- I tried to keep working as much as I could but --
Q. Let me show you what I'll mark as Exhibit 16.
(DFT. EXH. 16, Confidential Memorandum dated 4/12/07 to Peter Protopapas from Natalie Armstrong, was marked for identification.)
BY MR. BECKER:
Q. This is a memorandum from you to Peter Protopapas dated April 12, 2007?
A. Yes.
Q. Is that right? Was that your last day of employment with – April 20th, 2007, was that your last day of employment with --
A. No.
Q. Okay. Well, did you write this memo to Peter Protopapas?
A. I did.
Q. Did you intend for Friday, April 20th, to be your last day?
A. I did.
Q. And because you were law clerk extraordinare, did you have to work beyond that date?

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A. They were just very lenient because it's very hard to study for the bar and make money at the same time so they allowed me to work a little here and a little there until I ultimately decided that I had to stop and study for the bar.
Q. Okay. So you continued to work on some after the 20th?
A. Yeah.
Q. When do you think you last worked at Lewis and Babcock?
A. I don't -- I don't know, it could have been in May or June.
Q. Of 2007?
A. Yes.
Q. Have you applied for employment at Lewis and Babcock since May or June of 2007?
A. No.
Q. Have you applied for employment with Dick Harpootlian or his law firm?
A. No.
Q. Have you ever applied for employment with Gedney Howe or his law firm?
A. No.
Q. Have you applied for employment with Mike Spears or his law firm?

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A. No.
Q. Do you have currently planned to apply for employment with any of the four law firms that I've just mentioned?
A. No.
Q. Now, I believe you mentioned you had a lot of friends at Lewis and Babcock?
A. Yes.
Q. Do you still have friends there?
A. Yes.
Q. Do you consider Mr. Thomas a friend?
A. Yes.
Q. Do you believe that your friendship with people at Lewis and Babcock, including Mr. Thomas, would conflict in any way with your duties as a representative of the group you purport to represent in this lawsuit?
A. No.
MR. BECKER: Okay, why don't we – I think our lunch is here, this is a good time.
(A luncheon recess transpired.)
BY MR. BECKER:
Q. Miss Armstrong, doubling back a little bit on some of the things we covered before the lunch break. Tell me again, you had your Honda

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Civic that you were in the accident in down in Hilton Head.
A. Yes.
Q. When was that again?
A. It was the first weekend in August. It was the weekend of the South Carolina Trial Lawyers convention.
Q. Okay. About how many days before Saturday, August 12th, was it that you -- was it the weekend before?
A. No, it was probably -- I want to say the Trial Lawyers was like the 2nd, that weekend of the 1st and the 2nd, so maybe ten days before.
MR. THOMAS: It's usually that first weekend in August.
BY MR. BECKER:
Q. Okay, August 1st was a Tuesday. Does that help you, would it have been that --
A. It would have been that 4th or 5th, that weekend.
Q. Okay, the weekend of the 4th or the 5th?
A. Right. I guess it was the week before.
Q. Okay. Yeah, August 6th was Sunday, August 5th was Saturday so it was a week later that

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you bought the car?
A. Yes.
Q. Okay. So was the accident on a Saturday or a Sunday?
A. I don't remember. I think it was Saturday.
Q. Were you driving back from the Trial Lawyers?
A. I was.
Q. Had you been at the Trial Lawyers convention with the Lewis and Babcock lawyers?
A. I was there -- I was the president of the student chapter of the Trial Lawyers.
Q. Oh, I see.
A. So I was -- I mean, I was there but not specifically with them.
Q. I got you. So did the -- did the -- did it end on Saturday or Sunday?
A. No, it ends on Sunday. I usually go down on Wednesday because there is a staff meeting on Wednesday evening that I had to attend so I went to that so I had been there since Wednesday and since I wasn't a lawyer at the time I think I just decided to leave on Saturday.
Q. On Saturday?

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A. Yes. It was kind of a long weekend because my purse had gotten stolen.
Q. Oh, goodness.
A. Yeah.
Q. Everything that could go wrong did.
A. It did.
Q. Oh, I'm sorry. Okay, so the accident probably happened the Saturday before you bought the car from Galeana?
A. Yes. I think it was a Saturday.
Q. When did you first know how much money you would get from the insurance?
A. Let me see, I don't know, I guess -- I don't remember.
Q. Okay.
A. It was -- they totalled my car and assuming the adjuster went because I never went back there. They ended up mailing me my check so I don't remember, it was the next day or so.
Q. And you said you started shopping for a car just more or less right after the accident?
A. Right, once I found out that they were considering it totalled. I think it was just -- wasn't that much damage, it was just not worth fixing.

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Q. Did you have a computer at home at that time?
A. Yes.
Q. And did you have Internet service at home?
A. Yes.
Q. Take a look for me back at Exhibit Number 2. And now I'm looking at -- I'm looking at actually the last sentence in your affidavit. You say: I viewed the Galeana advertisements in the paper and on-line prior to going to Galeana to purchase the Liberty.
And I believe earlier you testified that you saw these ads attached to the affidavit before you went to Galeana the first time?
A. Yes.
MR. THOMAS: Object to the form.
BY MR. BECKER:
Q. And you recall the first ad in Exhibit B to the affidavit, the one marked Galeana 2, you recall that being in The State newspaper?
A. Or something similar to that, yes.
Q. The second ad that's part of Exhibit 2, where did you see that ad?
A. I don't -- I don't remember. Yeah,

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just -- I don't remember where I saw the second two ads. I remember the first one because it had the Liberty and the price very big and bold but I looked at a ton of ads so I don't remember where I saw this, this second and third one.
Q. Okay. Do you know for certain that you actually saw the second and third ads marked Galeana 26 and 28 before you went to buy the vehicle?
A. For certain, no.
Q. Let me show you what's been marked as Exhibit 17.
(DFT. EXH. 17, Refund Check, was marked for identification.)
BY MR. BECKER:
Q. This is a small refund check that was issued to you by Galeana after -- back in early September of '06, they were refunding four dollars for an unused tag fee deposit. Did you get that check, do you recall getting it?
A. I don't remember.
Q. Well, there's not a lot of significance to it obviously because it's not a lot of money but you don't dispute that this check was issued to you and you would have received it and likely cashed

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it?
A. No, I don't dispute that.
Q. Miss Armstrong, have you ever bought an automobile from Overland, Inc., which does business as Land Rover of Columbia?
A. No.
Q. Do you think you've ever been to that dealership?
A. I don't know, maybe.
Q. Okay.
A. I know where it is. I know people with Land Rovers so I could have gone over there with them or something like that, I don't know.
Q. But sitting here today, can you recall a specific time when you've ever set foot on that dealership's premises?
A. No.
Q. Have you ever -- did I ask you if you ever bought a car from Land Rover of Columbia?
A. No, you didn't ask me that and the answer to that question would be no.
Q. Have you ever bought a car from Taylor Investments, Inc., which does business as Taylor Toyota of Aiken?
A. No.

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Q. Have you ever been to Taylor Toyota of Aiken?
A. Not that I can recall.
Q. Have you ever bought a vehicle from JLH Investments, LP which does business as Hendrick Honda of Easley, South Carolina?
A. No.
Q. Have you ever been to Hendrick Honda of Easley, South Carolina?
A. No.
Q. Have you ever bought a car from Sonic Automotive, 2752 Laurens Road, Greenville, Inc., which does business as Century BMW in Greenville, South Carolina?
A. No.
Q. Have you ever been to Century BMW in Greenville, South Carolina?
A. No.
Q. Have you ever bought a car from Dick Dyer & Associates, Inc.?
A. No.
Q. Have you ever been to Dick Dyer & Associates, Inc.?
A. Not that I can recall.
Q. Do you know they are located up on Two

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Notch Road?
A. Yes.
Q. But you don't believe you've ever visited that dealership?
A. Yeah, I don't -- I don't think so.
Q. Okay. Have you ever bought a car from Toyota of Greenville, Inc.?
A. No.
Q. Do you know if you've ever been to Toyota of Greenville?
A. No.
Q. Earlier I asked you if you were aware of any -- if you had any personal knowledge that any employee of Galeana might have been engaged in conduct of -- in a civil conspiracy with employees of any other dealership to charge or increase closing fees at any dealership. Let me ask you that same question for all of these other dealerships that we've just mentioned.
A. Right.
Q. Do you have any evidence, any personal knowledge that any of the other dealerships that are named as named defendants in this case have ever engaged in any conduct which would fit the description of a civil conspiracy to charge or

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increase closing fees?
A. No.
MR. THOMAS: Object to the form.
BY MR. BECKER:
Q. Are you aware of any evidence that any of those -- any employees of those dealerships have ever communicated in any way, ever had a conversation with any employee of any other dealership to conspire to charge or increase closing fees at any dealership?
MR. THOMAS: Object to the form. Go ahead and answer.
THE WITNESS: Not to my knowledge.
BY MR. BECKER:
Q. Are you aware of any written communications between any employees of those dealerships that are named plaintiffs in this lawsuit, written communications between employees of any of those dealerships and some other dealership to conspire together to charge or increase closing fees at any dealership?
MR. THOMAS: Object to the form. Go ahead and answer.
THE WITNESS: No.
BY MR. BECKER:

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Q. If this case were tried to a jury and the trial were going to last several days, would it be more convenient for you to try the case in Richland County or in Aiken County?
A. It wouldn't make a difference.
Q. It wouldn't?
A. Um-um.
Q. Why is that?
A. I'm from Aiken so my parents live there and I live here in Columbia so either way it wouldn't make any difference to me.
Q. What about for Mr. Carson, DJ, would it be more convenient for him to try the case in Richland County or in Aiken County?
A. I don't think it would matter.
Q. But both of you, you and DJ, you all both live here in Columbia, is that correct?
A. That is correct.
Q. And you both work here in Columbia?
A. That's correct.
MR. BECKER: I think we may be through, Miss Armstrong, but let me just make sure.
Does anyone else plan to ask any questions?
MR. HAMM: You've asked the one area of

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questions that I would have asked on behalf of Land Rover.
MR. BECKER: Okay. Brady, are you going to have any questions for her?
MR. THOMAS: I've got two.
MR. BECKER: Why don't you go ahead with those.
MR. THOMAS: All right.
EXAMINATION
BY MR. THOMAS:
Q. Miss Armstrong, I just have two follow-up questions. You testified earlier that you think you would buy another vehicle from Galeana. What are you seeking from Galeana in this lawsuit?
A. Just to get my money back and hopefully for other people to get their money back if they were charged the same fee.
Q. And if Galeana did that, would you be happy with Galeana?
A. Yeah.
Q. Also, taking a quick look at Exhibit 12 and I don't think it really matters but we were looking at this document earlier, Exhibit 12, the used car inspection list sheet, and there were some

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questions about when the driver's visor and the evap cannister hose was replaced and I think you testified, I just want to confirm, you don't remember these items being replaced?
A. Right.
MR. BECKER: Object to form.
BY MR. THOMAS:
Q. And what date was the actual inspection performed on this vehicle, can you tell from looking at it?
A. July 11, 2006.
Q. And when -- what, if any, items were replaced on the vehicle on the 14th when you signed this document?
A. I didn't think any. Apparently those two were done at some point prior to the 14th but I don't think it was based on my purchase.
MR. THOMAS: Okay. No further questions.
MR. BECKER: Thank you, I have nothing further, Miss Armstrong.
(WHEREUPON, the proceedings concluded at 1:58 PM.)

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CERTIFICATE OF REPORTER

I, Terri L. Brusseau, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript, Pages 1 through 134, is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 24th day of July, 2009 at Charleston, Charleston County, South Carolina.

_____
Terri L. Brusseau,
Registered Professional Reporter,
Certified Realtime Reporter
My Commission expires
March 24, 2016.

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

C.A. No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiff,

v.

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

Defendants.

AFFIDAVIT OF JARRAH JORDAN

I, the undersigned Jarrah Jordan, being duly sworn, state under oath as follows:

1. I was a New Car Salesman at Galeana Chrysler Jeep, Inc. ("Galeana"), located at 180 Greystone Boulevard in Columbia, South Carolina from May 2002 to January 2007.

2. I have personal knowledge of the facts set forth in this affidavit to the extent specified and, if called as a witness, I could competently testify to these facts.

3. On Wednesday, August 9, 2006, Lindsey Valek, a former employee of Galeana and a friend of mine, brought Natalie Armstrong to the dealership and asked to see me. I knew Ms. Valek, but I did not know Ms. Armstrong.

4. Ms. Armstrong said she was interested in purchasing a Jeep Liberty, and wanted to keep the purchase price between $10,000 and $12,000. She did not reference any specific year, color, or trim level of Jeep Liberty.

5. Ms. Armstrong did not identify or make any reference to any advertisement, on the Internet or otherwise, of any Jeep Liberty.

6. I showed Ms. Armstrong a blue, 2002 Jeep Liberty Sport that had an asking price of $12,495 and was one of the vehicles that was close to Ms. Armstrong's price range. Ms. Armstrong liked the vehicle, and after test driving it, she told me she wanted to return on Friday, August 11th to discuss things further. Ms. Armstrong and I did not discuss any specific prices for the vehicle, and we did not engage in any negotiations at that time.

7. To the best of my recollection, there was a hang tag on the 2002 Jeep Liberty Sport displaying the price of the car as $12,495. There was also probably a Kelly Bluebook Equipment Sticker, which did not display the price of the vehicle.

8. A Buyer's Guide, a sticker required by federal law, was also on the 2002 Jeep Liberty Sport. The Buyer's Guide does not mention the price of the vehicle and does not disclose any information about the closing fee. A true copy of the Buyer's Guide attached to the 2002 Jeep Liberty Sport is attached hereto as Exhibit A. There were no other stickers or printed information on the vehicle.

9. At the time I showed Ms. Armstrong the 2002 Jeep Liberty Sport, the vehicle had not yet been certified as "Chrysler Certified Pre-Owned," and its asking price of $12,495 did not include the certification and the related warranty. In order to designate a vehicle as "Chrysler Certified Pre-Owned," Galeana completes a comprehensive inspection, requires all factory maintenance to be up to date, and performs certain reconditioning services. Once certified, the vehicle has a factory warranty that covers all mechanical items for 90 days and a factory powertrain warranty up to 80,000 miles.

10. I called Ms. Armstrong on Thursday, August 10, 2006, to follow up, and she said she could not come back to the dealership until Friday evening.

11. When I called Ms. Armstrong on Friday morning, August 11, 2006, to confirm our appointment for that evening, Ms. Armstrong was concerned she would not qualify for a loan to purchase the vehicle. I took her credit application over the phone.

12. Later that evening, Ms. Armstrong visited the dealership with Drelton Carson, who I knew personally and understood to be her boyfriend. As we started negotiations, I showed Ms. Armstrong an initial buyer's order, which is one of the first documents I usually show to a customer. I handwrite the terms of the deal on the form and review it multiple times with the customer as negotiations progress. The initial buyer's order disclosed the admin fee of $199. I do not remember Ms. Armstrong asking any questions about the fee, or objecting in any way to the charging of the fee, but if she had, I would have explained that Galeana's policy is to account for the fee on every transaction, and the fee is used to help reimburse the dealership for costs related to document preparation, storage, and retrieval.

13. At that time, Ms. Armstrong offered for the 2002 Jeep Liberty Sport that I had shown her two days earlier was $10,000.

14. I discussed her offer with my sales manager, John Reitenga, and he told me to make a counteroffer to Ms. Armstrong to sell the vehicle for $11,995 and to offer to certify the vehicle as a "Chrysler Certified Pre-Owned" vehicle as an additional incentive to purchase the vehicle.

15. Mr. Reitenga informed me that an advertisement would be published the following day on August 12, 2006, offering some used Jeep Liberty Sports, all Certified Chrysler Pre-Owned vehicles, of varying years and conditions, for as low as $11,995. I told Ms. Armstrong about the upcoming ad to encourage her to increase her previous offer of $10,000 and to show her that the 2002 Jeep Liberty Sport that she liked so much was worth at least $11,995,

especially if we certified the vehicle as a Chrysler Certified Pre-Owned Vehicle. I referred to the future advertisement only as a negotiation tool to explain that the type of vehicle she wanted would sell for a lot more than she was offering. I never showed Ms. Armstrong a copy of the ad.

16. Mr. Carson continued to try to negotiate a price lower than $11,995, but I informed Mr. Carson that $11,995 was the lowest amount Galeana would accept and that Ms. Armstrong was getting a manufacturer-certified vehicle at that price.

17. On that same evening, Ms. Armstrong's father telephoned me from Aiken, S.C., and tried to negotiate a lower price for the vehicle on behalf of Ms. Armstrong. I told him the same thing I had told Ms. Armstrong and Mr. Carson—that the lowest acceptable price was $11,995 and that the price included the "Chrysler Certified Pre-Owned" warranty of eight years or 80,000 miles.

18. At the end of that same evening, on August 11th, Ms. Armstrong agreed to pay $11,995 for the 2002 Jeep Liberty Sport, with its certification as a Chrysler Certified Pre-Owned vehicle. Having reached a final negotiated price, I again reviewed the initial buyer's order with Ms. Armstrong and directed her attention to the closing fee. She signed the initial buyer's order, a true copy of which is attached as Exhibit B.

19. When Ms. Armstrong left the dealership on Friday night, we agreed that she would return the next day to complete the necessary financing paperwork and pick up the vehicle.

20. On Saturday morning, August 12th, Ms. Armstrong and Mr. Carson returned to the dealership and asked to drive the Jeep Liberty Sport to Aiken to show her father. This request was approved. While they were gone, Ms. Armstrong's father telephoned me and tried to re-open negotiations to obtain a price lower than $11,995. Mr. Reitenga and I refused to lower

the price, but we did agree, at her father's request, to clean the battery, replace the front windshield, and provide a new tire cover as additional terms of the deal. Her father called me again later after the deal was completed to thank me for helping Ms. Armstrong and working things out.

21. Ms. Armstrong and Mr. Carson returned to the dealership with the 2002 Jeep Liberty Sport on the evening of August 12, 2006, and Ms. Armstrong met with Dale Wolan, a Finance and Insurance manager, to complete the deal.

22. By the time Ms. Armstrong met with Mr. Wolan, Ms. Armstrong had already been in the dealership numerous times where multiple notices of the closing fee are posted. Additionally, I had reviewed the initial buyer's order with Ms. Armstrong several times during negotiations, and directed her attention to the closing fee before we reached a final negotiated price.

23. Neither Ms. Armstrong, Mr. Carson, nor her father ever questioned the purpose or amount of the closing fee. I do not recall their asking any particular questions about the fee. At all times, all three participants in the deal were free to ask any questions they wanted to ask, and if I could not answer them, I would have asked a manager for help. At all times, Ms. Armstrong was free to leave Galeana without purchasing the vehicle if she decided that she did not want it for any reason.

24. When the transaction was complete, Ms. Armstrong appeared to be very pleased and happy with the deal.

25. In my experience, the vast majority of customers never offer to pay the asking price or advertised price for a vehicle and generally engage in negotiations with salespersons at various stages of the transaction. In my experience, most buyers negotiate over every charge

associated with the purchase of a vehicle, including but not limited to the price of the vehicle, additional products and services such as optional equipment, warranties, and insurance, and the closing fee. In most instances, buyers restart or continue negotiations over prices *after* being informed of the closing fee.

26. It would be extremely rare for a buyer to come to Galeana and simply offer to pay the asking price for a vehicle, whether the vehicle is advertised or not. Most customers also negotiate the price or addition of optional equipment, warranties, or other services, to be included in the price of the vehicle.

27. In my experience, every price ever advertised or displayed by Galeana was negotiable and almost always was negotiated at great length by most buyers.

28. During the period of my employment with Galeana, a notice of the closing fee was conspicuously posted in the dealership, the fee was prominently disclosed on the buyer's order and final invoice forms signed by each customer, and I and other salespersons, sales managers, and finance and insurance managers were always available to explain the fee and answer any questions about it.

29. During the period of my employment with Galeana, there was never a prepared script for me to use to explain the closing fee. I was instructed to say to customers that the fee is not required by law and to explain that Galeana's policy was to account for the fee in every transaction. I understood that the fee did not have anything to do with obtaining state title or tags, and have never told a customer that the fee was to cover such costs.

30. During the period of my employment with Galeana, I do not believe that there is any way that a customer could have purchased a vehicle from me and not have been aware that Galeana charges closing fees and why those fees are charged. By the time the customer left the

dealership, the customer had been informed of the closing fee by me, by notices posted throughout the dealership, and by multiple forms signed by the customer.

WITNESS my hand this 25th day of June 2009, at Columbia, South Carolina.

Jarrah Jordan

SWORN TO and subscribed before me
this 25 day of June, 2009.

Notary Public for the State of South Carolina
My commission expires
My Commission Expires October 25, 2011

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., attorneys for Galeana Chrysler Jeep, Inc. and Hendrick Automotive Group, Inc., hereby certify that I have served the attached document(s) on the Plaintiffs and the other Defendants by causing true copies thereof to be mailed by first-class mail, postage prepaid, to their respective attorneys of record, whose names and addresses are as follows:

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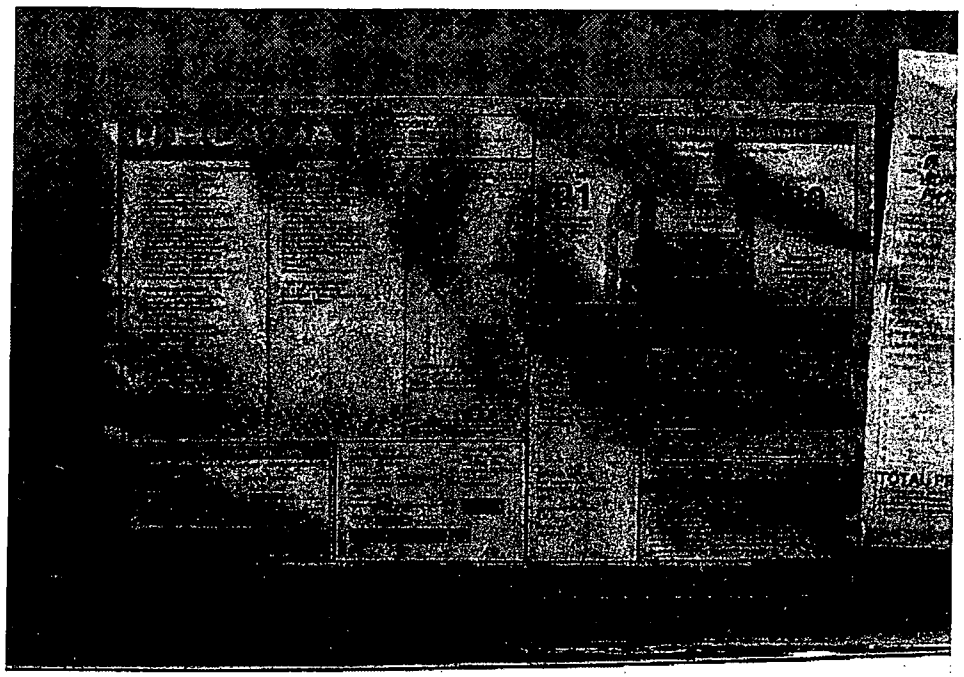
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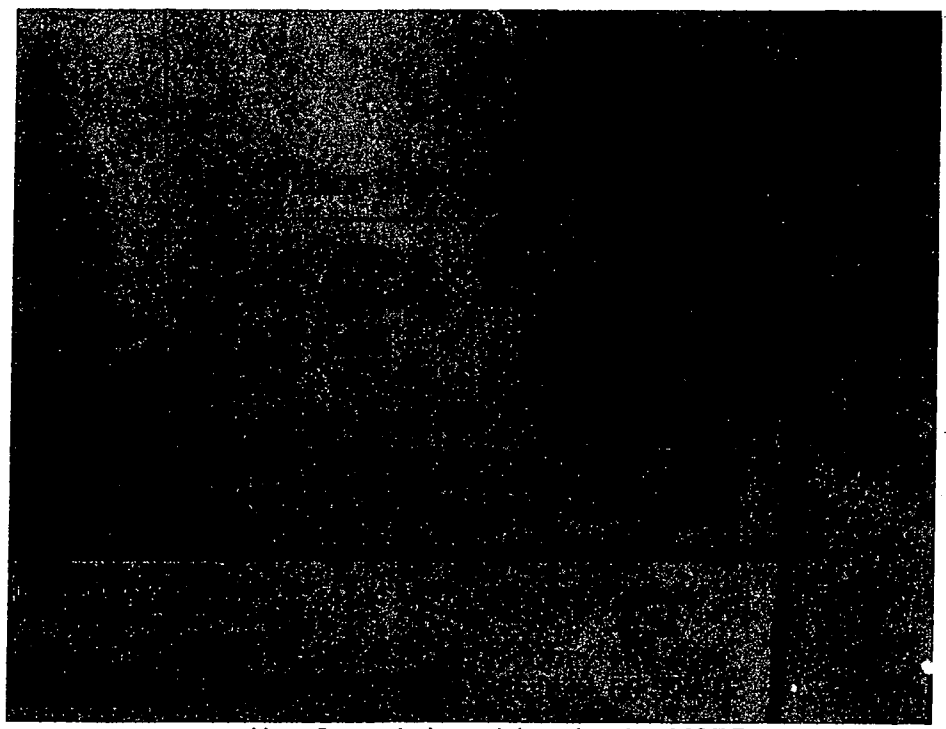
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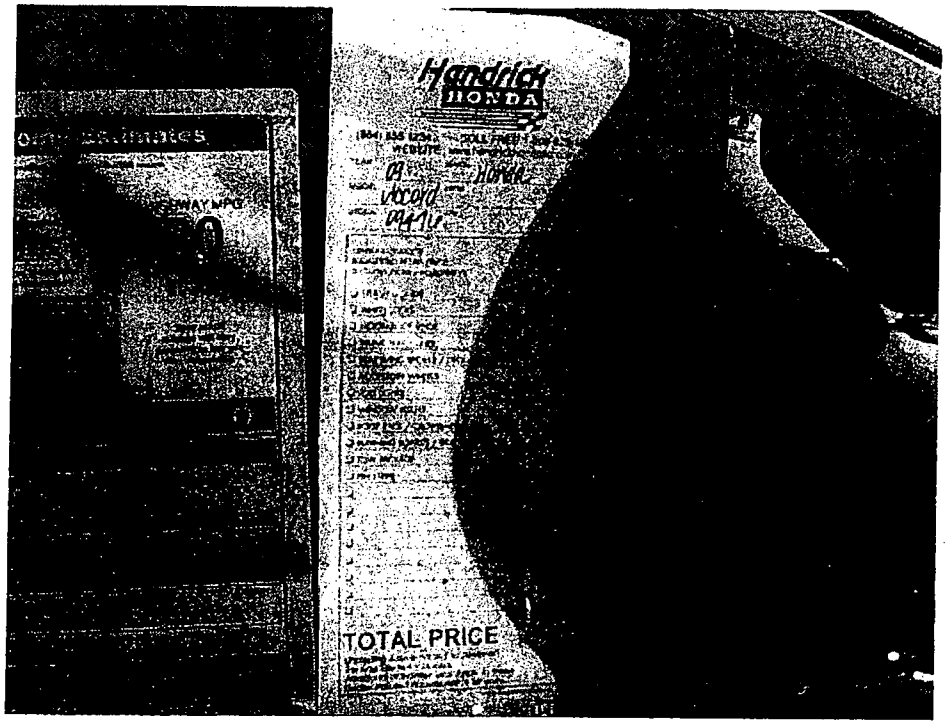
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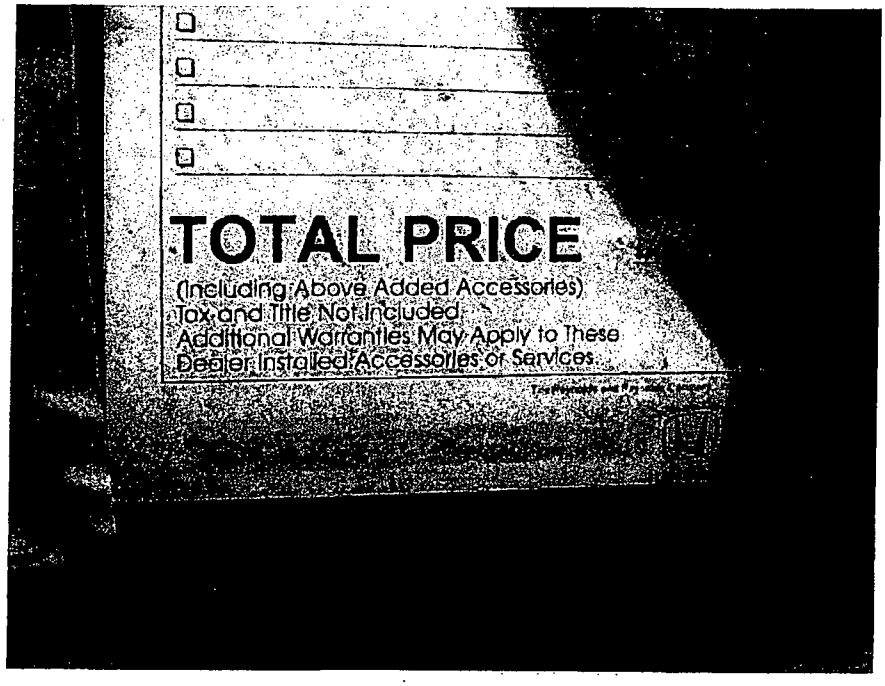
EXHIBIT W





New Cars window sticker showing MSRP





Accessories Addendum Sticker showing MSRP; Accessories; MSRP with Accessories

EXHIBIT X

The Florida Senate

Interim Project Report 2008-107 *October 2007*

Committee on Commerce

EXAMINATION OF AUTOMOBILE DEALERS' DOCUMENTATION FEES

SUMMARY

This report examines issues related to automobile dealers' documentation fees, or the "pre-delivery service fee," charged to consumers by most motor vehicle dealers in Florida. This discretionary charge "represents costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles, and preparing documents related to the sale."[1]

This report identifies types of costs incurred by consumers in the purchase of a vehicle; sales disclosure requirements required by federal law and the Florida Deceptive and Unfair Trade Practices Act; the monetary range of pre-delivery service fees imposed across the state; and limits on similar fees imposed by dealers in other states.

The report also presents findings and offers options for the Legislature to consider.

BACKGROUND

Motor Vehicle Sales Generally

Florida has a number of laws to protect consumers. The principle law relating to the automobile dealer-consumer relationship is Part VI of ch. 501, F.S. This section of law describes prohibited dealer actions under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), and provides guidelines regarding motor vehicle pricing and notice to consumers. The state law supplements federal law in this area.

Federal law (the Monroney Act) requires manufacturers to affix to each new automobile a sticker, which shows the suggested retail sales price for each vehicle.[2] This sticker must be attached to the side window of the vehicle and state several items of information, including:

- the make and model of the car;
- serial or identification numbers;
- the final assembly point;
- the name and location of the final dealer to whom it is delivered;
- the method of transportation used in making the delivery;
- the Manufacturers' Suggested Retail Price (MSRP);
- the MSRP of optional equipment installed on the vehicle;
- the transportation charges for delivery of the vehicle from the manufacturer;
- the total MSRP of all of the aforementioned charges; and
- the Environmental Protection Act's mileage estimates for the vehicle.[3]

In addition to the "Monroney Sticker," consumers may also see a supplemental sticker, known as the "Dealer Addendum Sticker," which shows the suggested retail price of dealer installed options. This dealer sticker may also list the dealer preparation fee and the pre-delivery service fee. At the dealer's option, the dealer sticker may include a total of the charges listed on both stickers.

It is generally recognized in the automobile sales industry that the charges listed on the Monroney and dealer sticker may be negotiable.

The customer will also be required to pay several fees imposed by state law, such as sales tax, title, registration, licensing, new tire fees and a battery fee.

[1] Section 501.976(18), F.S.

[2] 15 U.S.C. § 1231, et. seq. (the Monroney Act).

[3] Autopedia, Monroney Sticker History, http://autopedia.com/html/monroneysticker.html. (summarizing 15 U.S.C. § 1232), last visited August 31, 2007.

These fees are not negotiable, and typically not included on the Monroney or dealer sticker.

At some point the customer meets with a sales person or business manager to negotiate a final sales price for the vehicle. At this time, the dealer may offer a number of options not listed on the Monroney or dealer sticker. These options may, for example, include:

- Warranties, in addition to factory warranties;
- Gap insurance, to pay the difference between a car loan and vehicle value if a vehicle is "totaled";
- Paint protection;
- Security Systems; and
- Service plans for scheduled maintenance.

At some point in the sale's process, the dealer completes a "Buyer's Order" or similar document listing the costs to the consumer of the vehicle selected.[4] If imposed, the dealer's pre-delivery service fee is required to be specified on this document.

The pre-delivery service fee is also referred to as a documentation or documentary fee (DOC Fee), dealer fee, dealership services fee, dealer service fee, dealer preparation fee, delivery or handling fee, or processing fee.[5] Our research indicates most dealers in Florida impose this fee, which is intended to either increase their profit or offset costs they have incurred in preparing the vehicle and associated documents for the customer. The statutes recognize this industry practice and require the following statement be included on all documents that include a line item for the fee:

> This charge represents costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles and preparing documents related to the sale.[6]

This fee varies among dealerships and, at times, among customers of the same dealership.[7]

A representative of the Florida Automobile Dealers Association (FADA) offered this statement about the pre-delivery service fee:

> These fees are but one small element of the overall cost framework for purchasing a vehicle in any state....Because these fees are variable and there is a large market for automobile sales in Florida, FADA endorses competition and market forces as the appropriate regulator with regard to these fees, which are by statute included in any advertised price of a vehicle....
>
> The reductions in dealer margins (the difference between the manufacturer's suggested retail price and the dealer cost) over time have increased the dealer's reliance on these fees for preparing and delivering vehicles to consumers.[8]

Similarly, a representative of the Florida Independent Automobile Dealers Association (FIADA) stated that the cost of operating a used-car business has increased, and the

> [p]re-delivery fees allow the dealer to recoup some profit (sometimes the only profit in the transaction)....The FIADA recommends that the Florida Legislature make no attempt to "set" motor vehicle pricing. Prices that consumers pay should be determined by the market. If there is a consumer protection issue, more attention should be paid to enforcement, rather than changing current law.[9]

Regulation of Motor Vehicle Dealers in Florida

Section 320.27(1)(c), F.S., defines a "motor vehicle dealer," in pertinent part, as "any person engaged in the business of buying, selling, or dealing in motor

[4] The Buyer's Order "is a sales contract between the buyer and the seller that includes the sale price of the vehicle and any additional fees and charges that will be assessed during the sales transaction." Ted L. Smith, President, FADA. (Sept. 27, 2007)

[5] As identified in the September 2007 surveys of new and used auto dealers, through the Florida Automobile Dealers' Association (FADA) and Florida Independent Automobile Dealers Association (FIADA). The dealer responses to the FADA survey list an additional 22 names for this fee.

[6] Section 501.976(18), F.S.

[7] As with all charges imposed by the dealer, this fee may be negotiable.

[8] Response to Interim Project from Ted L. Smith, CAE, President, Florida Automobile Dealers' Association (Sept. 20, 2007)(on file with the Senate Commerce Committee).

[9] Letter from Larry Peters, Executive Vice President, Florida Independent Automobile Dealers Association (Sept. 24, 2007)(on file with the Senate Commerce Committee).

vehicles or offering or displaying motor vehicles for sale at wholesale or retail...." Paragraph (1)(b) defines a motor vehicle as any motor vehicle required to be registered under ch. 319, F.S. Chapter 319, F.S., in turn does not define "motor vehicle,"[10] but provides definitions for the terms "new motor vehicle" and "used motor vehicle."[11]

Notably, s. 320.27, F.S., delineates five categories of motor vehicle dealers to include: franchised, independent, wholesale, auction, and salvage motor vehicle dealers.[12] This report focuses on the first two categories, franchised and independent dealers, the only categories that engage in retail sales of whole vehicles (as opposed to parts sold by salvage dealers) to consumers.

Franchised dealers sell new motor vehicles under an agreement with a manufacturer, while independent dealers sell used motor vehicles. In Florida, one trade association represents each category. FADA represents franchised dealers and claims approximately 815 members. FIADA represents independent dealers and has approximately 1,400 members. Each association educates its members regarding state and federal laws related to dealerships, and lobbies on behalf of their members' interests.

Motor vehicle dealers are regulated by the Division of Motor Vehicles (division) in Florida's Department of Highway Safety and Motor Vehicles (DHSMV). The division issues annual licenses to dealers and regulates them pursuant to s. 320.27, F.S.[13] In Fiscal Year 2006-2007, the division issued an estimated 12,800 motor vehicle licenses.[14] The division enforces collection of statutorily mandated fees such as title and registration by dealers, but has no authority to regulate pre-delivery service fees.

[10] *See* ss. 206.01(23), 316.003(21), and 320.01(1), F.S.

[11] A "new motor vehicle" is one for which legal title has not been transferred by a manufacturer, distributor, importer, or dealer to an ultimate purchaser. Section 319.001(8), F.S. According to s. 319.001(11), F.S., a "used motor vehicle" is one that is not a "new motor vehicle as defined in s. 319.001(8), F.S.

[12] Section 320.27(1)(c), F.S.

[13] It is important to note that this section also authorizes the department to deny, suspend, or revoke any license for violations involving dealer-consumer relations. Section 320.27(9)(b), F.S.

[14] Department of Highway Safety and Motor Vehicles, Division of Motor Vehicles, Performance Statistics, http://www.hsmv.state.fl.us/html.FactsFiguresFY2006/PerSTaDMV.htm, last visited August 10, 2007.

Florida Law

Section 501.976, F.S., provides a list of 19 possible actions that constitute actionable, unfair or deceptive acts or practices with regard to the sale of motor vehicles.[15] Several of the provisions directly address notice related to the pricing of motor vehicles, and sales contract requirements.

Section 501.976(9), F.S., prohibits dealers from obtaining signatures on contracts from customers if the contracts are not fully completed at the time the customer signs, or if the contract does not accurately reflect the negotiations and agreement between the consumer and the dealer.

Section 501.976(11), F.S., forbids dealers from adding to the cash price of a vehicle any fee or charge other than those provided in s. 520.02(2), F.S. According to s. 520.02(2), F.S., "cash price" is:

> [T]he price at which a seller, in the ordinary course of business, offers to sell for cash the property to service that is the subject of the transaction. At the *seller's option*, the term "cash price" may include the price of accessories, *services related to the sale*, service contracts, and taxes and fees for license, title and registration of the motor vehicle. The term "cash price" does not include any finance charge. (Emphasis added).

If the pre-delivery service fee is considered a service "related to the sale," inclusion in the cash price is optional. Nevertheless, s. 501.976(11), F.S., also provides that:

> [A]ll fees or charges *permitted* to be added to the cash price...must be fully disclosed to customers in all binding contracts concerning the vehicle's selling price. (Emphasis added).

Based on a reading of both provisions, it appears the dealer has the option to disclose the pre-delivery

[15] This provision was preceded by Florida Attorney General Rule 2-19.005, F.A.C., which was created in 1974 and repealed in 1996. Rule 2-2.001, F.A.C., explains that the repeal of this rule and others enacted pursuant to Part II, ch. 501, F.S., the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), did not modify or restrict the application of FDUTPA. Therefore, despite the rule's repeal, consumers would continue to enjoy the same protections previously existent under FDUPTA.

service fee in the cash price, but is *required* to do so in any contract for sale of the motor vehicle.

Section 501.976(16), F.S., forbids dealers from advertising the price of a vehicle

> unless the vehicle is identified by the year, make, model, and a commonly accepted trade, brand, or style name. *The advertised price must include all fees or charges* that the customer must pay, including freight or destination charge, dealer preparation charge, and charges for undercoating or rustproofing. (Emphasis added).

Consequently, the pre-delivery service fee must be included in the advertised price of a vehicle.[16]

Section 501.976(17), F.S., prohibits dealers from charging customers for any pre-delivery service required by the manufacturer, distributor, or importer for which they are reimbursed by the manufacturer, distributor, or importer.

As previously noted, s. 501.976(18), F.S., prohibits dealers from charging a customer for any pre-delivery service without having printed on all documents that include a line item for the pre-delivery service fee the following disclosure:

> This charge represents costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles and preparing documents related to the sale.

METHODOLOGY

The Commerce Committee staff researched both federal and state law related to motor vehicle dealers' fees and pricing. In order to determine whether consumers have complained about motor vehicle dealers' fees to state agencies, committee staff also contacted DHSMV, the Department of Agriculture's Division of Consumer Services, and representatives of the Automobile Dealers Industry Advisory Board.

Committee staff requested the presidents of the trade associations that represent motor vehicle dealers in the state, the FADA and the FIADA, survey their members about their fees.

Committee staff conducted legal research to determine whether state law exists addressing the pre-delivery service fee and performed internet research to gather information related to how other states address this issue.

FINDINGS

Consumer Complaints

Florida's Department of Agriculture and Consumer Services (DACS) handles a variety of consumer complaints. However, according to a DACS representative, consumers who call the DACS consumer hotline with complaints related to motor vehicle sales are directed to contact DHSMV.

When asked whether it had received complaints related to pre-service delivery fees, DHSMV representatives indicated the department does not separately categorize such complaints. Therefore, DHSMV is not able to discern the number of complaints received by the DHSMV regarding such fees.

Members of the Automobile Dealers Industry Advisory Board[17] indicate it has not examined this issue, nor has it been asked to do so by DHSMV.

Advertisements and Pre-Delivery Service Fees

Section 501.976(16), F.S., requires all vehicle advertisements to include "all fees or charges that the customer must pay..." excluding state and local taxes, tags, registration fees, and title fees. However, "advertisement" is not statutorily defined.

Industry representatives understand this term to include the price presented in media advertisements, prices "painted" on vehicle windshields, or the "totaled" or "bottom line" price on the Monroney and dealer stickers. While not specifically identified, the fee must be included in the price advertised. Industry representatives further assert that the dealer sticker, is

[16] Subsection (16) also provides that "When two or more dealers advertise jointly, with or without participation of the franchisor, the advertised price need not include fees and charges that are variable among the individual dealers cooperating in the advertisement, *but the nature of all charges that are not included in the advertised price must be disclosed in the advertisement.*" (Emphasis added).

[17] This board was created within DHSMV by s. 320.275, F.S., and is required to, among other duties, "present licensed motor vehicle dealer industry issues to the department for its consideration [and] consider any matters relating to the motor vehicle dealer industry presented to it by the department...." Section 320.275(1), F.S.

not "an advertisement" unless a total price is provided or calculated on the sticker.[18] Consequently, the customer may not become *specifically* aware that the dealer will impose a pre-delivery service fee – or the amount of the fee – until the buyer's order is submitted to the customer.

In 1988, Florida's Attorney General (AG) issued an opinion directly addressing this issue, which may support this interpretation.[19] This opinion analyzed portions of Rule 2-19.005, F.A.C., the predecessor to s. 501.076, F.S.[20] The opinion answered four questions posed by a state attorney regarding pre-delivery service charges and advertising in the context of pricing vehicles.

First, the opinion specifically addressed whether pre-delivery service charges were required to be included in the advertised price of a vehicle. The AG relied on the plain language of Rule 2-19.005(16), F.A.C., and found:

> With the exception of those charges or fees specifically exempted in Rule 2-19.005(16), F.A.C., a motor vehicle dealer, if authorized to impose pre-delivery charges on the customer pursuant to Rule 2-19.005(17)-(20), F.A.C., must include those charges in the advertised price.[21]

The next issue the opinion addressed concerned whether prices posted on vehicles either through a window sticker or painted on the windshield of the car, are advertisements for the purpose of Rule 2-19.005(16), F.A.C. The AG concluded price postings, *in any form*, must comply with the requirements of the rule. Therefore, window stickers or prices painted on windows must include pre-delivery service charges. Importantly, in answering this question, the AG noted:

> *[A]ny form of posted price* on a motor vehicle, when done in a manner to sell or induce the customer to enter into an obligation relating to the vehicle, is an 'advertisement.' (Emphasis added).[22]

The third question the AG addressed asked whether a motor vehicle dealer could disclose pre-delivery charges by advertising the price as "plus taxes, tags, registration and title fees, plus pre-delivery charges." After noting state and local taxes, tags, registration and title fees are exempt from disclosure while pre-delivery service charges are not, the AG concluded prices could not be advertised in the manner suggested by the question.

The last question posed asked whether the fee charged by motor vehicle dealers to customers for processing paperwork for tags and title could also be excluded from the advertised price of a vehicle. In answering this question in the negative, the AG noted:

> The rule appears to contemplate that excluded from the advertised price are those fees levied or assessed by a governmental entity rather than those charges by the dealer of processing the paper work necessary to procure the tag and title, regardless of the name given such a charge by the dealer.[23]

The AG concluded any fee or charge imposed by the dealer for handling paperwork, regardless of the name given the fee by the dealer, must be included in the advertised price – and the advertised price includes "any form of posted price on a motor vehicle, when done in a manner to sell or induce the customer to enter into an obligation relating to the vehicle."
In 2003, the Economic Crimes Division of the Office of the Attorney General readdressed this issue through an investigation of motor vehicle dealer advertising irregularities and violations of the advertising

[18] Discussion with Ted L. Smith, President, Florida Automobile Dealers Association (FADA), September 20, 2007.
[19] Fla. AGO 88-58.
[20] It should be noted that the provisions of the current statute are substantially similar to those of Rule 2-19.005, F.A.C., with two notable exceptions. *See* ch. 2001-196, L.O.F. Subsections (19) of the rule provided that where a motor vehicle is available for inspection by a prospective purchaser, the dealer had the option of attaching a window sticker that specifies pre-delivery service charges. Subsection (20) provided that if the dealer opted to use the window sticker to make the pre-delivery service charges disclosure, the dealer was prohibited from adding additional pre-delivery service charges on other sales documents. Subsection (20) was not included in the 2001 law. Subsection (19) was included, but changed the rule's window-sticker provision from optional to mandatory. This provision was repealed, and applied retroactively to the effective date of the 2001 law, by ch. 2002-54 L.O.F. The analysis for the Senate bill indicates that the change from an optional to a mandatory requirement was inadvertent. For more details, see Senate Staff Analysis, CS/SB 1956 (2001) and Senate Staff Analysis, SB 344 (2002).
[21] Fla. AGO 88-58, 1988 WL 407004 at 1 (Fla. A.G.).
[22] *Id* at 3.
[23] *Id.* at 4.

provisions of s. 501.976(16), F.S.[24] The AG investigated dealers whose advertised price did not include a pre-delivery service fee, and those ads which mentioned a fee, but did not specify the amount.[25] The FADA intervened to negotiate a settlement on behalf of the dealers who had been cited. As a result, the AG entered into informal settlements with the cited dealers by issuing Letters of Agreement which required dealers to acknowledge the laws regarding advertising, pay $3,000, and express the intent of future compliance, in exchange for ending the investigations.

Importantly, the FADA offered to initiate a Voluntary Compliance Program for Dealer Advertising and issued guidelines to its members which would help avoid future AG audits. The suggested advertising guidelines recommended dealers take several steps which included, but were not limited to:

- Avoid displaying a price for a vehicle and footnotes indicating the price excludes the pre-delivery service charge;
- Include all dealer fees in the advertised price, and avoid footnotes specifying the amount of those fees;
- Make the advertised price the largest print size in the advertisement; and
- Avoid displaying a bold print advertised priced that could only be secured through the application of specialized rebates that do not apply to all buyers.

In summary, s. 501.976(11), F.S., requires that the pre-delivery service fee be disclosed on all binding contracts related to the sale. Section 501.976(16), F.S., requires that the pre-delivery service fee be included in the advertised price of the vehicle. Because the term "advertisement" is not defined, dealers must rely on the Attorney General's interpretation of the term, and trade association guidelines, to ensure the public is fully noticed that the pre-delivery service fee will be imposed, and the amount that will be charged.

There is enough ambiguity in current law to allow that the consumers may not be specifically aware that the pre-delivery service fee is imposed, and the amount of the fee, prior to receipt of the Buyer's Order. The law requires the fee be "included" rather than "specifically delineated" in the advertised price. Furthermore, the fee is not required to be delineated on the dealer window sticker.

Dealer Survey Results

Pre-delivery service fees are widely imposed by new and used automobile dealers in Florida, ranging from $189 to $699. While some dealers charge no fee, most do.

Staff asked FADA and FIADA to survey their members to ascertain whether dealers charge a pre-delivery service fee and the dollar amount of the fee.

The FADA reports it received 67 responses from its 815 members (8.2 percent).[26] Of these responses, 64 (or 95.5 percent of the respondents) charge a pre-delivery service fee, or a fee of a similar name. Fee amounts ranged from $100 to $699. (See TABLE 1.)

The FIADA reports it received 55 responses from its 1,400 members (3.9 percent).[27] Seventy-eight percent (43 of 55 respondents) reported they charge a pre-delivery service fee, or a fee of a similar name. Fee amounts ranged from $3.50 to $499. (See TABLE 2.)

TABLE 1
New Car Dealers

Fee Amount	# of Dealers
$ 100 - $ 199	3
$ 200 - $ 299	11
$ 300 - $ 399	22
$ 400 - $ 499	20
$ 500 - $ 599	6
$ 600 - $ 699	2

[24] FADA Response to Interim Project, 2003-2004 correspondence between FADA and the AG's office, and news alerts provided by FADA to the Commerce Committee on September 20, 2007 (on file with the Commerce Committee). A representative of the AG's office indicated that 62 investigations were opened in 2003, but that all had been resolved.

[25] Florida Automobile Dealer Association, *Special Alert*, July 28, 2003 (on file with the Commerce Committee).

[26] While the number of survey responses may be few, they are informative.

[27] While the number of survey responses may be few, they are informative.

TABLE 2
Used Car Dealers

Fee Amount	# of Dealers
<$100	9
$ 100 - $ 199	15
$ 200 - $ 299	7
$ 300 - $ 399	9
$ 400 - $ 499	3

Limits on Pre-Delivery Fees in Other States

At least 13 states impose limits on pre-delivery service fees[28] in the following manner: Arkansas--$129;[29] California--$55;[30] Illinois--$55;[31] Louisiana--$50 ($35 documentation fee plus $15 notary fee);[32] Maryland--$100;[33] Michigan--$170;[34] Minnesota--$50;[35] New York--$45;[36] Ohio--$250;[37] Oregon--$50;[38] Texas--$75;[39] and Washington--$100.[40]

Additional State Initiatives

In recent years, several states have expanded notice requirements to consumers of dealer charges and fees.[41] For example, California recently passed a Car Buyer's Bill of Rights[42] which, among other requirements, prohibits motor vehicle dealers from excluding from the advertised price of a vehicle, all costs to the purchaser at the time of sale, including the dealer document preparation charge.[43] A 2007 Arkansas law also requires notice to customers of the fee in the form of a disclaimer noting that the fee is not a government fee and may result in profit to the dealer. Notably, the Arkansas law permits dealers to charge a "service and handling fee" to handle, process and store documents, as well as, other administrative and clerical services, or to recover costs.[44]

Consumer Initiated Lawsuits

While consumers have the option of filing civil actions under FDUTPA to remedy violations of the act,[45] arbitration and mediation clauses in motor vehicle sales contracts, which require consumers to waive jury trials, may hinder this action. However, Florida consumers have attempted to seek redress in this manner.

In 2002, a Florida consumer filed a federal action challenging the legitimacy of charging pre-delivery service fees, and alleging violations of the federal Sherman Antitrust Act,[46] the Consumer Leasing Act,[47] and common law breach of contract.[48] However, the merits of the case—whether the plaintiff should have been charged a dealer fee when he chose to exercise his purchase option after leasing a car—were left unresolved, since the case was settled after the lower court's denial of class certification was affirmed.[49]

A Florida class action filed in 2005 challenges a dealer's practice of advertising a pre-delivery service fee as "administrative and state fees," and failing to include the disclosure statement required by s. 501.976(18), F.S., as a violation of FDUTPA.[50] The

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[28] The terms used for this fee vary widely across the states.
[29] 2007 Ark. Acts 366 (HB 1718).
[30] Cal. Vehicle Code § 11713.1(e) (2007).
[31] 815 Ill. Comp. Stat. 375/11.1 (2007). The fee was set at $40 in 1992, but is adjusted each year to the percentage of change in the Bureau of Labor Statistics' Consumer Price Index.
[32] La. Rev. Stat. Ann. Section 969.18(A) and (B), (2007).
[33] Md. Code Ann., Transp. Section 15-311.1(b)(1)(ii) (2003).
[34] State of Michigan, Department of Labor and Economic Growth, Office of Financial and Insurance Services, Bulletin 2007-01-CF, *In the matter[of] Documentary Preparation Fee adjustment under the Motor Vehicle Sales Finance Act,* available at http://www.michigan.gov/documents/cis/2007-01-CF_184979_7.pdf, last visited 11 September 2007 (describing change in statutorily defined fee as provided in Mich Comp. Laws Section 492.113(2)(a)).
[35] Minn. Stat. § 53C01, Sub d. 2 (2007).
[36] N.Y. Comp. Codes R. & Regs. Tit. 15, § 77.8(c) and (d) (2004). Dealers may also charge a maximum fee of $5.00 as a special plate processing fee (N.Y. Comp. Codes R. & Regs. Tit. 15, § 78.19(d) (2004).
[37] Ohio Rev. Code Ann. § 1317.07 (2007).
[38] Or. Admin. R. 137-20-0020(2)(k).
[39] Tex. Fin. Code Ann. § 345.251 (1997).
[40] 2007 Wash. Laws 155 (SB 6129).
[41] For a general discussion regarding recent national developments regarding such fees, *see,* Jennifer Saranow, *Paperwork Is A Rising Cost For Car Buyers*, Wall Street Journal, Oct. 3, 2006, http://online.wsj.com/public/article_print/SB115983616457080652.html.
[42] Cal. Vehicle Code § 11713.1(e) (2007).
[43] Cal. Vehicle Code § 11713.1(c)(1) (2007).
[44] 2007 Ark. Acts 366 (HB 1718).
[45] Section 501.211, F.S.
[46] 15 U.S.C. § 1, et. seq.
[47] 15 U.S.C. § 1667.
[48] *Zelman v. Nissan Motor Acceptance Corp.*, Case No. 02-10298 HH (11th Cir. 2002), Appellant's Initial Brief, 2002 WL 32303527, (March 7, 2002)(on file with the Commerce Committee)
[49] *Zelman v. Nissan Motor Acceptance Corp.*, 57 Fed. Appx. 415 (11th Cir. 2002), affirming, Case No. 97-10062-CV-NCR (S.D. Fla. 2002).
[50] *Chrzanowski v. S.D.S d/b/a Lexus of Jacksonville,* Case

case remains pending in Florida's First District Court of Appeal.[51]

Consumers in at least one other state have initiated a class action suit relating to dealer fees. In New Jersey nearly every motor vehicle dealer in the state was named in a 2003 suit targeting "documentary fees" related to obtaining registrations and titles.[52] The case, involving 397 dealers and close to 5 million vehicles, was settled in 2005. The settlement grants consumers a $100 coupon off of their next purchase or lease from the dealership from which they purchased their vehicle in addition to refunds of the documentary fees.[53]

Summary

In summary, the law requires that the pre-delivery service fee be disclosed on all binding contracts related to the sale and be included in the advertised price of the vehicle. The Attorney General has investigated irregularities and violations of the advertising requirements.

Consumers may not be specifically aware that the pre-delivery service fee is imposed, or of the amount of the fee, prior to receipt of the Buyer's Order. The law requires that the fee be "included" rather than "specifically delineated" in the advertised price. Furthermore, Florida law does not require that the fee be delineated on the dealer window sticker.

Survey research indicates whether fees are charged by dealers and the amount of such fees, which varies from dealer to dealer. According to survey results, most dealers impose a pre-delivery service fee. While a small number of dealers surveyed charge no fee, those that do impose fees ranging from $100 - $699.

State laws across the nation also widely differ. Staff research found that while several states have imposed caps on pre-delivery service fees, ranging from $45 to $250, others impose no caps at all.

RECOMMENDATIONS

Should the Legislature choose to address the issues identified in this report, it may consider expanding the notice requirements for the dealer imposed pre-delivery service fee, or, as other states have done, impose a cap on such fees.

No. 2005-CA-005434 (Fla. 4th Cir. Ct. 2005).

[51] The lower court allowed class certification and denied the dealers' motion to arbitrate. Both issues are on appeal and will be argued at the 1st DCA on October 17, 2007.

[52] Charles Toutant, *Car-Dealer Class Actions: Coupons for Clients, Big Bucks for Lawyers*, N.J. Law Journal, November 3, 2004, http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1099217133803.

[53] *Cerbo, et. al. v. Ford of Englewood, et. al.*, No. BER-L-2871-03, 2005 WL 1252568 (N.J. Super. Ct. Law Div. May 16, 2005); *see also*, David Schwab, *Dealer will pay car owners after overcharging for fees*, Star Ledger Staff, July 10, 2005, http://www.nj.com/news/stories/0710_dealers.html.

EXHIBIT Y

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF AIKEN

Heather Herron, et al.,

Case No.

Plaintiffs, 2006-CP-02-1230

vs.

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

Defendants.

DEPOSITION OF: HEATHER HERRON

DATE: June 25, 2009

TIME: 10:10 a.m.

LOCATION: Richardson, Plowden & Robinson, P.A.
1900 Barnwell Street
Columbia, SC 29201

TAKEN BY: Counsel for Plaintiff

REPORTED BY: KENNETH McCLURE,
Registered Merit Reporter

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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(Index at rear of transcript)

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STIPULATION

It is stipulated by and between Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent waives reading and signing of this deposition.

* * * * * * * * * * *

HEATHER HERRON,
Being first duly sworn, testified as follows:

EXAMINATION

BY MR. HAMM:

Q. Good morning.
A. Good morning.
Q. How would you like me to refer to you, as Miss Herron, Heather? I want to do whatever you deem to be respectful.
A. "Heather" is fine.
Q. My name is Steve Hamm. With me is Joan Hill. We are legal counsel for Land Rover of Columbia, an organization that I understand you have done business with.

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A. Yes.
Q. We're taking this deposition under the Rules of Civil Procedure of South Carolina. I want to make sure that, when I ask you a question, if you have any doubts about what I have asked or it is not clear, I simply ask that you tell me you don't understand, ask me to repeat it or whatever.

I have a tendency at times to talk very quickly. I invite you to ask me to slow down. It will make the court reporter happy as well.

Have you had your deposition before?
A. Never.
Q. Never?
A. First time.
Q. Then let me remind you that, once we begin this deposition, even when we take breaks, you can't discuss, during the deposition, with Mr. Brady or with anyone else, the substance of your testimony. I'm not concerned that you are going to, I'm just reminding you what the rules require.

Are you taking medications or are you under any treatment that might affect your ability to answer truthfully or to remember events that have taken place in the past?
A. No.

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Q. And you understand that you are under oath and that, being under oath, you have made an oath that what you are going to testify to is the truth as you best understand it?
A. Yes.
Q. Okay. One of the things that I need you to do is to make sure, when you answer a question to me, you don't shake your head. Since this deposition is being taken verbatim by a court reporter, a head nod would be impossible for the court reporter to decipher, so I need to you answer in verbal form.
I'm going to want to talk to you about your lawsuit against Land Rover of Columbia and your understanding of the events. We have all reserved objections except to form, so it may be that I will ask you a question, and Brady will say "object to form." You are still to answer the question. Brady is protecting his rights about the question that I ask, but he is raising the objection. You still have an obligation to answer. Do you understand that?
A. Yes.
Q. Okay. I've already told you where the facilities are. If at any time you need to take a

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break, that not a problem. All right?
A. Okay.
Q. You have already stated for the record your full name, but what did you say your middle name is?
A. Marie.
Q. I have it down as "Murphy."
A. Murphy is my maiden name.
Q. Is it M-A-R-I-E?
A. Yes.
Q. So you were born Heather Marie Murphy?
A. Yes.
Q. Okay. Have you ever been known by any other names?
A. No.
Q. Have you ever filled out any legal documents on which you have referred to yourself in a name different than Heather Marie Murphy or Heather Murphy Herron?
A. Not that I recall.
Q. Where were you born?
A. In Dayton, Ohio.
Q. And you were born on January 8, 1970?
A. Yes.
Q. I got that from your driver's license.
A. I know.

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Q. What is your social security number?
A. 248-91-8391.
Q. All right. In response to a question from the court reporter, you indicated your address as 324 Sharebrook Lane, Columbia. And that is in Lexington County?
A. Yes.
Q. How long have you lived there?
A. Five years.
Q. And, before that, where did you live?
A. I don't remember the address, but it was in Highland Creek -- it was on Highland Creek.
Q. Okay.
A. Chestnut Hills Plantation is the name of the subdivision.
Q. What I really want to know is, what county are you currently living in? Lexington County?
A. I think that was Lexington County as well.
Q. Where you live, is that a house, a condo, what is it?
A. It's a home.
Q. That is your home?
A. Yes.
Q. You and the bank own it together?
A. Yes.

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Q. Me too.
All right. You have lived in Chestnut Hills. How long have you been in the Columbia area?
A. Columbia area?
Q. Yes.
A. Since 2000. And I was married in 1990, so, from 1990 to 1999 or 2000, I lived in the West Columbia area. And prior to that, I lived in Pelion, South Carolina.
Q. All right. So have you ever lived in Richland County?
A. Chestnut Hills Plantation may have been Richland. The school district is Lexington Richland Five. I can't remember if it's Lexington or Richland.
Q. Talk to me about any of your relatives that live in either Richland County or Lexington County.
A. Relatives by marriage or --
Q. Relatives by marriage, by any familial connection.
A. In Richland County, I don't believe that I have any relatives in Richland County. In Lexington County, my sister lives in Lexington County.
Q. Could you identify the name of your sister?
A. Holly Langenburg.

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Q. Can you spell that?
A. L-A-N-G-E-N-B-U-R-G. And her husband, Aaron.
Q. Can you spell that?
A. A-A-R-O-N.
Q. A-A-R-O-N?
A. Yes.
My husband lives in Lexington County with me. And his parents live in Lexington County.
Q. And give me those names, please.
A. My husband's name is Brian, with an I, Hardy, H-A-R-D-Y.
Q. B-R-I-A-N?
A. That's correct.
Q. All right. And you don't use his name as your --
A. No, I do not.
Q. You didn't take his name in marriage?
A. I have not.
Q. Okay. Any other relatives in Lexington County? We've identified your sister, Holly. We've identified your husband, Brian. Who else? What about children?
A. They're all dependents.
Q. Okay.

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A. And they live in my home.
Q. What is the age of the oldest?
A. She's 18 and her name is Lunden -- it is L-U-N-D-E-N -- Herron.
Q. L-U-N-D-E-N?
A. Yes.
Q. And she's 18?
A. She's 18.
Q. Okay. And there are other children, all younger than 18?
A. Yes.
Q. How many other children are there? I don't need to know their names.
A. I have two other stepchildren. I have two stepchildren and two other children, biological children.
Q. Brian Hardy, do I understand he would be your second husband?
A. That's correct.
Q. Where is your first husband?
A. He is in Richland County.
Q. And what is his name?
A. Tobias Herron.
Q. T-O-B-I-A-S?
A. That's correct.

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Q. Herron. Okay. What does he do?
A. He worked for Michelin.
Q. Okay.
A. And he is married as well, and her name is Wanda Herron.
Q. Okay. And when did you marry Tobias Herron?
A. 1990.
Q. And that marriage ended when?
A. 2001.
Q. And you married Brian --
A. In 2007.
Q. Okay. Well, happy new marriage.
A. Thank you.
Q. Have we missed anybody?
A. My husband's parents live in Lexington County.
Q. Why don't you tell me their names, please?
A. Steve and -- Steve Hardy and Deborah Hardy.
Q. Okay. Was there anyone else?
A. Steve actually remarried. Steve Hardy.
Q. Steve Hardy being the father of Brian Hardy?
A. That's correct.
Q. All right.

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A. And the previous wife's name -- she lives in Lexington County now. I know it's confusing.
Q. I'm doing fine.
A. Brian's parents are Steve and Deborah Hardy, and Brian's -- my husband's stepmother's name is Brenda Hardy.
Q. Okay.
A. I think that's it.
Q. I think I'm navigating all this. Have we got anyone else in Richland or Lexington County?
A. No.
Q. You have spoken of your sister, and I think I have understood you to say she is your identical twin?
A. That's correct.
Q. Are there any other children, brothers or sisters of yours, other than your sister, Holly, living in Lexington County or Richland County?
A. No.
Q. Does your husband have any siblings that live -- does Brian Hardy have any siblings that live in Lexington County or Richland County?
A. Yes. Brother, Robert Hardy.
Q. Where does he live?
A. In West Columbia.

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Q. Anybody else?
You didn't realize this was going to be a family-tree thing, did you?
A. I know.
I think that's it.
Q. Is the brother married?
A. No, he is not.
The brother of my husband?
Q. The brother of your husband.
A. No, he is not.
Q. Let's talk a little bit about your educational background.
A. Okay.
Q. Where did you graduate from high school? In Ohio?
A. No. Pelion High School.
Q. When did you come to South Carolina?
A. I want to say, 1983. '82, '83.
Q. You graduated from Pelion High School what year?
A. 1988.
Q. Any schooling after high school?
A. I have not finished any bachelor's degree. I'm actually a student now.
Q. Okay.

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A. I've taken classes at Midlands Tech and Columbia College.
Q. What is it you are studying?
A. History.
Q. Where are you in that process?
A. I honestly don't know. It's slow. I try to take a class a semester.
Q. Okay. When did you start taking these classes at Midlands Tech or Columbia College?
A. Midlands Tech was right out of high school.
Q. So that would be 1988 or '89?
A. Yes.
Q. Okay.
A. I started a family. I did take a few classes through that eleven-year process, but I don't recall when.
Q. Okay.
A. And then I started taking classes at Columbia College in 2000. And just finished a class this spring.
Q. Okay. And the goal at the end of that process would be to have a bachelor's in history?
A. Yes.
Q. Do you have some plan what you are going to do with a bachelor's in history?

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A. Just to finish.
Q. Okay. I think I have -- the only child that you have that's 18 or older is Lunden, right?
A. That's correct.
Q. What does she do?
A. She is currently working part-time in the office that I work in. And then she'll be a student next semester at Trident Technical College.
Q. So you, your sister and your daughter are employed by Mr. Harpootlian?
A. Yes, we are.
Q. A real family deal here.
What does Brian Hardy do?
A. He works for Smith's Medical.
Q. What is Smith Medical?
A. They sell medical devises.
Q. All right. You graduated in 1988, took some time to have your family, and you have taken classes at Midlands and Columbia College. What I want to do now is talk about your work history.
A. Okay.
Q. Up until today. Let's start in 1988, at least as the beginning point, when you got of high school, and please share with me where you worked.
A. I worked at Golden Hills Country Club.

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Q. That's on 378?
A. It is.
Q. Okay. That's in what time frame?
A. Right when I graduated high school. I was actually working there when I was in high school.
Q. Okay.
A. And I worked there until, probably, 1991, '92.
Q. What did you do at Golden Hills?
A. I worked in the restaurant. I worked in the pro shop.
Q. Are you a golfer?
A. Yes.
Q. Any good?
A. No.
Q. Me either.
We have Golden Hills. What's next?
A. Then I was a stay-at-home mom.
Q. Okay. And at this point, you are married to Mr. Herron?
A. Yes.
MR. HAMM: For the record and for Brady, since we have put in the call to the clerk of Judge Early, she indicated she might call me back. Normally, I wouldn't leave my phone. I just wanted

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you to be aware.
MR. THOMAS: That's fine.
Q. You were a mom, which is an ongoing occupation.
A. Yes.
In, I believe it was, 1988 or the beginning of 1989, I went to work for Greg Harris, who is an attorney here in Columbia.
Q. Okay. What did you do for him?
A. Just legal assistant, secretary, receptionist.
Q. How long did you work for Mr. Harris?
A. I left in – I believe I left in October of 2000, and was offered a position with Mr. Harpootlian.
Q. Golden Hills, working on your family, Greg Harris. October of 2000 is when you joined Mr. Harpootlian?
A. Uh-huh. And in between, when I was a stay-at-home mom, when my sister -- because my sister went to work for Mr. Harpootlian in 1995, and, when she would have children, I would come in and work for her the six weeks that she was out for maternity leave, and she had two children before I actually came to work in 2001.

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Q. Is your sister, Holly – what is the age of her oldest child?
A. Ten?
Q. Okay.
A. Nine or ten.
Q. And maybe you told me. Did you tell me what your sister's husband's name is?
A. Aaron.
Q. You did tell me that. Okay.
So we're now in October of 2000, and you are leaving Greg Harris' law office, and you are going to Mr. Harpootlian's law office.
A. Yes. I think that's the time frame.
Q. And what is your -- do you have a job title?
A. Legal assistant.
Q. What does that mean?
A. What does "legal assistant" mean?
Q. Yes.
A. What are my job duties?
Q. Yes.
A. Is that what you are asking?
Q. Yes, ma'am. I'm sorry. In the context of working for Mr. Harpootlian, are you a legal assistant to Mr. Harpootlian?

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A. To the firm. We have another attorney in the office, and I work a lot with him.
Q. That would be?
A. Graham Newman.
Q. Tell me what you do in your role as a legal assistant.
A. We put files – I mean, I'm confused by the question.
Q. Here, let me be more specific. Maybe that will help you.
Do you draft any documents?
A. Do I draft them? Not normally.
Q. Okay. Do you review documents that may come in during like discovery or get them in order or --
A. Yes.
Q. So part of your job duties is to review documents?
A. On the cases that are assigned to me, yes.
Q. Okay. Is this case a case on which you are working?
A. I have done a few things on the case, but it's not solely my responsibility.
Q. What have you done generically? I'm not asking you to disclose any – I'm just trying to

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understand. You are a plaintiff in this case. You work for the law firm. I understand that. I just want to understand what you do with regard to this lawsuit.
A. I haven't done anything in quite a while. I don't even review the files. I mean, the receptionist puts everything in the file. Earlier on, I may have done some things, but I don't specifically remember. I don't specifically remember. There may have been some correspondence, but I don't specifically remember.
MR. THOMAS: Want to take a quick break?
MR. HAMM: Of course.
(There was a discussion off the record.)
(A recess was taken.)
Q. I apologize for the delay, Heather. We had to deal with some matters. I didn't want you to think we were ignoring you or not trying to treat you with respect.
All right. We were talking about your service at Mr. Harpootlian's law firm. You indicated you are a legal assistant and provide legal assistant work to both Graham Newman and to Mr. Harpootlian?
A. Yes.

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Q. You have indicated you have been there since October of 2000. Who do you consider to be your boss?
A. I work for both Graham and Dick, but Mr. Harpootlian signs my check.
Q. Makes sense to me.
On a day-to-day basis, who do you report to? I mean, is there someone, from an administrative standpoint?
A. That I report to?
Q. Yes.
A. No. There is seven of us in the office, and we independently work.
Q. Okay. You indicated that you have reviewed documents. I think you indicated you didn't draft pleadings.
A. No, I do not draft pleadings.
Q. In the course of a lawsuit that Mr. Harpootlian might be involved in, talk to me about what you do with documents. Let me start there.
A. What I do with the documents.
Q. Something comes in and has something to do with a law case that you might be working on. Do you review the documents?

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A. I do review the documents.
Q. Do you consider yourself trained in reviewing documents?
A. I'm not sure what you mean by "trained." If it's a case that I am assigned to, I review the documents.
Q. Okay.
A. I check and make sure it's calendared properly. I don't do the initial calendar, but I do check to make sure that it is calendared properly. I don't file. Somebody else does all the filing.
Q. Is that simply so you have a uniform system of filing that you don't personally do it?
A. We have someone who files at our office. I don't, personally.
Q. That is not because they don't think you can file, that is just not the way your system is set up?
A. That's correct.
Q. When you say you review documents, I'm trying to understand what that means.
A. I read them.
Q. Okay. And after you have read them, whatever information --
A. Right. If there is something that needs to

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be done, if discovery comes in, something that I need to do is to type in the discovery and begin responding to the discovery.
Q. Okay.
A. If there are motions that need responses to them, I make sure the attorneys know that the response to the motion is due on this certain date, and we talk about the contents of the motion.
Q. Okay.
A. I do all the federal filing in our office for the cases that I'm involved in. I actually do the -- you know, file the ECF documents.
Q. Okay. Have you been promoted during your period of service with Mr. Harpootlian?
A. No.
Q. Are you involved in any other business activities, or have you been involved in, you know, other money-making enterprises besides working for Mr. Harpootlian?
A. Yes.
Q. Okay.
A. I have five rental properties, so I am the sole member of an LLC.
Q. Where are they located? Which county?
A. Most of them are Richland County. One is

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in Lexington County and the rest are in Richland County.
Q. Okay. And do those tenants recognize you, individually, as the landlord?
A. One of them is handled by a rental agency. The other four, I do -- I am the landlord, yes.
Q. You say four. Are they in Richland County?
A. Three of them are. One is in Lexington County. The checks go to the LLC. The checks are written to the LLC and not to me individually.
Q. What is the name of the LLC?
A. American Vision.
Q. Is that V-I-S-I-O-N?
A. Yes.
Q. Any significance to the "Vision" part?
A. No.
Q. Any other business activities different than your work as a legal assistant?
A. I am a 20 percent investor -- maybe 10 percent investor, now, in a business called Nutritious Dining.
Q. What is that?
A. A gourmet meal delivery service. But other than just an initial stake in it, I don't have any activity at all in it now. And, actually, I am

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pulling out of that business.
Q. Is that a business that you have operated out of your home?
A. No.
Q. You just have invested in it?
A. Yes.
Q. Tell me what you did to prepare for this deposition.
A. Other than meeting with Brady this morning for an hour or so, that was it.
Q. What documents did you take a look at?
A. My sales receipt, sales form, from Land Rover of Columbia.
Q. Anything else?
A. No.
Q. Without mentioning substance, anybody else other than Brady that you talked with in preparation for this? Did you talk to Mr. Harpootlian in preparation for this?
A. No.
Q. I think you told me you hadn't had your deposition taken before. Am I remembering that correctly?
A. That's correct.
Q. Have you been involved in any other

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lawsuits where you have been a party for or against, or a witness in any other lawsuits?
A. Yes. I have been a plaintiff in my divorce case.
Q. Okay.
A. I'm actually a defendant in the divorce case now. It's a something that was subsequent to -- I'm a defendant. My ex-husband has brought a lawsuit for child support reduction.
Q. Okay.
A. And that's pending. And then, unfortunately, I have a lawsuit pending against the gentleman who put two new air-conditioning units in my home.
Q. Is that lawsuit proceeding or is it resolved?
A. Which one?
Q. The air-conditioning.
A. It is -- I have a judgment against him, but it is still --
Q. So it has proceeded to the judgment stage?
A. Yes.
Q. Whether you collect is another issue?
A. That's correct.
Q. Where has that lawsuit been filed?

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A. Everything has been filed in Lexington County.
Q. I'm assuming your divorce matter is in Lexington County.
A. That's correct.
Q. Any other cases where you have been called as a witness?
A. Called as a witness.
Q. Two parties are having a lawsuit, but somehow or another they think that Heather Herron knows something about it and wants to call her as a witness.
A. Not that I can recall.
Q. Do you know who Natalie Armstrong is?
A. I believe she is a plaintiff in this matter, a named plaintiff.
Q. Ever talk to her, met her?
A. No.
Q. Never?
A. Never.
Q. What about Michael Ritz?
A. I believe he is also a named plaintiff.
Q. Have you talked with him?
A. No.
Q. Met him?

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A. No.
Q. Never met him?
A. Nor have I talked to him.
Q. But you know he is a plaintiff?
A. I believe he is. The name sounds familiar.
Q. What about Michael Blease?
A. I think he is also a named plaintiff.
Q. Ever talked with him or met him?
A. No.
Q. But you know he is a plaintiff?
A. I believe he is.
Q. What about Julie Freeman?
A. I just assume, because you are asking, that she is a named plaintiff, but I'm not sure on that.
Q. I should conclude, obviously, you haven't met her?
A. Correct.
Q. What about Alison Dannert?
A. She was a named plaintiff, maybe. I believe I have met her.
Q. Have you had any conversations with her prior to or getting ready for this deposition?
A. No. But I believe I know who she is.
MR. HAMM: Let's see. Where are we on Watts?

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MR. THOMAS: I think Christine is on appeal.
Q. Do you know Christine Watts? I'm actually thinking more of Michael.
A. No, I don't.
Q. Have you ever met Michael Watts?
A. No.
Q. Do you know who -- do you know David Carroll?
A. I know a David Carroll, but I know him -- I know a David Carroll who is involved in a lawsuit in our office, but I don't know a David Carroll -- I've never spoken to him.
Q. Do you know whether that David Carroll is involved in any aspect of this?
A. I do not.
MR. THOMAS: For the record, there is no way it is the same guy.
MR. HAMM: Okay.
Q. So at this point you are telling me, in order to get ready for today, you met with Mr. Thomas, you looked at, I guess, what I understood you to say, sort of the documents in your transaction. Anything else you might have done?
A. I've only looked at one document, and that

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was the sales form. That was the only document.
Q. We'll go through the documents in a little bit. Have you read the complaint in this lawsuit?
A. I'm sure I have.
Q. How recently? When might that have happened?
A. At the very beginning.
(Defendant's Exhibit 1, consisting of 28 pages, first page being Summons, Civil Action No. 06-CP-02-1230, State of South Carolina, County of Aiken, Court of Common Pleas, Heather Herron, et al., Plaintiffs, v. CarMax Auto Superstores, Inc., et al., Defendants, was marked for identification.)
Q. Let me hand to you what has been marked as Defendant's Exhibit No. 1.
I don't mean to throw it at you.
A. That's fine.
Q. Do you recognize that document?
A. I have seen it. I'm not sure that I have read it from cover to cover, but I have seen it.
Q. When you say you've seen it, when do you think? I'm trying to just get a time frame here.
A. Gosh. It has been a long time.
Q. Do you think you saw it before it was filed, after it was filed?

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A. I don't recall.
Q. What do you understand this Exhibit No. 1 to do? I mean, what is your understanding of what these pleadings do, or claims?
A. This specific?
Q. Yes.
A. It is --
Q. You are listed as a plaintiff on Exhibit 1, in which you are asserting you are suing a large number of automobile dealers. You agreed to be a plaintiff in this lawsuit?
A. Yes, I did.
Q. So a lawsuit was filed under your name?
A. I'm a part of the lawsuit, yes.
Q. What do you understand this lawsuit was supposed to accomplish?
A. My understanding is it was a lawsuit brought on behalf of Land Rover of Columbia because of the administrative fee that I was charged when I purchased a vehicle, and I don't --
Q. Anything else?
A. That the fee was unfair and unjust, and I didn't know about the fee until later in the game.
Q. Okay.
A. When purchasing the car.

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Q. Okay. Are there any other aspects of your understanding of this lawsuit that you have not shared with me?
A. Well, I understand I'm a named plaintiff for a group of individuals who bought a car from Land Rover of Columbia and were also charged this fee. And I understand that there are other named plaintiffs in the lawsuit as well.
Q. All right. Anything else?
A. If you would like for me to read it and give you an opinion on what I think ...
Q. No. You have told me you read it and you are a named plaintiff, so I'm just trying to understand what you understand about a lawsuit that you agreed to participate in against Land Rover and a large number of other dealers.
A. Right. I stated that I saw it. I don't know that I stated I read it from cover to cover. And if I did read it from cover to cover, it's been a very long time.
Q. This lawsuit was filed on August 29, 2006. Going back in my memory, your transaction was in February of 2006.
A. I believe so.
Q. I think that's correct. At what point

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after you bought this vehicle from Land Rover did you decide that you wanted to participate in a lawsuit against Land Rover?

A. Had to have been between February and August. I honestly don't know. Somewhere between February and August.

Q. What happened sometime between February and August to cause you to say, you know, I want to sue those people who sold me that vehicle?

A. I remember being upset about or being angry about the administrative fee, and not having a resolution or not having a good explanation to why I was charged the administrative fee. At some point, I talked with Dick about this. And then it was just later -- I can't even remember who came to me, but it was later that they talked to me about --

MR. THOMAS: I will caution the witness not to talk about the substance of what you talked about.

MR. HAMM: I am not asking --

MR. THOMAS: I think she was about to say "I talked to him about." I know Steve is not asking for it.

Q. Okay. When you say "no explanation," I'm trying to understand. The dealership refused to

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explain the fee to you?

A. The individual at the dealership couldn't give me a clear explanation what the administrative fee was.

Q. Okay. Again, you told me that, sometime between the dates you purchased the vehicle and this lawsuit -- Exhibit No. 1 was filed on August 29, 2006. Help me go back in terms of, at what point did you say: I'm going to sue those people?

A. I don't know.

Q. You don't know?

A. I really don't remember.

Q. At the time you were purchasing the vehicle, did you believe they were charging you an improper fee at the time of the purchase?

A. At the time of the purchase, I was upset about the fee because it was nonnegotiable and I didn't understand why it was already imprinted on the form. And I didn't get a good resolution of what the fee was for. Did I walk out of the store saying I was going to sue them? No.

Q. But you just told me that you specifically asked about the fee during the transaction, or this came to your attention later? That is what I'm trying to get clear in my mind.

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A. No. After the negotiations, after negotiating the price of the vehicle -- and I was there for some time.

Q. Okay.

A. I remember sitting down, looking at the piece of paper, the sales slip, and, as they were going through the numbers, I asked: What is this? And the salesman couldn't answer me.

Q. Who was the salesman? Who was that person?

A. I can't remember. I think it's listed on the sheet.

Q. Can you describe him? I'm trying to get clear in my mind that we're talking about the same person.

A. This was a while back. Three years ago. I think it was a large man. He had to have been taller than myself. And he was a white man. I don't know.

Q. All right. And he was -- your testimony is that he was unable to explain it to you?

A. He did not give me a satisfactory answer.

Q. All right.

A. Yes.

Q. So you purchased the vehicle. You're testifying that you didn't get a satisfactory

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answer. This is in February. This lawsuit gets filed in August of 2006. At what time do you say -- I'm trying to narrow it down, to the extent that we can. At what point did you reach the point where you concluded that you wanted to actively participate in a lawsuit against Land Rover?

A. Are you asking me for a time frame?

Q. Yes, ma'am.

A. A month. I know it wasn't immediately after. It must have been some months after. I honestly don't know.

Can I clarify something? You had stated that I purchased the vehicle and then I didn't get a clear answer on the administrative fee. I didn't get a clear answer on the administrative fee before I purchased it, and then nor did I get a clear answer to the administrative fee after I purchased it.

Q. Okay.

A. I wanted to clarify that. Because we discussed the fee prior to me -- right prior to me signing the paperwork, sitting down and writing a check and signing the paperwork.

Q. So you knew about the fee?

A. I knew about the fee when --

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Q. And you had concerns, but you proceeded to purchase the vehicle?
A. I couldn't purchase the vehicle without paying the fee. If I wanted the vehicle, I had to pay the fee.
Q. I'm going to now give you what is marked as Exhibit No. 2.
(Defendant's Exhibit 2, consisting of 10 pages, first page being Plaintiff's Corrigenda, Civil Action No. 06-CP-02-1230, State of South Carolina, County of Aiken, Court of Common Pleas, Heather Herron, et al., Plaintiffs, v. CarMax Auto Superstores, Inc., et al., Defendants, was marked for identification.)
MR. THOMAS: And we'll give the court reporter the marked one.
Q. I am handing to you what has been previously marked as Defendant's Exhibit 2, Plaintiff's Corrigenda.
Are you one of the plaintiffs in this case?
A. Yes.
Q. What is this document?
A. Well, it says: Due to a scrivener's error, the caption of the complaint and paragraph 84 of the complaint mistakenly included as defendants "all

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motor vehicle dealers as defined in" yadda-yadda-yadda. The proper caption should have stated "all motor vehicle dealers as defined." This looks like something that was filed with the court because there was a scrivener's error.
Q. Were you involved in the preparation of this document?
A. No.
Q. Were you aware that this document was being filed?
A. I'm sure I've seen it. But I was not involved in preparing the document.
Q. Before we go further in this Land Rover transaction, I want to get clearer in my mind about your previous vehicles. Are you aware of the responses to discovery that have been filed on your behalf?
A. I know that there are some discovery responses. I don't know they have been served yet, but I do know there were some discovery responses in this case.
Q. Did you verify the accuracy of the responses we have received to date?
A. I spoke with Brady about the discovery responses, but I don't remember if I signed a

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verification or not.
Q. So it wouldn't surprise you if you have not signed a verification of your discovery responses?
A. I don't know if I have or if I haven't.
Q. As a legal assistant of Mr. Harpootlian, have you authorized them to file pleadings responsive as to you without your reading and verifying them?
A. I don't know what my -- what my being a legal assistant with Mr. Harpootlian has to do with filing documents in this case.
Q. Okay.
A. If you are asking me on an individual basis, I trust the judgment of the attorneys that are representing me in this case.
Q. Okay.
A. So if I signed a verification -- I don't know if I signed it or not, but I trust their judgment.
Q. So they are authorized to file materials that you haven't read?
A. They are my attorneys. If they file -- and I don't know that I haven't read it.
Q. But you don't know whether you have, I guess?

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A. No, I do know that I've discussed the discovery responses.
MR. THOMAS: And I'm cautioning the witness again -- and I'm sure Mr. Hamm is not asking you for the substance of any conversations you had.
MR. HAMM: I am not.
MR. THOMAS: I just want to let her know not to get into -- when you say discuss this document, not to get into what it is about.
Q. Let me give you what we'll mark as Exhibit No. 3. And I'll give you that one, and we will put that there for the court reporter.
(Defendant's Exhibit 3, consisting of 13 pages, Plaintiff Heather Herron's Answers to Defendant Overland, Inc., d/b/a Land Rover of Columbia's First Set of Interrogatories, was marked for identification.)
Q. What I have handed to you has been marked as Defendant's Exhibit 3, Plaintiff Heather Herron's Answers to Defendant Overland d/b/a Land Rover of Columbia's First Set of Interrogatories.
Have you seen this document before?
A. I haven't seen it in its final stages. But I know about the form. I know about the responses. I'm familiar with the responses.

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Q. You are familiar with the responses. Did you read the final document that was sent to us? Did you read the document that was actually sent to us?
A. I did not read it in its final stages, no.
Q. In the answers to the interrogatories, you were asked to identify persons known to you concerning the facts. Obviously, we know who you are. Who is James Bacot? And I don't know how to pronounce that?
A. It is "Bacot."
Q. Excuse me.
A. He is a friend of mine.
Q. Was he with you on the day that you purchased the vehicle?
A. At some point, he was with me. And I can't recall when he was with me.
Q. You were actually at the dealership a couple of different times, were you not?
A. That's correct.
Q. You just don't know when he might have been there?
A. Yes, that's correct.
Q. You don't know how to locate your friend?
A. I have his phone number. He doesn't live

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in town anymore.
Q. Do you know what that number is?
A. I don't know it off the top of my head, though.
Q. Would you ask your counsel to supply me with that number, please?
A. Sure.
REQUEST: PHONE NUMBER OF JAMES BACOT_____
_____
Q. He doesn't live in town. Where is this person now?
A. He's in Greenville.
Q. Okay. Do you maintain any contact with him?
A. I haven't spoken to him in probably three years. He moved, and I haven't spoken to him since.
Q. Is he aware that you have named him as a witness in a lawsuit in which you are the plaintiff?
A. I did not call him and tell him, no.
Q. So he doesn't know that I now have his name?
A. I'm not sure if he knows.
MR. THOMAS: Form.
A. I don't know.
Q. And who is Steve Bonifas?

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A. That was a salesman.
Q. And Mr. O'Connor?
A. He was the general manager there.
Q. Given the fact that you have listed him, you've had some interactions with Mr. O'Connor?
A. I did.
Q. And when was that?
A. The day I purchased the vehicle.
Q. The day you purchased the vehicle, if my memory is correct, it was a Saturday?
A. It was.
Q. So it was that Saturday?
A. Uh-huh.
Q. Is that --
A. Yes.
Q. Who is Dr. Jack Frasher?
A. I believe he owns -- my understanding is, he has some involvement with Land Rover of Columbia.
Q. Did you have any interactions with him?
A. Not that I recall.
Q. So if you didn't deal with him, why are you listing him as a witness?
A. Because he has some type of involvement with Land Rover of Columbia.
Q. Back to a question I asked you earlier.

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You have clarified that you have not spoken to Mr. Bacot --
A. Bacot.
Q. -- for some extended period of time, which means you haven't talked to him about this case?
A. It has been a long time since I have spoken with John -- James, John. I don't recall speaking to him about this case, no.
Q. All right. Go to page 3, just so we are both clear. In the answer (b), under his name, "and accompanied her when she went to defendant."
A. Uh-huh.
Q. But you have acknowledged you went a couple of times, and you are unclear at the moment about whether it was the day before or the day of purchase, is that what I'm hearing you say?
A. No. He was with me there the day of the purchase.
Q. Okay.
A. But I visited the dealership more than once, and I can't recall when he came with me, at what point he was there.
Q. So you knew Mr. Bacot, obviously, prior to the time that you purchased the lawsuit?
A. Yes.

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Q. I mean: Purchased the vehicle.
A. Yes.
Q. Excuse me.
Your discovery response on page 4 to the list of the documents, have you come across any other additional documents not listed in that answer?
A. No.
Q. My understanding, based on your discovery, is that you saw a vehicle on the lot that caused you to go in and take a look at it?
A. Yes.
Q. Explain that in more detail, so I understand how that happened. Which direction were you going?
A. I get off every day at the interstate at the intersection of Piney Grove Road and I-26 to go to work.
Q. Okay.
A. And when you come down that entrance ramp, there is Land Rover of Columbia. So, every day I went to work, I'd see a car.
Q. And you were interested in -- you saw car. You see lots of cars, though, lots of times. So did you see a car? I'm trying to -- you go by other

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dealerships. Apparently, you didn't --
A. I wanted a Land Rover.
Q. Okay.
A. The lease on my Saab was up in a few months and I wanted another vehicle.
Q. Okay. You had driven by, you were interested in a Land Rover. So walk me through it. You go by the dealership on a regular basis on your way to work. Walk me through -- at some point, you literally drove onto the dealership lot. Walk me through that.
A. I did my homework.
Q. Okay. What does that mean?
A. On Land Rovers.
Q. What does that mean?
A. Just getting on the internet and looking at the different styles of Land Rovers and Range Rovers.
Q. Okay.
A. And knew that the body style was changing or had just changed. And liked the old body style of a Land Rover. And knew that the lease was up on my Saab, and liked the small -- I had a Suburban at the time, and liked the smallness of the Saab. And wanted another small vehicle, especially when my

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daughter was getting ready to drive.
Q. Okay.
A. Needed another vehicle. And, on a Saturday, I was supposed to be at work, and I had just -- yeah, just had breakfast and stopped by the dealership. They were open. It was early. I think it was early. And drove up into the parking lot and started looking at the difference between the new body style and the old body style.
Q. You make reference to Saturday.
A. I believe it was a Saturday.
Q. Okay. So your first -- I want to make sure I'm clear. Is that Saturday the same Saturday on which you purchased the vehicle?
A. Yes.
Q. Okay. So you came to the dealership, left, and came back?
A. I -- yes. I know I came in the dealership, and left, and came back. But I was at the dealership for a bit of time.
Q. Okay.
A. Before I left and came back.
Q. All right. You just made reference to a Saab. And I'm looking at your discovery response. I guess that is referring to this 2005 Saab

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convertible.
A. I don't know that it was a 2005.
Q. Page 7 of your discovery response.
A. I see it. I can't remember, honestly.
Q. You just told me that, in a few months, your three-year lease on your Saab was up. This vehicle was purchased in 2006, but this is referencing a 2005 Saab. So is this accurate or not?
A. That must be an error, because the Saab lease was up in, I think, April of 2006.
Q. Okay.
A. So it must have been a 2003 Saab.
Q. Okay. Now, the documents that you provided to us in discovery responses references a 1999 Chevrolet Suburban, and I was surprised to see that, in your discovery response, there is no 1999 Chevrolet Suburban. Where is that vehicle?
A. It must be -- when Brady and I were discussing -- when I was discussing the answers to this, I honestly don't know if -- what year the vehicle was. I think I purchased the vehicle in 2001, and it was a 1999 vehicle. The dates could easily be off. I do know that I own a 2004 Chrysler Town and Country, and I know, for sure, that I own a

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2004 Honda Accord.
Q. Do you know for sure whether you own a 2005 Chrysler Crossfire?
A. I no longer have that vehicle.
Q. The Hancock Volkswagen, the 2000 diesel, I take it you don't have that anymore?
A. No, I do not.
Q. And you don't have the Suburban anymore?
A. I do not.
Q. Did you, in any of these transactions, pay a closing fee or administrative charge?
A. I do know that, in the 2004, I did. And the other ones, I don't recall.
Q. Okay.
A. I don't know.
Q. The 2004 item --
A. Chrysler Town and Country.
Q. Okay.
A. No. I'm sorry. I apologize. No, I didn't -- I don't know about -- I don't know about the Chrysler Town and Country. I do know I paid it in the Land Rover. Not -- I don't recall. I don't.
Q. When you leased the, perhaps, 2003 Saab convertible, did you pay an administrative fee in that transaction?

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A. I don't remember.
Q. The 2004 Honda Accord, do you still own that?
A. My daughter has it, yes, sir.
Q. When was that purchased?
A. Sometime in 2007.
Q. So it would have been after you purchased the vehicle from Land Rover?
A. Yes.
Q. Okay. Did you pay a closing fee on that vehicle?
A. I don't remember.
Q. Have you filed a lawsuit against that dealership?
A. Actually, I didn't buy it from a dealership. It was my husband's car, and I just transferred the title and the loan from my husband's name into mine, for my daughter.
Q. So the statement that Plaintiff Herron does not remember the dealership from which this vehicle was purchased, you didn't purchase it from a dealership, you purchased it from your husband?
A. Right. And I don't know what dealership he purchased it from.
Q. When you -- the records in this transaction

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showed that you traded in a 1999 Chevrolet Suburban. You indicated that, on item (b), page 7, perhaps that is simply the wrong date. Were you driving that vehicle at the time you traded in -- I heard you mention the Saab convertible. Where is this Suburban? Was that just simply one of the family vehicles that you traded in?
A. Yes.
Q. Okay. Go back. Again, I'm trying to be clear. Everything happened -- whatever happened took place on one single day at Land Rover, or did you go on different days?
A. What do you mean, "everything"?
Q. Well, you told me, on a Saturday morning, after breakfast, you went to the Land Rover to look at vehicles. We know that you purchased a Land Rover on a Saturday. I'm just trying to understand -- and I thought I understood you to say that it all happened on the same day.
A. My best recollection, yes.
Q. Okay.
A. Yes, it all happened on the same day.
Q. So you decided to go to the lot to look at a Land Rover?
A. Yes.

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Q. And you drove in on that Saturday morning, whatever time that was. You are now driving in on a Saturday morning in your Saab convertible, and you are now about to get out of your car. Walk me through what happens then.
A. Well, I don't know if I was in the Saab or the Suburban.
Q. Okay. I wasn't trying to --
A. I just wanted to clarify that.
Q. I don't want to put words in your mouth. You just mentioned you were driving the Saab. It doesn't make any difference. You're in a car?
A. I'm in a car.
Q. You turn off the engine, pull out the keys, open the door. And what happened then?
A. It was a long time ago. But I remember pulling up beside or behind both the new vehicle, the new body style, and the old body style. They were sitting next to each other. And the cars were facing the road, the entrance ramp.
Q. Okay. The entrance ramp that fronts on I26?
A. Yes, uh-huh, from Piney Grove Road.
And I remember looking at both vehicles, kind of comparing the inside, the interior, just

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peeking through the windows, looking at the interior of both vehicles. I remember walking around both vehicles. Because the body styles are very different.
Q. The two vehicles that you are looking at -- I know the vehicles you purchased was a previously owned vehicle?
A. Right.
Q. And the other vehicle was new, previously owned?
A. I don't recall.
Q. Okay.
A. I just know it was the new body style.
Q. You are now peeking through the window, comparing the body style. What happened then?
A. At some point, a salesman came out.
Q. All right.
A. I believe it was Steve.
Q. Steve Bonifas?
A. Yes.
Q. The gentleman listed on page 3 of your discovery response?
A. Right. I believe he was the only salesperson that I dealt with with regards to the purchase of the car.

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Q. Right.
A. I remember asking him the differences between the two. And I knew that there was a -- if I remember correctly, there was a rebate on the newer model, the new body-style cars, and I was comparing the prices of the used vehicle that I was looking at and the new one, minus the rebate, and comparing the prices of the two.
Q. What happens then?
A. I remember we did drive -- I don't remember if we drove the new one, the new body style, but we did drive the older car that I initially looked at, the older model car. And I pulled up -- when I pulled up, I pulled up to that older model car. It was the green color that I really liked. And that's the one that we ended up test-driving. That is the one I ended up purchasing.
Q. You used the word "we" a couple of times. Who is "we"?
A. If I used "we," I didn't mean to.
Q. We looked at, we test-drove it. I'm trying to make sure I'm clear.
A. If I said "we," I don't mean we. I was there by myself for a period of time, until John came, James or John came.

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Q. Bacot?
A. Mr. Bacot.
Q. Okay.
A. He came. And if I recall correctly, he was there when we test-drove the used car that I ended up purchasing.
Q. Okay.
A. But I was there for a period of time by myself, for a good period of time by myself.
Q. So you have driven on the lot, you have compared the various body styles, you are aware of a rebate. What else was going on? I mean, you said that Mr. Bonifas apparently came out to the lot.
A. Yes.
Q. He said what?
A. I can't remember exactly what he said, but he was interested in selling me a car.
Q. He's a salesperson, so that wouldn't be surprising?
A. Right, yes.
I remember him asking, Do you want to take it for a drive? And again, if I remember correctly, John was there at this point.
Q. Okay. So John --
A. Mr. Bacot.

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Q. John is the same person as James Bacot?
A. Yes, Bacot.
Q. So he went on the test drive with you?
A. If I remember correctly, he did.
Q. Did Mr. Bacot go too?
A. Yes.
Q. So there are three of you?
A. Yes. And we took it on the Interstate.
Q. Okay.
A. And then we came -- I can't recall the route, but I do remember taking it for a test drive.
Q. Okay.
A. And then we came back. And I know the price was the big deal, because there wasn't much of a difference, with the rebate, between the used car and the brand-new one. That had a -- if I am remembering correctly, it either was a rebate or the financing was zero percent. It was one of the two. I was juggling with the price of two vehicles. But I didn't really like the body style of the new vehicle.
Q. Okay. So the vehicle you purchased was what year?
A. What year was the vehicle that I purchased?
Q. Yes.

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A. I can't remember. Maybe a 2004.
Q. I'm looking -- we'll go into it in a moment, but I'm looking at this. It is a 2003 Land Rover.
A. Okay.
Q. I am just trying for the record to be clear. You are making reference to the newer vehicle, because at this point you are on the lot, in February of 2006, you are looking at -- one of the vehicles, it is clear, that you have looked at is the one that you purchased, which is a 2003. I'm trying to get clear in my mind whether the vehicle that you are making the comparison with was a new 2006 model or some other model that is still previously owned but was built after 2003.
A. I remember Mr. Bonifas telling me that -- if I'm correct, that they don't make the Discovery anymore. They make it -- it's is called an LR4. They make a different model than the Discovery.
Q. Okay. That's what you are comparing?
A. Right. When I say "a new vehicle," it's that new model.
Q. Okay.
A. I'm not sure if it is a new vehicle.
Q. Okay. But if there was a rebate, it

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probably was a new one. Are you familiar with rebates on used vehicles?
A. No. But it may have been last year's model to rebate.
Q. Okay.
A. I remember a rebate, and I remember -- I honestly cannot recall if the rebate was applicable to the car I was looking at or applicable to a car that was similar to the new body style. I do know the rebate was for the new body style. There was a flag outside on the fence of Land Rover of Columbia with -- and I believe it said something about a very low interest rate or a rebate on the new model.
Q. Okay.
A. I believe.
Q. All right. So you have gone on the test drive, you and -- you refer to James as John. So you, John and Steve. You have taken it on the Interstate, and you now come back on this Saturday morning, at some point. Now what?
A. I can't recall if we -- at some point, we left.
Q. Okay.
A. But I cannot recall if we left after -- to the best of my recollection, we discussed the price

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of the Discovery, because I really liked the body style of the Discovery and I liked the car.
Q. Okay. I'm not trying to interrupt, but when you say "we," you and Steve and John?
A. I discussed the price of the vehicle with Steve.
Q. Okay.
A. I don't know that John was involved with me in negotiating the price of the vehicle.
Q. That's what I am asking.
A. But Steve and I discussed the price of the vehicle. I know that. And we had gotten to a point that we had agreed on the price of the vehicle. And --
Q. Was that during the test drive or --
A. I'm sure it was after the test drive.
Q. So you are back. You have had your test drive and you are back?
A. Yes.
Q. Where are you when you are having this conversation?
A. I can't recall. It was somewhere either on the lot or inside the building.
Q. But you don't recall that today?
A. I remember having -- the initial

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discussions. I don't recall if it was -- I remember discussing with Steve and with John the price between the two different cars on the lot.
Q. Okay.
A. But negotiating the price of the car that I ended up purchasing, I believe that happened within the office.
Q. Okay.
A. And not outside on the car lot.
Q. You negotiated. You were able to do some negotiating with regard to the price?
A. Yes, but I don't remember how much.
Q. Okay. You don't remember whatever you agreed upon versus whatever discount you were able to negotiate?
A. Can you repeat the question?
Q. Sure.
You indicated that you negotiated.
A. Yes.
Q. Which, at least as I'm hearing you, suggests, well, it started at one price, but I was negotiating to get a lower price. I was under the impression that you were able to do that.
A. I believe I was.
Q. But you don't remember what the first

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number was versus the second?
A. I don't.
Q. And you are not sure exactly whether that conversation is taking place out on the sales lot or perhaps in the dealership area?
A. The negotiating part?
Q. Yes.
A. I don't recall.
Q. You have told me you negotiated a lower price. Now what?
A. After I negotiated the lower price, I decided, let's trade in the Suburban.
Q. Okay.
A. And I can't remember if I came in the Suburban or if I came in the Saab. But I do know they had to see the Suburban.
Q. Right.
A. And if I remember correctly -- if I remember correctly, we -- John and I left to go get the Suburban. That's when we left.
Q. So if you left to go get it, you probably were in the Saab?
A. I must have driven the Saab up there. And if I remember correctly, we went to get the Suburban so they could evaluate the trade-in allowance for

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the Suburban.
Q. Okay. So when you left, you had already negotiated the price?
A. I believe so. I am not a hundred percent sure, but I believe so.
MR. HAMM: Off the record.
(There was a discussion off the record.)
Q. So you have now -- you believe you may have negotiated the price. If you have to go get the Suburban, obviously, you are not in it. So you and John go off and get the Suburban?
A. I believe that's what happened.
Q. Okay. You return in what time period, back with the Suburban?
A. I don't remember.
Q. Again, I'm just -- I'm not trying to be difficult. It is the same day?
A. Yes.
Q. Prior to the time that you left, you had looked at vehicles, driven the vehicle that you ultimately purchased?
A. Yes.
Q. You make a determination at some point that you're going to at least consider trading in the Suburban, because you and John leave to go get the

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Suburban, and return?
A. Yeah. And, again, I'm not a hundred percent clear that we did that, but it seems -- I recall something about that, but I'm not a hundred percent sure.
Q. Okay.
A. Because I know they had to see the Suburban.
Q. So you come back, and you are obviously returning in the Suburban if you are going to have them look at it. Now what?
A. They had to evaluate the Suburban to give an estimate, trade-in estimate.
Q. Uh-huh.
A. And I can't remember exactly what we did after that, if we waited for them to give an evaluation of the Suburban, or if we began discussing more negotiations with the Land Rover.
Q. How many times do you think you walked in and out of the dealer showroom?
A. I'm sure I walked in -- I believe, twice.
Q. So --
A. Maybe once. Wait. Well, we had to sign the paperwork inside. So it -- I know we walked in there once.

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Q. Okay. Is it possible you would have walked into the dealership more than once?
A. If we walked in -- it wouldn't have been more than twice.
Q. Okay.
A. Because it wasn't hot outside. It was February. I walked in there either once or twice.
Q. When you are going off the dealership lot, going to get the Suburban, are you talking about this transaction with John?
A. I can't remember.
Q. Okay. You have indicated you have come to the dealership, you have gone through the test drive, you have gone to get the Suburban. Do you return in the Suburban with John or are you by yourself?
A. John comes back with me.
Q. John comes back --
A. Or I know John is -- I'm not a hundred percent sure. I believe he was there with me.
Q. I understood you to say that you were a hundred percent sure that he was with you because there were three people when you did the test drive.
A. Yes.
Q. But what you are now saying is, you are not

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certain whether he was with you when you returned with the Suburban?
A. I'm not sure if he was with me when I returned with the Suburban. We live in the same neighborhood, or we lived in the same neighborhood. And he could have dropped me. I am not sure if he returned with me when I was in the Suburban.
I do know that he was there when I signed the final paperwork, because he ended up getting a hat and a shirt from Steve when we left, after the transaction.
Q. So you had somebody with you both in the first visit, and then, if he got the hat and the whatever, then he must have been with you when you returned?
A. And I believe – my best recollection is that he was only with us, or with Steve and I, for a few minutes with the test driving of the vehicle, and then I do remember him talking to somebody outside.
So he wasn't with Steve and I when we were doing some other things. He was talking to someone who had pulled up in a Corvette. Because I remember walking out and saying something about the Suburban.
And then he was there when I signed the

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papers. I don't know if he was in the cubicle – because it was like a little area. I don't believe he was standing near me, because he was trying to get a hat and a shirt from somebody.
Q. Who else did you talk to during the course of the transaction?
A. The general manager.
Q. What did he tell you?
A. Pardon me?
Q. What did he tell you?
A. When Steve – when I asked about the administrative fee, he didn't answer my question, so I asked for the general manager. And that's when Jim O'Connor came out and talked to me about the administrative fee.
Q. Are you testifying that Steve Bonifas was there that Saturday afternoon?
A. I believe so. There was a salesman there, and I believe it was Steve Bonifas.
Q. Who else did you talk to?
A. That's all I can recall, the salesman and the Jim O'Connor, who was there.
Q. Anybody else?
A. At the dealership?
Q. Anybody.

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A. I'm sorry.
Q. Pardon me?
A. Did I talk to a person?
Q. Yes, to anybody. I don't care if it was at dealership or otherwise. Who else, if anybody, did you talk to?
A. I spoke with Mr. Harpootlian on the phone.
Q. Tell me about that.
A. I told him that I was going to be late coming in because I was buying a car.
Q. All right.
A. And he told me -- I told him where I was. He told me get out immediately, those cars are trouble and very expensive and for upkeep and not to buy it. And I believe I called my sister as well.
Q. How many times did you talk to Mr. Harpootlian?
A. I know I talked to him once.
Q. Was he your lawyer at that point?
A. Was he my lawyer? No.
Q. So, in that conversation, he was not acting as your lawyer?
A. Absolutely not.
Q. You were not consulting with him as your lawyer?

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A. No, he wasn't consulting. No, I wasn't. He is a friend.
Q. Okay. What else did he tell you?
A. Just to get out of there, don't buy the car.
Q. And you listened to him?
A. I really wanted the car.
Q. So you didn't listen to him?
A. I did not listen to him.
Q. Anything else you remember about that conversation?
A. Well, if you know Mr. Harpootlian, he is very brief, so I'm sure I didn't have a long conversation with him. No.
Q. Did you tell the salesman that you needed to talk to your boss before you bought the car?
A. I don't remember saying that.
Q. Okay. Is it possible -- do you refer to him as "your boss"?
A. He is my boss.
Q. So the fact that you don't remember doesn't mean it didn't happen?
A. I don't normally refer to him as my boss.
Q. Okay.
A. If I refer to him as anything, I'd say "an

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employer" or "a friend." I've known him a long time.
Q. Okay.
A. But I don't recall saying that.
MR. THOMAS: Off the record.
(There was a discussion off the record.)
MR. HAMM: I remind you that you are not to have conversations with anybody. I am not questioning your integrity, I just want you to be aware of that.
THE WITNESS: Yes.
(The luncheon recess was taken.)
(Defendant's Exhibit 4, unsigned Land Rover Retail Buyer's Order, Deal# 3915, in name of Heather Murphy Herron, 2/25/06, was marked for identification.)
CONTINUED EXAMINATION
BY MR. HAMM:
Q. Welcome back.
A. Thank you.
Q. I am going to hand to you what that been previously marked as Defendant's Exhibit 4. If you will, identify what that document is.
A. It is the sales receipt for the Land Rover.
Q. All right. This particular document

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doesn't have your signature on it, correct?
A. That's correct.
Q. And we received this from you as part of defendant's discovery, from our discovery. Now, help me understand, where did this document come from, since, at this point, it is not signed.
A. It must have come from Land Rover of Columbia.
Q. Okay.
A. To me, from them. I don't know why it's not signed.
Q. Look at the Document. There is a sticker next to the Land Rover 0001. What is that?
A. It's a Bates label.
Q. Okay. Again, we received it from you, so what do you understand -- whose Bates label is that?
A. I'm not sure.
Q. Okay. So tell me what you remember of why it is that you have -- you have obviously had an opportunity to look at this document, because it was faxed to you, it appears. I can read in the upper part -- again, we received this from you -- "from Land Rover." I can't tell what the rest says over there on the left. So you receive a copy, from Land Rover, of your unsigned buyer's order. What do you

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remember about that?
MR. THOMAS: Object to the form.
Go ahead and answer.
A. I don't. I don't.
Q. To the extent that it was faxed to you, doesn't that suggest that you had an opportunity to study it prior to the time that you did sign it?
MR. THOMAS: Same objection.
Q. Answer the question.
A. I don't know.
Q. Do you know who circled "processing and recording fees"?
A. No, I don't.
Q. Take me -- you and I, prior to the lunch break, went through your visiting the dealership. Now, we confirmed that John visited with you in the morning, went with you on a test ride with, I think you testified, Steve Bonifas.
A. I'm not sure if it was Steve. I believe a salesperson was with us.
Q. I'm just trying to establish again, to refresh your memory, is it possible that you visited the dealer on a Friday, and then returned and purchased it on a Saturday?
A. I don't remember that.

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Q. Well, what other explanation can you think of that would indicate that you had a copy of -- they wouldn't have faxed you a buyer's order on the day that you are there purchasing the vehicle.
MR. THOMAS: Object to form.
You can answer.
A. I don't know. I honestly don't know.
Q. But you do understand that we got this document from you, this is something you gave us?
A. You know, I will agree with you.
Q. Okay. Okay. So we know that you had in your possession, prior to the time that you signed it, for reasons you don't recall --
A. I don't know that I had this in my possession before I signed it. If you look at the very top --
Q. We are going to go to one that you signed, and maybe we can understand. Let's do that.
(Defendant's Exhibit 5, Document No. LR-03, signed Land Rover Retail Buyer's Order, in name of Heather Murphy Herron, 2/25/06, was marked for identification.)
Q. Let me now tender to you Exhibit No. 5. And I want you to compare Exhibit No. 5 to Exhibit No. 4, which, in my reading, are virtually

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identical in every respect, other than, the one that I got from you is not signed, the processing and recording fee is circled, and, then, Exhibit No. 5, which you did sign, which means you signed it after Exhibit No. 4.

A. I don't believe that is true. If you look at the very top, it looks like it was faxed on June the 2nd of 2006, maybe. Up at the very top of the page.

Q. I can't read it. I'm not arguing with you, I am just telling you that I can't read it.

A. Well, on Exhibit No. 4, it looks like the fax information is June the 2nd.

Q. Okay.

A. From Land Rover.

Q. Okay.

A. So it would have been -- I don't know why this isn't signed. But the signed copy is dated different than the fax copy.

Q. Say that again. Both of the documents are dated 2/25/06. Is there any question that they both represent exactly the same document?

A. Well, it looks different. Because, if you look at Exhibit No. 4 and Exhibit No. 5, the date isn't situated underneath.

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Q. Okay.

A. So that's different.

Q. Okay.

A. Also Terri Phillips, my insurance agent's name, is actually sitting on the line on Exhibit No. 4, and it is in the line on Exhibit No. 5.

Q. Okay.

A. The font looks a little different. If you look at the very top on the left, under Stock No. 50710, is situated different.

Q. Is that potentially just simply the way it came out of a printer? Is that what you are suggesting, it is printed differently?

A. I don't know that they are the same documents. You are asking me if they are the same, and I can't tell you that they are the same.

Q. Now, look at Exhibit No. 5. Exhibit No. 5, you recognize this document?

A. Yes.

Q. What is Exhibit No. 5?

A. It is an invoice for the purchase of the car.

Q. And does this buyer's order reflect the transaction that you entered into with Land Rover of

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Columbia?

A. A purchase, yes.

Q. Now, you have demonstrated a good eye on the differences between Exhibit No. 4 and Exhibit No. 5. So that suggests that you carefully review documents.

MR. THOMAS: Objection to form.

Q. Do you carefully review documents?

A. I carefully reviewed Exhibit No. 4 and Exhibit No. 5.

Q. Is your signature on Exhibit No. 5?

A. Yes.

Q. What is your practice about documents which you sign? Do you review and examine them before you sign them?

A. Typically.

Q. Okay. So in this Exhibit No. 5, read right above where your signature appears. What does it say?

A. Read Carefully: Land Rover Columbia agrees to sell and the buyer(s) agree to purchase the vehicle as above described at the price set forth. The buyer shall remit full payment of the entire balance due on or before 2/25/06. This buyer's order constitutes the entire agreement between the

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parties and may not be changed except by an instrument in writing signed by the party to be charged.

Q. All right. So you read this document before you signed it?

A. I don't know if I -- I mean, I don't know if I read every word on the document.

Q. Well, the document directs you to read it carefully. And you signed it. I'm just trying to understand, you've told me earlier, in your role as a legal assistant, you review documents. You have affixed your signature on the document where it expressly says that you agreed to buy the vehicle described at the price set forth, all of that is listed, and you signed it?

MR. THOMAS: Object to form.

A. But the question was -- you asked me if I read that part. And, typically, I read things that -- I read things fully when I sign it. When I purchase a home, do I read every single word in the 30 pages that are involved there? I trust the salesperson or trust the real estate closer. I can't tell you if I read it or not. I signed it. You would think that I read it.

MR. THOMAS: Just for the record,

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Miss Herron, let Mr. Hamm finish his question. I don't think he was quite done yet.
Q. I'm not asking you about 30 pages. I'm asking you about a document in which you are advised on the document in bold letters to read it carefully, and that you agree to purchase the vehicle at the price set forth. All the numbers are listed. You sign it. And included in there is the recorded and processing fee.
So I'm trying to understand, under the terms of your complaint, you have already testified that you knew about this charge. You expressed some concerns about the charge. But then, I understood, despite that, you then signed the buyer's order. Is that correct?
MR. THOMAS: Objection to form.
Go ahead and answer.
A. If I wanted the vehicle, I had to sign this form.
Q. All right. But you didn't have to buy a Land Rover at Land Rover of Columbia. To the extent that that was a material issue to you, you could have said, Thank you very much, and left. But you did not, did you?
A. I bought this vehicle.

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Q. Okay. And again, I don't want to be repetitive, but you signed the document, and you are trained to, and part of your professional responsibilities is to review documents; yes?
MR. THOMAS: Object to the form.
Go ahead and answer.
A. I do review documents at my job, just as the receptionist reviews documents at the job, yes.
Q. But when you signed this document, regardless of the closing fee, you were agreeing to make a roughly $20,000 purchase; yes?
A. I did, yes.
Q. Okay, so this is not a casual purchase, this is a significant purchase in which you decided to proceed with the purchase, correct?
A. I did buy the car, yes.
Q. Now, did anybody force you to sign the document?
A. No, no one forced me to sign the document.
Q. I mean, my understanding of the transaction is that it was a pleasant – I mean, there was no tension or anything. At least, I'm not aware of any. Right?
A. With the general manager, because he couldn't explain the -- this, they call it a

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recording and processing fee that was already on the form -- he couldn't explain to me what it was for.
Q. All right.
A. All he told me was that it was not negotiable.
Q. Okay.
A. It was --
Q. Go ahead. I am not trying to interrupt you.
A. It wasn't negotiable. It had to be paid.
Q. All right. So if it wasn't negotiable, did you have to sign?
A. To purchase the car, I had to sign the document.
Q. But if you found that to be an objectionable term, did you have to sign?
A. I didn't have to purchase the car.
Q. All right. So you made the decision to purchase the car. And you're telling me that it was nonnegotiable. In other words, they weren't willing to adjust the price any further, correct?
A. That's correct.
Q. Now tell me what you know about what you were given on the trade-in on this 1999 Suburban.
A. It looks like they gave me $6,950 for a

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trade-in.
Q. Do you know whether or not you were given an over-allowance for the vehicle, in other words, they gave you additional value attributable to the trade-in that it might not have ordinarily been worth?
A. I don't know.
Q. Did you negotiate on the trade in?
A. I can't remember.
Q. You have already told me you negotiated the price down. So the price at the top, the 26,950, you couldn't remember what it might have been. But that 26,950 was something that you negotiated?
A. I believe so.
Q. Okay. Tell me again what, if anything, you remember about your negotiations for the trade-in.
A. I don't remember about the negotiations for the trade-in.
Q. All right.
A. I don't.
Q. Now, you have indicated that, when you got there, you had someone with you, the first time?
A. When I got to ...
Q. When you got to the dealership the first time, the Saturday morning after breakfast when you

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were with James and you go to the dealership and do the test drive.
A. Mr. Bacot was not with me when I initially came.
Q. Okay.
A. So he was there -- I don't believe he rode with me.
Q. Wait a minute.
A. He came after. But he did do -- I believe he did the test drive with me.
Q. So you are saying that he arrived in another vehicle, he didn't arrive with you, is that what you are telling me?
A. If I recall correctly, yes.
Q. So you had somebody with you the entire time that you were on the lot?
A. No, I was initially there by myself.
Q. And, apparently, whatever was going on was pleasant enough that you didn't -- you know, you didn't leave. You were talking to -- I think, as I understand your testimony, you were talking to Steve Bonifas, when you first got there?
A. Exhibit No. 4 and 5 say the salesperson was Steve Bonifas, and I believe that's who it was.
Q. In terms of this document --

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A. Is this Exhibit No. 4 or Exhibit No. 5?
Q. Exhibit No. 5. I want to focus on the document that you signed.
A. Okay.
Q. And I'm not trying to be a smart aleck, but, certainly, you can read and understand plain English?
A. Yes.
Q. And reading carefully where you sign a document that says you are agreeing to buy the vehicle at the price set forth, that is capable of common understanding?
A. I mean, I don't know how to answer that. I understand it as you read it to me.
Q. So you would have understood it at the time that you signed?
A. I would imagine.
Q. Okay. Exhibit No. 5 represents your contractual promise that you are going to purchase the above-described vehicle with a balance due of $20,550. Do you understand this to be a contract?
A. I understand it to be a sales receipt.
Q. So it reflects the agreement that you have reached with Land Rover?
A. My understanding is, it's a reflection of

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the purchase of the vehicle.
Q. Okay. It outlines the particular vehicle, model of the vehicle, and the price you ultimately agreed to pay for the vehicle?
A. Plus some other -- plus the trade-in allowance, cash difference, sales tax, you know, everything else that gets you to the balance due, yes.
Q. But all of those get you to the balance due, which is what you agreed to?
A. Yes.
Q. Let's walk back again about your walking into the dealership. Did you observe any signs regarding the -- that the dealership charged a closing fee?
A. I don't remember.
Q. You don't remember?
A. I don't.
Q. Well, then, if you don't remember it, then, are you saying that -- if you don't remember, is it possible that they were there and you just didn't notice them?
A. I mean, I don't remember seeing them.
Q. So if you don't remember seeing them, whatever they said wouldn't have made a difference

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to you one way or the other, then?
A. Not necessarily true.
MR. THOMAS: Objection.
Q. What document did you look at that you relied upon other than Exhibit No. 5 with regard to the transaction describing the series of dollar amounts that ultimately caused you to sign a document saying that you owe $20,550? Any other documents?
A. Not that I remember.
Q. Exhibit No. 5 is put in front of you, correct, during that Saturday afternoon, as best we all -- and I have verified that February 25th of 2006 was a Saturday.
A. Okay.
Q. You have already testified about the morning-after-breakfast visit. You're there for a while. Apparently, John Bacot may have come after you had been there, but he was there when you test-drove the vehicle?
A. I believe so.
Q. Okay.
A. I believe that's correct.
Q. And then you come back, and you said that you may or may not have gone into the dealership at

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that point, right?
A. That's correct.
Q. I think you told me, if I went in, it was probably two times, maybe in the morning when I was there, and, certainly, in the afternoon, because, when I came back, we signed the documents in -- and I think you referred to it as "a cubicle."
A. Right.
Q. Okay.
A. Yes.
Q. Did anybody prevent you from carefully examining the documents that you were presented to sign?
A. Did anyone prevent me?
Q. Right.
A. No.
Q. Okay. And, in fact, when this was put on the table in front of you, it did not have your signature, correct? I mean, you hadn't signed it when they first show it to you, right?
A. That's correct.
Q. And you have told me, and I saw that on there, you didn't like the response that you got from him, and that you then talked to what you thought was the manager, I think is what you said?

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A. Yes.
Q. So you have had one explanation from the salesman that you did not find acceptable?
A. I believe that's correct.
Q. Then you say: I need to understand this better?
A. Yes.
Q. Okay. And you request the opportunity to speak with someone at a higher level of authority. At least that's how I heard what you said. I'm not trying to put words in your mouth.
A. Right. And I don't know if I requested the general manager to come out or someone that could explain it to me, or if the salesman said, you know, you're exhausting, I need to find someone else to help me with this. Somehow or another, another individual came out to try to explain the fee to me.
Q. And, in fact, you testified that the salesperson explained it to you, and then, not finding that acceptable, you had the manager come and explain it to you, right?
A. And I don't know if it was the manager or if it was someone else. And I'll tell you, I was upset about it, because I had already negotiated the price for the vehicle. And with this sitting in

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front of me, the recording and processing fee, you could easily tell that this was preprinted on the form.
Q. All right.
A. And I didn't know what it was.
Q. If you will look at this, just so the record reflects where I'm getting a name, if you look at your Defendant's Exhibit No. 3, Page No. 5, and Question No. 8: List of names each person you spoke or corresponded with.
Steve Bonifas, you have identified as the salesperson. Is Jim O'Connor the person -- you are the one who gave us this name. So, remind me, who is Jim O'Connor?
A. I believe Jim O'Connor is the individual I spoke with after Steve Bonifas.
Q. So Mr. O'Connor is the one that you then asked to discuss it with or whatever?
A. To the best of my knowledge, yes.
Q. And then, of course, you have testified, and in your discovery, that, during the course of that purchase, you also spoke were Dick Harpootlian, your boss?
A. My employer, I did, yes.
Q. So based on your discovery response, it is

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Mr. O'Connor that you think made these explanations? I mean, I'm just looking at your discovery response.
A. And I understand that. To the best of my knowledge, I believe those are the individuals I spoke with.
Q. So you're sitting down. Exhibit No. 5 is put in front of you. You see the processing and recording fee, so you clearly know about it; yes?
A. I knew about it when this form was in front of me.
Q. All right. But you knew about it. You requested an explanation, from whoever the salesperson was?
A. Are you asking me a question?
Q. Yes, ma'am. You requested an explanation from whoever the salesperson was. I want to get into who that might have been. I want to examine that just a little bit.
A. Okay.
Q. But there is no question that, prior to the time that you signed Exhibit No. 5, you spoke to the salesperson, whoever that might have been, and you spoke to Mr. O'Connor, seeking an explanation of the closing fee?
A. I believe those are the individuals I spoke

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with. I do remember speaking with two males who I believe is Steve Bonifas and Jim O'Connor.
Q. Okay. What do you recall Mr. O'Connor telling you?
A. I mean, verbatim, I can't remember. But it was pretty much the same thing that I received from Steve, is that it is something that everyone from Land Rover of Columbia has to charge. It is a fee that has to be charged. And I remember asking him why it was already printed on the form, and he just said it's -- I don't know if it is policies and procedures, but I understand it to be: It has to be charged.
Q. So what kind of time period are we talking about between the time that you see the charge on there, you talk to the salesperson, and then you talk to Mr. O'Connor?
A. I don't remember. I don't know if it was immediate. I don't remember.
Q. But you had a continuing time period to decide whether or not you wanted to purchase the vehicle at the price quoted to you, correct?
Regardless of the components, at this point, we are talking about $20,550, and you had the explanation of the salesperson, and I'm assuming

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there is at least some few minutes involved between the two. So it is not like it's, you know: Sign.
I understood your testimony to be: No, I want a further explanation. And they arranged for you to get a further explanation. Whether you found it acceptable, I understand, but you got a further explanation; yes?
MR. THOMAS: Object to the form.
A. As I'm sitting here, I honestly cannot remember if I signed the document and then noticed the fee, or if I talked about the fee before -- I cannot -- I can't remember. I can't remember the time frame in between Steve Bonifas -- or in between the two individuals that were talking to me about the fee. I honestly cannot remember. I know it was Saturday.
Q. Okay. When you talked to the second person -- again, I'm just looking at your responses to discovery. You already testified you talked to Dick Harpootlian. Did you discuss the fee with Mr. Harpootlian?
A. I discussed it with him -- I don't believe I discussed it with him that day.
MR. THOMAS: I will caution the witness that the conversations with Mr. Harpootlian where

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she considered him to be her attorney --
MR. HAMM: I object. She already testified that Dick was not her attorney at the time of the transaction.
MR. THOMAS: At the time of that conversation. But she is describing her conversations, and I'm going to caution the witness not to answer any questions describing any conversations she had with Mr. Harpootlian at any time when she was seeking legal advice from Mr. Harpootlian.
Q. My understanding was that you had talked to Mr. Harpootlian. Did you talk to Mr. Harpootlian more than once?
A. That day?
Q. Yes.
A. I can't remember. I do remember talking to him once.
Q. Did you raise the fee with Mr. Harpootlian?
A. I don't believe so.
Q. Okay. But you might have?
A. I don't recall.
Q. Well, you have listed -- Provide a list of names and address of each person you spoke or corresponded with regarding the purchase of any

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subject vehicle. And you have got Mr. Harpootlian. You brought a lawsuit against Land Rover with regard to the closing fee, and you list Mr. Harpootlian. And you've already told me he was not your lawyer at the day you purchased it. Correct?
A. That's correct.
Q. When did he become your lawyer?
A. You know, when I first talked to him about the fee on the invoice.
Q. What would Mr. Harpootlian testify to if he was called, since you list him as someone you spoke to?
MR. THOMAS: Objection to form.
You can answer.
A. Well, I did speak with him about the purchase of a vehicle, because I asked him his opinion of the vehicle. So I did speak with him about the vehicle. And he gave me his opinion of the vehicle.
Q. And I'm smiling simply because I think you have testified that he told you not to purchase it. And you did.
A. That's correct: Run. Get out.
Q. Okay. Anything else he would testify to?
MR. THOMAS: Same objection.

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A. I mean, no.
Q. All right. So, as I am hearing, you are now not clear when you signed this document?
A. I'm sure I signed the document on 2/25/06.
MR. THOMAS: For the record, referring to Exhibit No. 5.
Q. I'm holding up Exhibit No. 5, for the record.
There is no question that you signed it?
A. That is my signature.
Q. There is no question that anybody forced you to sign it?
A. No, nobody forced me to sign it.
Q. All right. There is no question that you sought a second explanation about the charge you agreed to pay for in connection with this transaction, because you asked for a second explanation, right?
A. Right. When this form was put in front of me, I asked about the -- it is called a recording and processing fee.
Q. Like I said, you have testified that you sought and got two explanations about what it was, one from the salesperson and one from, based again on your discovery response, Mr. O'Connor?

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A. Right. They tried to explain it to me.
Q. All right.
A. They did.
Q. Even if you had signed it, are you telling me that, I've signed it, I don't like the explanation, but they forced me to buy the car?
MR. THOMAS: Object to the form.
A. That's not what I said.
Q. Tell me again what you said.
A. I purchased the car. I bought the car.
Q. Okay. I'm not quarreling with you. I'm not trying to be argumentative. If I am coming across that way, I'm not attempting to do it.
I'm just trying to understand that you, as a legal assistant working in a law firm, put your signature on a document that contained a charge you expressly recognized, asked questions about, and you still bought the car. Not only did you buy the car, you decided to bring a lawsuit against the people who told you about the charge. And now you are saying -- well, what are you saying in this lawsuit?
MR. THOMAS: Object to the form.
You can answer.
A. Do you want me to answer the first question or the second question?

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Q. You can answer either one, and then we will go to either one you don't get to. And I apologize, I shouldn't be giving you multiple questions.
MR. THOMAS: Same objection, but go ahead and answer.
A. I went into Land Rover as a consumer, not as a legal assistant for a law firm. I went in as a consumer. I wanted the vehicle. I did my homework on the vehicle. This is the vehicle that I wanted.
I had done all the negotiations with the price of the vehicle. And then, when it came time to write a check for the vehicle and to sign the paperwork, that's when I asked about this recording and processing fee.
Nobody came to me and said -- they didn't -- I do remember, they did not walk down this path of how you get to the balance due. I noticed the recording processing fee.
Q. Okay.
A. I asked the salesman about it. He did not give me an explanation that I was satisfied with. I asked the general manager for -- or asked someone else -- for him to get someone else to explain it to me. I still didn't get a satisfactory answer. But I had invested -- I wanted this car. And I could

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not buy the car without paying the processing fee.
Q. All right.
A. So it was, either you pay the $225, not understanding what it means, and get the car; or you walk away and don't get the car.
Q. But you made the decision that you wanted to pay the price presented to you, with all of its components?
A. When this paper was put in front of me, I made the decision to pay $26,950 for the car. When the paper was put in front of me -- I understand about the sales tax. You have to pay $300 sales tax when you buy a car over a certain amount. I understand about the title and licensing fee. Didn't understand the recording and processing fee.
Q. And I hear you. I hear you. But I am trying to understand, when -- you have clarified that you knew it was there. Whether it was brought to your attention, you knew, with your training or whatever kind of person you are, you looked at this thing, you saw it. So it is not something that, at the end of the day, you didn't know about before you left there, having purchased the car, right?
MR. THOMAS: Object to the form.
A. I did not totally know what the fee was

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about. I never got an explanation on what the fee was about.
MR. THOMAS: Can we take a real quick break?
MR. HAMM: Of course.
(A recess was taken.)
(Defendant's Exhibit 6, Document No. LR-18, copy of 2/24/06, Check No. 2392 of Heather M. Herron to Land Rover Cola, in the amount of $20,550, was marked for identification.)
Q. Let me now hand you what has been previously marked as Defendant's Exhibit No. 6.
For the record, what is what I have just handed you a copy of?
A. It's a personal check for the amount of the vehicle.
Q. Is that your signature on the check?
A. Yes.
Q. So that's the same -- the same person that signed the buyer's order, you, and, notwithstanding the apparent concerns you have expressed to me, you then signed an even more important document, you signed the check purchasing the car, correct?
A. Yes.
Q. Okay. I was looking at this last night.

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You have the numerical, 20,550, but the written is 20,500. What amount cleared your account?
A. I don't know.
Q. In discovery, I think, we had asked you for your accounts so we could determine how you paid for the vehicle, because you wrote a check. And in your discovery, as I understand it, this was written off of a home equity line of credit?
A. Actually, this is my personal account. BB&T is my personal account. And what happened was, I wrote this check and then took the money out of my home equity and transferred it to my BB&T account.
Q. And that's fine. So at the time you wrote the check, in order to make sure that there were funds for the check to clear, you transferred money from another source, in this case your home equity?
A. Right.
Q. So as far as the dealership is concerned, you didn't finance the transaction in any form?
A. That's correct.
Q. You're a cash purchaser?
A. Yes. And it says it on the form.
Q. Okay. Now, one of the things that I wanted to be clear on is -- again, let's go back to the buyer's order that you signed, Exhibit No. 5. And I

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was noticing -- what is the date on your check?
A. It is the day before. And I'm not sure why it's the day before.
Q. That is what my question was.
A. I'm not sure why.
Q. Is it possible that, in fact, you were on the dealership on two different days?
A. I don't believe so.
Q. So everything that you testified to based on your best memory, took place on that Saturday, the 25th?
A. That's correct.
Q. So this just may be a simple case of, you just put the wrong date, and nothing more? I don't know why you would write a check the day before you got there.
A. That's right. I don't know either.
Q. You didn't do any telephone negotiations that Saturday. That is the only thing I wondered when I saw this.
A. No. My best recollection is, everything took place on Saturday.
Q. Okay. So in the two visits that you had at the dealership on Saturday, the 25th, how long do you think you were -- what is the total amount of

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time that you ultimately spent at the dealership that day?
A. I don't have any idea.
Q. You indicated earlier to me that you might have been there as much as an hour before John Bacot arrived?
A. I don't know that I testified to an hour before. It was -- I was there for a period of time before John arrived.
Q. Okay.
A. I don't know that I testified to an hour.
Q. If I misspoke, I wasn't trying to put words in your mouth. You were there for a while. Mr. Bacot arrives. You went on a test drive. And you ultimately leave to go get the Suburban. You go get the Suburban. And that was whose idea?
A. At some point, I decided I was going to trade the Suburban in. So I'm not sure whose idea it was, but it was my vehicle.
Q. At that point, how many vehicles did you own?
A. At that point, two. I believe it was two.
Q. You got the Saab convertible?
A. Yes.
Q. You have got the Suburban?

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A. Yes.
Q. Did you own any other vehicles at that time listed in your response, your discovery response?
I am referring specifically, just so we are clear on the record, to Exhibit No. 3, Page No. 7.
A. Can you repeat the question?
Q. Yes.
At the time you purchased the Land Rover on February the 25th, how many other vehicles did you own at that time?
A. Well, I owned the Suburban.
Q. Okay.
A. And I was leasing the Saab.
Q. Okay. Any others, at that point?
A. I don't believe so.
Q. Now, you have testified that you drove by the dealership, saw the vehicles, and you said that you decided, based on driving by, that you were going to go look at it?
A. Yes. And that's because, prior to, I had been – I wanted a Land Rover.
Q. Right. Now, how long did you keep this Land Rover that you wanted so badly?
A. A short period of time.
Q. And why is that?

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A. Because I hated the vehicle. I really disliked it.
Q. Were there mechanical problems, or you just didn't like the feel of it? You bought a lot of vehicles. I thought, Well, maybe she just goes through vehicles quickly.
A. It was a V8.
Q. Okay.
A. And I understood a V8, but I never owned a V8.
Q. Well, the Suburban was a V8.
A. No, it was a V6. The Suburban was a V6.
Q. I am not arguing with you.
A. And the gas was very expensive. It was uncomfortable. For me, I have three children, so it wasn't a true five-passenger vehicle. They were squished together in the back. The back passenger doors didn't open wide enough for a large person to get in and out of the back seat. And when we traveled, I had to buy a carrier for the top of the vehicle because our luggage wouldn't fit in the back space. And being a single parent, it was tough putting the carrier on top, loading it, all that stuff.
Q. What did you do with the vehicle?

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A. I made arrangements for the vehicle to be sold back to Land Rover.
Q. How did you do that?
A. I have a friend who -- I don't know the whole transaction, but I have a friend who knows Jim O'Connor, and he agreed to take the vehicle back from me.
Q. Now, who is this friend?
A. Darrell Hudson.
Q. Well, Darrell Hudson runs an automobile business.
A. He -- I think it is a wholesale business. I'm not sure exactly what he does.
Q. I have had friends that have bought vehicles from him.
A. And I have bought vehicles from him as well.
Q. We don't need to spend much time on this, but why did you just not go back to Land Rover?
A. I just really was unhappy with the car. It needed $1,100 worth of brakes on the car. I thought that they would help me with the servicing of the brakes. If I remember correctly, that's how much Land Rover told me they would charge me for the brakes, $1,100. Just really displeased with the

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whole process, of the fee, the car. Couldn't stand the car.
MR. STUDEMEYER: Off the record.
(There was a discussion off the record.)
(A recess was taken.)
(Defendant's Exhibit 7, consisting of 9 pages, Plaintiff Heather Herron's Responses to Defendant Overland, Inc., d/b/a Land Rover of Columbia's First Requests to Produce, was marked for identification.)
Q. Let me hand to you what has been marked as Defendant's Exhibit No. 7. Take a look at that document and tell me if you recognize it.
A. I know it is the responses.
Q. And responses to?
A. The defendant's request for production.
Q. Did you look at this document prior to the time that it was served upon Land Rover?
A. I discussed the document. I did not look at it in its final, final stage.
Q. I don't want to know what was said. Are you telling me you discussed the contents of it at some point but didn't see the final version of it? Is that what you are telling me?
A. That's correct.

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Q. A couple things. Go to the very last page. It was this document that caused me to ask you about how you funded the purchase of the car. I read this as some sort of home equity line. Maybe that was an improper assumption. But this is the transaction that you talked to me about a few moments ago that you transferred funds from –

A. Yes. I transferred funds from my home equity to my personal account to cover the check.

Q. I did notice, now that I'm looking at it, that they cashed the 20,550, not the 20,500 that you had in the written part. Now we both know that answer.

A. Okay.

Q. Literally the next day, you make an immediate payment. I'm trying to read what it is. Almost $4,000.

A. Yes.

Q. Is that related to this transaction?

A. That must have been -- might have been my taxes. My federal income taxes came in, and I just -- what I recall is, my federal income taxes came in, and I wrote a check for the exact amount of my income tax to put own my home equity.

Q. Did anyone else assist you in the purchase

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of this car, in monetary support or anything else?

A. No.

Q. You indicated that you didn't see the final version, but you saw an earlier version of this document that was served upon Land Rover, correct?

A. That's correct.

Q. Now, in some of these responses, you indicate that, apparently, there are documents responsive but you have invited Land Rover to inspect.

Just go to, for example, Question No. 2. This is your response. "Identify and provide copies of any and all statements or affidavits given by either eyewitnesses or other witnesses to the incidents and matters alleged in the plaintiff's complaint or the responses of the defendant, or pleadings in this action which are in the possession of the plaintiffs or any of your attorneys, whether written or recorded."

And you indicate that all such nonprivileged documents will be made available. Tell me, what is it you are making available to me? What am I going to see when I go?

A. Well, I was trying to find some additional documents, trying to find the original documents.

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And I looked, and I can't find the original documents.

Q. Is this telling me that there are additional documents that you have that I haven't seen?

MR. THOMAS: Object to the form.

I think we made a CD available that has everything on it, per my paralegal. Did you guys get to see it? The only thing it doesn't have is that one that was attached to the request to produce. I just want to make sure you know that we've given y'all everything.

MR. HAMM: So there is no other documents other than what is on the CD?

MR. THOMAS: That's correct.

Q. Do you understand what it means to verify a document?

A. Yes.

Q. And you recognize you have not done that in this case?

A. No, I have not.

Q. Do you recall the little dance we had in this room?

MR. THOMAS: And, you know, Steve, we are more than willing to verify the interrogatory

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answers as well.

MR. HAMM: Please.

MR. THOMAS: No problem.

MR. HAMM: I'm trying to be more gentle than the experience we had. So that's in the record. I've got the CD?

MR. THOMAS: Yes.

MR. HAMM: I may have known it, but I didn't remember it today. Okay.

Q. Let me ask you a question and we can determine whether we need to put these all in the record.

Do you remember signing a number of other documents in connection with your purchase with Land Rover?

A. I believe I signed more documents, but I don't know what they are.

Q. But in terms of this particular transaction, the signing of all those documents didn't cause you to miss the recording and processing fee shown on Exhibit No. 5, correct?

A. I did notice the recording and processing fee on this paper, yes.

Q. Sometimes I have people say, Well, I just signed so many documents. But you have been very

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explicit that you saw this. Regardless of whether you signed two other documents or twenty, you remember that you saw this on Exhibit No. 5?
A. Right. And I remember this specific form being put in front of me.
Q. Okay. Now, you are a plaintiff in this lawsuit, so you're prepared to testify in a trial against Land Rover, correct?
A. Yes.
Q. And you have retained the law firm of Mr. Harpootlian to represent you?
A. There are other counsel also involved in the lawsuit.
Q. Do you have a written agreement with your lawyer with regard to this lawsuit?
A. Yes.
Q. Tell me about it.
A. It is a standard agreement.
Q. What does a standard agreement include?
A. Honestly, I don't remember it. I don't remember the agreement.
Q. But you have signed a document -- let me stop. Tell me what you have signed.
A. I haven't seen it in a while. I signed a fee agreement.

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Q. Tell me what you remember about it.
A. I remember it was in regards to being a named plaintiff for this lawsuit.
Q. All right. And if the lawsuit was successful, what would happen then?
A. I don't remember. I don't remember the terms of the agreement.
Q. Now, is your compensation -- can it in any way be affected by the results of this lawsuit?
A. Compensation for what?
Q. Being the named plaintiff.
A. I don't understand your question. My compensation ...
Q. You have alleged that Land Rover has violated the law, correct?
A. Yes.
Q. And if you are successful, what financial compensation will you receive?
A. I would hope to get the $225 back.
Q. Okay.
A. And what I really would like is for the policies and procedures of Land Rover to change.
Q. Okay.
A. That's what I would hope to get back from the lawsuit. And for everyone else that I'm a named

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plaintiff for, to recover their -- if it was $225 for each person, for them to receive that back.
Q. One of the things that I thought was very interesting, you, yourself, described this as a cash transaction. And in Exhibit No. 3 -- let's go to Exhibit No. 3. Go to Page No. 10.
In your response to our question, you accuse Land Rover of Columbia, by failing to disclose the charging of an amount of administrative fees in their installment contracts --
A. Can you tell me where you are?
Q. Yes. Page No. 10. Under answer paragraph (b) as in boy.
A. Okay.
Q. And I am reading: Defendant Overland, Inc., doing business as Land Rover of Columbia, violated the Dealer's Act by failing to disclose the charging of an amount of administrative fees on their installment contracts.
Well, how would you know? You didn't have an installment contract. You paid cash.
A. I did pay cash. But I'm also the named plaintiff, and I represent a group of class members that have purchased cars from Land Rover. And I'm not sure how many people pay cash for their cars.

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Q. So it's your understanding that you represent individuals on a portion of a transaction to which you were never involved?
MR. THOMAS: Object to the form of the question.
A. I mean, that's – I don't understand the question. I don't know how to answer the question.
Q. Well, you are a named plaintiff.
A. Yes, that's correct.
Q. And you personally are prepared to swear in front of a judge and jury that my client violated the law. Yes?
A. Yes.
Q. Okay. And in paragraph (b), page 10: They failed to disclose the charging of an amount of administrative fees. How is it that you can do that when you didn't pay such a fee, so you don't have a document that shows that?
MR. THOMAS: Object to the form of the question.
A. You know, I don't understand. I don't know how to answer the question other than, I know that I'm a named plaintiff in a lawsuit, and that I'm representing a class of individuals. If it's – and I don't know the number of individuals in that

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class. And I am -- as a named plaintiff, I'm protecting their rights.
Q. Okay. Again, I want to make sure I get this clear on the record. In your transaction, did Land Rover fail to disclose to you the charging of an amount of administrative fees in an installment contract, in your transaction?
A. In my transaction, they did not.
Q. Okay. That's good.
Have you spoken to any other Land Rover customers?
A. No.
Q. So the allegation in answer (b) as in boy on page 10 is speculation on your part?
MR. THOMAS: Object to the form of the question.
A. I don't know how to answer that.
Q. Based on what I have heard you testify to today, the transaction we have discussed today is the only transaction you have had with Land Rover.
A. Other than, they purchased the vehicle back from me.
Q. Right. Were you involved in that transaction?
A. I believe a check was made payable to me.

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Q. But that's all centering around the vehicle we have talked about today, there has been no other?
A. That's correct.
Q. Let me ask again. Is your compensation working for Mr. Harpootlian in any way affected by the successful outcome of this lawsuit?
A. No.
Q. Other than your recovering $225 if you are successful?
A. If you are asking --
MR. THOMAS: Objection to the form of the question.
A. No. The answer is no.
Q. That's all I need to know.
A. The answer is no.
MR. HAMM: Let's take a break.
(A recess was taken.)
Q. On page 11 of your Defendant's Exhibit No. 3, your response to the first set of interrogatories, talk to me about what you know personally about the civil conspiracy that Land Rover has engaged in.
A. I mean, it is alleged in the complaint. Without -- I don't know.
Q. So in terms of you being a named plaintiff,

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do you have any evidence of a conspiracy that Land Rover of Columbia specifically engaged in with other automobile dealers? Do you have evidence of that?
A. My understanding is that each person that purchased a car from Land Rover of Columbia was charged this recording and processing fee, which wasn't disclosed properly.
Q. Where wasn't it disclosed properly?
A. It wasn't disclosed to the consumer properly.
Q. In your situation, you not only saw it, but you asked questions of two different people, right?
A. I saw the disclosure? I never saw the disclosure. I saw on Exhibit No. 4 and 5, an area that says "recording and processing fees."
Q. But, in your situation, you not only saw it, you sought responses from two different individuals at Land Rover?
A. I saw what?
Q. You sought.
A. Sought.
Q. Excuse me. You asked for an explanation from two different individuals at Land Rover?
A. I asked what the recording and processing fees -- what it was.

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Q. All right. So, in your circumstance, there is no question that you absolutely knew about it before you wrote a check and bought the car?
A. I knew that I had to pay a recording and processing fee to purchase the car.
Q. Okay.
A. But I did not understand what it was for.
Q. Okay. Now let me go back.
A. I never got a full explanation on what it is. What is it?
Q. So you never got an explanation that you accepted?
A. I didn't accept the explanation. I didn't get a good explanation.
Q. You got an explanation, you didn't get a good explanation?
A. The explanation I got was: You have to pay. It's not negotiable.
Q. But at the time you wrote that check which is in evidence, a copy of which is in evidence, in your handwriting, you wrote a check for $20,550, which would include the closing fee that you sought explanations for but didn't particularly like?
A. No, I wouldn't say that. I sought explanation, of course. But nobody could give me an

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explanation for what it was for.
Q. But you went ahead -- knowing that they wanted to charge it, and you went ahead and signed the buyer's order and signed a check that you filled out for $20,550; yes?
A. Yes. To purchase the car, I had to pay the fee.
Q. Let me go back to this conspiracy. You made reference to allegations, in the complaint. But you are the plaintiff against my client. Tell me again what you personally know that would allow you, as a plaintiff, to assert that Land Rover of Columbia engaged in a conspiracy with anybody.
A. With me personally?
Q. What do you know about a conspiracy between Land Rover and any other dealership in the State of South Carolina?
A. My understanding is that Land Rover of Columbia --
Q. Stop a minute. I don't want to be rude. I want to know, not what your understanding is. I want to know what you know personally about conspiracy.
MR. THOMAS: Mr. Hamm, let her finish, and you can follow up.

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MR. HAMM: Happy to.
MR. THOMAS: Try to answer.
A. Can you repeat the question?
Q. Yes.
A. Thank you.
Q. Be happy to.
What does Heather Herron know as a matter of fact about a conspiracy that Land Rover engaged with any other dealer in South Carolina?
A. As a fact, I know that it seems to me that -- okay. As a fact -- I know you didn't like that. As a fact, the dealerships that are involved in this lawsuit charged a disclosing fee, a recording and processing fee, or -- there are all different types of names for the fees. It's industry standard. To me, that is what I understand.
Q. Are you telling me, under oath, that you know as a fact that Land Rover engaged in an illegal conspiracy?
A. You know, I think that is best answered by the attorneys. Other than what I have already explained to you, I think any other explanation needs to be addressed to the attorneys.
Q. Okay. You agreed to serve as a plaintiff

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against Land Rover. No question there; yes?
A. That's correct.
Q. You authorized your lawyers to prepare a lawsuit against Land Rover and any number of other dealers, correct?
A. I authorized the attorneys to prepare a lawsuit against Land Rover of Columbia on my behalf.
Q. And, in your pleadings, I'm still -- I still haven't heard what you know as a fact that would allow you to make the claim against Land Rover. That you yourself observed.
MR. THOMAS: Objection, on the record.
MR. HAMM: That's fine.
MR. THOMAS: Asked and answered.
You can answer.
A. And, again, I have answered the question the best I know how. And I think any further response, you will have to ask one of the attorneys involved in the case.
Q. So your attorney would need to testify as to the basis of the claim for civil conspiracy?
MR. THOMAS: Object to the form.
A. I don't know how my attorney can testify to that.
Q. That's why I'm asking you. You just

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directed me to your attorney, and now you are acknowledging that your attorney is not going to testify. So who else do I ask?
MR. THOMAS: Object to the form of the question.
A. I think the answer that I gave you is the best answer that I know. Anything further -- I mean, I don't know. I could go back and review the complaint and see what the complaint says. It has been a long time since I reviewed it. But any further detailed answer, I can't -- I don't know. I can't give you.
Q. So you personally don't have any evidence of a conspiracy? Isn't that where we are at the moment?
A. No.
MR. THOMAS: Objection to the form of the question. Asked and answered.
Q. I am not giving up yet.
So you're saying, no, you have evidence?
A. And, again -- and I may say it a tad bit different than I said it the other times that you asked me. My understanding is, personally, me, I bought a car and paid a recording and processing fee, as stated on Exhibit 4 and 5, and was not given

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an explanation as to what it was.
Q. All right. So that is evidence of a conspiracy, that you didn't like the answer that you got from Land Rover personnel?
A. And again --
MR. THOMAS: Object to the form.
A. Again, it is not that I didn't like the answer that I got from the Land Rover personnel. It was not really a response. It was -- they didn't answer my question.
Q. Again, the claim you have made is that Land Rover has conspired with other dealers.
A. Correct.
Q. Did you go to another dealer and have some experience similar to this that would allow you to conclude that Land Rover must have conspired with that automobile dealer?
A. No. But being a named plaintiff in this lawsuit, I have found out, from being in the lawsuit, that all the other named defendants in this lawsuit charged a fee. Not the exact fee that I was charged. Nor is it named the same; some of them have different names to the fee. But it was the same practice and procedure as Land Rover of Columbia had dealing with me.

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Q. What is that practice and procedure that they had with you?
A. That there was a -- for me, it was a recording and processing fee. There are all kinds of -- administrative fee. There is all kinds of different language for the fee. That these fees were charged and not disclosed to the consumer.
Q. But you saw the fees. You cannot testify that it wasn't disclosed to you, because you knew about it and you asked two different employees of Land Rover about it.
MR. THOMAS: Object to the form.
A. And, again, I saw the recording and processing fee on this on Exhibit No. 4 and Exhibit No. 5 after I negotiated the whole entire deal. I sat down to sign the paper, to write a check.
I asked about the recording and processing fee to two different individuals. Never got an answer about what it was. All I knew when I left there was, I had to pay the fee. It was nonnegotiable. To purchase the car, I had to pay the fee. It was never disclosed to me what the $225 was for. What am I paying the $225 for?
Q. All right. And, again, you testified that

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you did not see the notices posted in the dealership?
A. I testified I didn't see -- I didn't -- I did not see -- I don't recall seeing.
Q. Okay.
A. I can't say that I did see or I didn't see.
Q. So your evidence -- I mean, this conspiracy, you will agree, is a very serious allegation?
A. Any allegation in a complaint is serious.
Q. And so if they had given you an answer that you found more acceptable, then they wouldn't be enduring a lawsuit for conspiracy?
A. I mean, I can't answer that.
MR. THOMAS: Object to the form of the question.
Q. You have had testified repeatedly that you noticed the charge, asked two different people, and that you weren't particularly satisfied with the response, correct?
A. No. I did not -- it's not that I wasn't satisfied with the response. I didn't get a response. What I was told was, again, that I had to pay the fee. It was nonnegotiable. If I wanted the car, I had to pay the fee. It wasn't whether I

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liked the response or disliked the response. Pretty much, I didn't get a response, other than, again, it is nonnegotiable.
Q. Well, you got a response, you just didn't like the response. I mean, I'm having a hard time with you saying on this record, under oath, "I didn't get a response," when you had two people -- and you testified, two different people try to explain it to you. So it is not that you didn't get a response. Did they say: I refuse to answer your question?
MR. THOMAS: Object to the form of the question. It is argumentative.
Q. Answer the question.
MR. THOMAS: There was no question.
Q. Did they refuse to answer your question?
A. "They" being the two individuals I talked to?
Q. Yes.
A. They answered the question to the best of their ability, I guess.
Q. That's all I need.
Now, I want to go back to your compensation. I'm going to try to ask your individual compensation, so I'm not going to put you

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in that situation.
Do you receive a base salary?
A. Yes.
Q. Do you receive the possibility of bonuses based on the work of the firm?
A. We do receive bonuses.
Q. Okay.
A. They're not guaranteed, and I don't think they're based on the -- what did you call it?
Q. "The work of the firm."
A. The work of the firm.
Q. Or whatever.
A. I don't -- we don't receive bonuses because of the work of the firm. We do receive a Christmas bonus, and, every now and again, we'll receive bonuses throughout the year.
Q. Do you have the potential to receive any additional compensation above your Christmas bonus and your other bonuses based on the results of -- let's just put it on the table -- this lawsuit?
A. No. I mean, are we going to get a bonus this year? Maybe. Is it as a result of many cases that come in, and there is a settlement or a verdict? That's something that is up to our office manager.

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Q. It is something that is possible. That certainly -- that is not anything you have any control over?
A. Absolutely not.
MR. THOMAS: Object to the form of the question.
Q. You mentioned all of your real estate transactions.
A. I have rental homes, yes.
Q. American Vision?
A. Yes.
Q. Did you pay any closing fees in connection with those real estate transactions?
A. I am sure that I paid closing fees.
Q. Okay. Do you know what those fees are called in real estate transactions?
A. No.
Q. So you don't know whether they are known as document fees or processing fees in real estate transactions?
A. No, I mean, I don't know.
Q. Have you filed any lawsuits with regards to document fees and processing fees related to your real estate transactions?
A. No.

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Q. You have testified about your dislike of the vehicle that you purchased. Do you remember how much you got for it when you had it sold back to Land Rover?
A. Are you talking about the Land Rover Discovery?
Q. Yes.
A. I know I took a significant loss.
Q. Are you an employee at will, or do you have an employment contract with the Harpootlian firm?
A. I'm not a contract employee.
MR. HAMM: Thank you very much.
EXAMINATION
BY MR. BECKER:
Q. Miss Herron, I'm James Becker. I represent two other defendants, Galeana Chrysler Jeep and Hendrick Honda of Easley.
Have you ever purchased a vehicle from either of those dealerships?
A. Tell me the dealership names again.
Q. Galeana Chrysler Jeep, which is located on Greystone Boulevard in Columbia, have you ever purchased a vehicle from that dealership?
A. I have not, although I have a little twist I need to explain. The Chrysler minivan that I

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currently own, Darrell Hudson, who is a friend of mine, made arrangements for me to purchase the car from Galeana, through him.
But I don't believe I've ever purchased it from Galeana. I believe I purchased it through Hudsons. But I told him what I wanted. He found it. And it happened to be at Galeana. And I believe it was Galeana.
Q. When did you buy that car?
A. I bought it right after I sold the Land Rover back to Land Rover of Columbia. So that would have probably been -- I don't remember. Somewhere in 2006.
Q. Okay. So you bought the Chrysler minivan shortly after you sold the Land Rover?
A. Yes.
Q. What is Mr. Hudson's -- how do you spell his name, and do you know where his place of business is?
A. It is on -- I think still on 378. Hudson Brothers.
Q. All right.
A. I'm not sure if he is still in business or not.
Q. Do you still own that Chrysler minivan?

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A. I do.
Q. So you have owned it for going on three years now?
A. That seems right.
Q. Are you satisfied with the Chrysler minivan?
A. Am I satisfied? As satisfied as I can driving a minivan. But it's paid for, so, yes, I'm going to drive it.
Q. You would rather be driving a Porsche, is that what you are telling me?
A. Yes.
Q. Did you pay a closing fee to Mr. Hudson when you bought the car?
A. I don't believe so.
Q. Do you have the documents for the sales transaction in which you purchased the vehicle, the Chrysler minivan, from Galeana through Darrell Hudson?
A. I don't know if I purchased it from Galeana through Darrell. I'm not sure, actually, how the transaction -- and I could look for the papers. But they may have been shredded when I got married.
Q. So you believe you purchased the vehicle from Mr. Hudson. He may have bought it from

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Galeana. Do you know at all -- first of all, is that your testimony, that you bought it from Mr. Hudson?
A. There is a Hudson Brothers sticker on the back of the car. And any car that I've purchased from him has the little Hudson Brothers emblem on the back of the car. But I honestly cannot remember if I purchased it from Galeana, through Darrell, or if Darrell purchased it and I purchased it from Darrell.
Q. When you purchased that Chrysler minivan, did you communicate in any way with any personnel who were directly employed by Galeana?
A. I don't think so.
Q. In all of the arrangements and discussions, negotiations, et cetera, for the purchase of that Chrysler minivan, did you ever deal with anyone other than Darrell Hudson?
A. No, I don't believe so.
Q. All right. Do you believe you may have purchased any other vehicles that would have come from Galeana?
A. No.
Q. Have you ever been to the Galeana dealership on Greystone Boulevard?

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A. It's on Greystone. I may have been. I can't specifically recall being there. But I may have.
Q. Do you think you may have visited the dealership at or about the time you bought the Chrysler minivan?
A. You know, I may have -- Darrell may have made arrangements for me to pick the car up from there. I can't remember. I can't remember if -- I can't remember.
Q. Okay. Do you know if you had already agreed to and paid for the purchase of the vehicle before you picked it up?
A. See, I can't remember where I picked it up from.
Q. Okay. And that's fine. We will move on.
As far as you know, you have never purchased any other vehicle that may have come from Galeana?
A. That's correct.
Q. Have you ever purchased a vehicle from Hendrick Honda of Easley, South Carolina?
A. No, I have not.
Q. Have you ever been to Hendrick Honda of Easley, South Carolina?

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A. No, I have not.
Q. Do you have any evidence that Galeana or any persons employed by Galeana have engaged in concerted action with other dealerships to charge or increase closing fees at their dealerships?
MR. THOMAS: Object to the form.
You can answer.
A. Other than being a plaintiff in a lawsuit and being aware of what the complaint says and what is going on in the lawsuit, it is my understanding that they have the same -- they're been doing the same practices.
Q. Okay.
A. As Land Rover of Columbia.
Q. Other than the fact that all of the dealerships named in the complaint or the amended complaint have a practice of charging closing fees, do you have any personal knowledge of any other facts which might tend to support an allegation that those dealerships have engaged in an illegal conspiracy to charge or increase closing fees at their dealerships?
A. Well, my understanding from the lawsuit is, they didn't just charge the fee; they didn't disclose it properly. So personal information other

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than my knowledge of the lawsuit, no.
Q. Okay. If I were to ask those exact same questions and substitute "Hendrick Honda of Easley," would your answers be the same, with regard to their participation in concerted action to charge or increase closing fees at their dealership?
A. I believe it would be the same.
Q. Would that answer be the same for all of the other dealerships named in the complaint?
A. To the best of my ability to know what civil conspiracy is, yes.
MR. BECKER: Thank you. I have no further questions.

EXAMINATION

BY MS. TEER:
Q. My name is Laura Teer. I represent Toyota of Greenville in this matter.
Have you ever purchased a vehicle from Toyota of Greenville?
A. No.
Q. Have you ever dealt with anyone at Toyota of Greenville regarding a vehicle, inquiries or anything of that nature?
A. No.
Q. Do you yourself have any knowledge of any

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of the policies and practices of Toyota of Greenville regarding the sale of vehicles?
A. Other than what I have read in the complaint that I have been given.
Q. So as to your own personal knowledge, would that be, no, you are not aware of their practices and procedures?
A. Right. I've never bought a car from them, so I don't know.
Q. Do you have any evidence that you have been damaged as a result of a civil conspiracy?
MR. THOMAS: Object to the form.
You can answer.
A. Damaged as a result of a civil conspiracy. Well, I had to pay the $225 that I didn't want to pay. But, you know, to answer that question, I am unsure how to answer the question.
Q. Are you contending that that $225 was as a result of -- that those are damages that you received as a result of the civil conspiracy? That's my question.
A. No, you know, the -- no. I'm not sure what the damages are for a civil conspiracy. The damages with regard to the lawsuit is the recording and processing fee, not necessarily specifically to

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civil conspiracy.
Q. So do you have any evidence that you suffered damages as a result of a civil conspiracy?
MR. THOMAS: Object to the form.
A. I mean, I don't know how to answer that question, other than what's alleged in the complaint.
Q. And I'm just asking, do you yourself have any evidence that you received damages as a result of a civil conspiracy?
MR. THOMAS: Object to the form.
A. To this date, I don't have any knowledge. Not as of this date.
Q. So if I understand correctly, what you are claiming here today is that your damages in this case were the $225 that you paid, is that correct?
A. That's part of them.
Q. Are you claiming something beyond them?
A. Well, you know, monetary damages are the $225 plus the -- you know, I really would like for them to understand what -- when someone goes to buy a vehicle, I really would like for them to understand what it is they are purchasing and what it is they are paying for. The damages aspect -- are you looking for a monetary amount?

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Q. My question is simply, other than the $225, do you claim that you have been -- that you received any other damages in this case? I mean, you testified that it is $225 that you paid. And I'm just asking if you are contending that you have some sort of damage other than that, and what it is, if you do contend that?
MR. THOMAS: Object to the form.
A. I am honestly confused by the question. I know that part of the damages would be the recording and processing fees. Any other damages. If I knew more about the civil conspiracy -- if I knew more about the law regarding civil conspiracy, I might be able to answer that, but I don't.
Q. Let me ask you this. Because, you know, this is our chance to kind of ask you questions and find out what you know. And we don't really get another chance if this case goes to trial.
And my question to you is, if you are sitting up on the stand and you're telling the jury, This is how I've been damaged, this is what my damages are, are you going to, at that time, testify that you have been damaged in some amount greater than the $225 that you are talking to us about today?

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MR. THOMAS: Objection to the form of the question.
A. I don't know how to answer that at this time. I really do not know how to answer that.
Q. Let me ask it this way. In what way are you claiming, other than the $225 processing fee or whatever it is disclosed as, that you have been harmed by what Land Rover did, other than paying the $225 dollars? That is the question.
A. I think, as a consumer, I wasn't informed -- or, as a consumer, I wasn't informed as to what the recording and processing fee was. I purchased the vehicle and took a great loss when I sent it back to them. I mean, I think, what you are trying to get me to say is about monetary damages. Am I wrong about that?
Q. I'm asking what you, as a plaintiff in this case, are claiming as your damages, what you are going to say -- how you have been damaged, how you have been harmed, and how you are going to quantify that. Yeah, what are you going to testify to?
MR. THOMAS: Object to the form of the question.
A. I honestly don't know how to answer the question any more than I already have answered it.

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Q. Do you have any evidence, yourself -- I'm not sure if I have asked this already -- that Toyota of Greenville was involved in a civil conspiracy with Land Rover?
MR. THOMAS: Object to the form of the question.
A. Other than what is stated in the complaint, no.
Q. So you have no other individual knowledge, is that correct?
A. Right. I have not purchased a car from Toyota of Greenville.
MS. TEER: I have no further questions.
EXAMINATION
BY MR. STUDEMEYER:
Q. I am Greg Studemeyer. I represent Dick Dyer Associates.
Let me ask you this. Would it be fair to say that, other than your own transaction and the things you have read in the complaint, you know nothing about any other transaction of any person you have proposed to represent?
A. For Land Rover of Columbia?
Q. For any purchaser.
A. Well, no. The answer to that is, no.

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Q. Okay. Do you have the responsibility for the younger children or stepchildren you have?
A. I mean, we share responsibility. I share responsibility with my husband when they are at our house, yes.
Q. Are they at your house now?
A. They are at our house now.
Q. What are the ages of the younger children?
A. Five and seven. Five and six. She will be seven soon.
Q. What does your husband do?
A. He works for Smith's Medical.
Q. Having children that are five and seven, when this case goes to trial, would it be more convenient for you to participate in a trial in Lexington or in Aiken?
A. I live in Lexington County, so it would be -- Lexington is closer than Aiken, so, of course, it would be more convenient to come to Lexington.
Q. Let me ask you this. The day that you -- the Saturday that you bought this Land Rover, when you left Land Rover, were you happy?
A. Was I happy? I mean, I just purchased a new car. Was I happy? I was still a little unnerved about the recording and processing fee.

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Q. Okay. Did you intend to sue anybody --
A. No.
Q. -- that day?
A. No.
Q. Tell me when you decided to sue somebody over that.
A. I don't know the time frame. But I do remember speaking with -- with my sister about it, about the transaction fee, and then speaking with Dick about it. But it definitely wasn't immediately. May have been a few months.
Q. Exhibit 4, I believe, is the one that has the fax legend on it.
A. Yes.
Q. It appears that document was faxed from Land Rover -- is that on June 2, 2006?
A. That's what it looks like.
Q. Does that fax number indicate it was faxed to your office?
A. Yes, it was.
Q. Does that give you any sense of when you began thinking about suing somebody?
A. I really honestly don't know.
Q. Can you tell me who it is that you propose to represent?

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A. The class members who purchased cars from Land Rover of Columbia who paid the -- what they call "recording and processing fee."
Q. Do you have any of their names?
A. No.
Q. Do you know how many there are?
A. No.
Q. Have you sought their permission?
A. Have I sought their permission?
Q. Yes.
A. To?
Q. To sue somebody on their behalf.
A. No, I haven't had any contact with them.
Q. So you don't have their consent?
MR. THOMAS: Object to the form of the question.
MR. STUDEMEYER: Let me rephrase the question.
A. Thank you.
Q. Do you have anyone's consent to file a lawsuit on their behalf?
MR. THOMAS: Object to the form of the question.
A. I wasn't aware, as a named plaintiff, that I had to go around getting consent from all the

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class members to file a lawsuit on their behalf.
Q. So you don't have anyone's consent?
MR. THOMAS: Objection to form.
Answer.
A. No, I did not talk with anyone to get their consent.
Q. Have you given anybody any notice that you were going to file a lawsuit on their behalf?
A. Are you talking about me personally?
Q. Yes.
A. Or through the attorneys?
Q. Either way.
A. I have personally not sent out letters with my signature on them. I believe there were notices – if I -- there may have been notices that went out from the attorneys. But I don't know who they were specifically to or what defendant. But, no, I have not personally sent out a letter to the class members with my signature, asking for consent.
Q. Now, are you familiar with Dick Dyer Associates?
A. Are they a Mercedes dealership?
Q. Well, are you familiar with the company?
A. The name sounds familiar.
Q. Have you ever been to their place of

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business?
A. Are they the Mercedes dealership on Two Notch Road?
Q. I really just need to know --
A. Okay. I don't know the answer to that, then. I don't know the answer.
Q. Have you ever been to a Mercedes-Benz dealership on Two Notch Road?
A. Yes.
Q. For what purpose?
A. My sister bought a Mercedes. Mr. Harpootlian bought a Mercedes. They were next-door to the Saab dealership where I bought my Saab, if it's the same dealership you are talking about. And I'm sure, you know, I may have walked across the chain link fence from the Lexus and Saab to the Mercedes to drool over the Mercedes. I'm sure I've been there.
Q. Have you ever bought anything from Dick Dyer & Associates?
A. No.
Q. Have you ever done any business with Dick Dyer & Associates?
A. I don't think so.
Q. Do you know someone named Donald Lee

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Johnson?
A. Donald Lee Johnson. I don't think so.
Q. Do you know somebody named Robert Young?
A. I know the attorney Bob Young.
Q. Are you familiar with a company called C2C? Letter C, number 2, letter C.
A. That doesn't sound familiar, no.
Q. Do you know someone named Jean Ballentine? That's J-E-A-N.
A. Not that I recall.
Q. Do you know someone named Kristie Conklin?
A. I don't believe so.
Q. Or William Clay Conklin?
A. I don't believe so.
Q. Now, Brian Hardy, that is your husband?
A. That's correct.
Q. He bought a car from CarMax, is that right?
A. I don't know. He has not bought a car since we have been married.
Q. Have you talked to Mr. Hardy about the lawsuit?
A. He is my husband. I'm sure we've spoken about it.
Q. Have you ever asked him for copies of any documents he got when he bought a car?

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A. I don't know that he has -- he has not bought a car since we have been married.
Q. I understand that. You already told me that. But have you ever discussed with him any documents about any car that he has ever purchased?
A. I don't recall. I don't recall doing that.
Q. Let me ask you this. Where did Brian Hardy live when you met him?
A. 125 Summer Path Court.
Q. Are you familiar with 14 Top Flight Court, Irmo?
A. His ex-wife lives there.
Q. Are you familiar with a 2001 Toyota Camry that he bought?
A. I think his ex-wife drives that car.
MR. STUDEMEYER: Let's mark this one, if we can.
(Defendant's Exhibit 8, Document No. 00021, CarMax Retail Installment Contract, Contract No. 10047, August 14, 2005, Buyer, Brian K. Hardy, 14 Top Flight Court, Irmo, SC, 29063, was marked for identification.)
Q. Have you had a chance to look at that?
When you have had a chance to look at it, tell me and we'll proceed.

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A. Okay.
Q. Are you familiar with this document?
A. No, never seen it before.
Q. When you met Mr. Hardy, did he own a 2001 Toyota Camry?
A. No. He did not.
Q. Do you know where the document came from?
A. No, I have no idea.
Q. Did you ask him for the document?
A. No, I didn't know he had owned a car.
Q. This document was produced by your lawyer, one of your lawyers. Do you know how they got it?
A. From CarMax? I have no idea.
Q. Have you ever discussed filing suit against CarMax with Brian, your husband?
A. No.
Q. Do you know Melanie Blease?
A. She is a paralegal at Cam Lewis's office.
Q. How did you come to know Miss Blease?
A. I don't really know her, I know of her. I just -- Mr. Lewis and Mr. Harpootlian work on cases together, and I just know that she is a paralegal there.
Q. Have you discussed this lawsuit with her?
A. Other than me being a named -- other than

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me being a named plaintiff, no.
Q. Sharebrook Lane, is that in WhiteHall?
A. Brittany II.
Q. The 2005 Crossfire that you have, was it blue?
A. Was it ...
Q. Blue?
A. Yes, it was.
Q. About the color of the chair you are sitting in?
A. It was blue, yes.
Q. Other than Darrell Hudson, do you know anybody else who owns or operates an automobile dealership?
A. No. And I don't know Darrell owns and operates a dealership. I think he -- my understanding is, he wholesales cars. I think he has some cars for sale. I don't think he owns and operates a dealership.
Q. How did you come to know Darrell Hudson?
A. I've known Darrell for years. He is a neighbor to my best girlfriend, and I just have come to know him from her.
Q. And what is her name?
A. Angela Porter.

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Q. Who does Angela do?
A. Stay-at-home mom.
Q. What else does she do?
A. She is a stay-at-home mom.
Q. What has she done in the past?
A. She is -- I don't believe she -- she worked at Eagle Aviation, years and years ago. She hasn't worked in a long time. She is very sick. She has been sick, like bedridden, for many years.
Q. Did she ever work with you?
A. She did work with me, at Golden Hills Country Club. And at Quincy's. She worked with me at Quincy's, years and years ago, when I was in high school.
MR. STUDEMEYER: That's all the questions I have.
EXAMINATION
BY MR. REIBOLD:
Q. I'm Rob Reibold and I represent Taylor Toyota. I have just a very few questions.
Have you had any contact or dealings of any kind with Taylor Toyota in Aiken or any of its employees?
A. No.
Q. I want to confirm, your only out-of-pocket

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losses that you are claiming in connection with this lawsuit is the processing fee, is that correct?
A. And I took a significant loss on selling the car back to Land Rover of Columbia.
Q. But that is the only out-of-pocket losses you contend that you have suffered?
A. I don't even know the 225 was out-of-pocket losses.
Q. I mean, money that came out of your pocket and went somewhere else.
A. I guess I will agree with you on that.
MR. REIBOLD: That's all I have.
MR. HAMM: I do have one follow-up.
MR. THOMAS: So do I. It's probably more efficient for me to go. I'm sure you will have follow-ups off of mine.
MR. HAMM: Okay.
EXAMINATION
BY MR. THOMAS:
Q. Miss Herron, Mr. Hamm asked you a question earlier about -- I think he was talking about Exhibit 4. No, Exhibit No. 5. He was asking if this was the only document that had the terms of the transaction on it. As a follow-up to that: How did you learn the price of this Land Rover?

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A. The price that's on this Exhibit No. 5, or the price that was on the car?
Q. The price that was on the car.
A. If I'm not mistaken, there was, on the passenger side -- no. The driver's side passenger window, there was a sticker, an as-is sticker, in the window, and I believe it had the price on the sticker.
The prices had to have been -- I believe the prices had to be on the vehicles, because I was out there debating on -- in my mind, trying to figure out the prices of the vehicle, the old vehicle, the used vehicle, versus the price of the new vehicle.
Q. And when you first learned the price of the vehicle, was the recording and processing fee disclosed to you at that time?
A. Was it on the window sticker? No. The only -- the first time that I saw this recording and processing fee is when this paper was put in front of me after the negotiations had already taken place.
Q. I think you have kind of answered this too. Just as a follow-up: You talked to -- I think you testified earlier that you talked to the salesman

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about price prior to coming in?
A. Yes.
Q. And in those conversations, when the salesman published the price to you in your conversations with him, did he tell you he was going to add on a recording and processing fee?
A. No, he did not.
MR. THOMAS: No further questions.
FURTHER EXAMINATION
BY MR. HAMM:
Q. This is the first I've heard about a price on the vehicle. What document are you referring to?
A. There was a sticker. You know, one of the stickers that are in the window. And I remember it saying: As is. And I believe it had generated numbers on the car. You see them in --
Q. Excuse me. Finish your answer. I want to be respectful to your answer.
A. If I remember correctly, it had the information of the car on the sticker. And if I remember correctly, it had a price on the car. I don't remember exactly what was on the sticker. I do remember, before I spoke with anyone, that I was going through my mind with the different prices of the vehicles, of the new body style versus the

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Discovery.
Q. You remember -- this the first time I'm aware of this. You remember a sticker?
MR. THOMAS: Object to the form.
A. I remember something being posted in the car.
Q. Okay.
A. Or on the car, somewhere on the car.
Q. This was a used car, used vehicle?
A. The Discovery that I ended up purchasing was a used vehicle.
Q. And the document said that it was as-is?
MR. THOMAS: Object to the form.
A. It either said "certified" or "as is." Whatever was on it made me realize it was a used vehicle. And I'm not sure exactly what language was on it, but I knew immediately that it was not a new vehicle.
Q. Okay. Are you familiar with the buyers guide disclosure required by the Federal Trade Commission?
A. I'm not familiar with that, no.
Q. And that document, as I understand, that document requires that a used vehicle needs to be disclosed whether or not there was a warranty. So

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is it possible that that is the document that you are referring to?
MR. THOMAS: Object to the form.
A. It's possible. There was something -- I know that, before a salesman came out, before -- if it was Steve Bonifas came out, I'm a numbers person, and I was already calculating the numbers in my head.
Q. Okay. You previously testified to me that, during this process, you negotiated a lower price. Do you remember that?
A. I believe I did, yes.
Q. Do you have -- like I say, I haven't seen this. Do you have a copy of this document that you are referring to?
A. No. And my recollection is that the vehicle was not clean. And so they cleaned the vehicle for me. And I believe that was taken off. And I'm not sure what happened to it. So the answer to that is, no, I don't have a copy of it.
Q. I'm not sure what you mean "the vehicle was not clean." I don't understand what you are saying.
A. He had the car washed -- I believe he had car vacuumed and washed for me before I left the lot. I believe.

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Q. So you are telling me you have a memory of some sort of document on the window? Where was this document?
A. My recollection is, it was on the driver's passenger window.
Q. Talking about the front or the back, the driver's side window?
A. The driver's side of the window, the passenger window. The rear passenger window, yes.
Q. Help me understand what other information was on that document. You are remembering that it was "as is"?
A. I don't know if it said "as is" or "certified," or "preowned" or -- I do remember that, whatever I read, I instinctively knew that it was not a brand-new vehicle.
Q. Okay.
A. But I don't remember exactly what was on it.
Q. Okay.
A. And I honestly cannot recall if the price of the vehicle was on that or not. But I do know that, before a salesman came out, that I knew the prices of the vehicles. Somehow.
Q. Okay.

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A. So I just assume it was on the sticker on the window.
Q. You assume it, but you can't testify to certainty about it?
A. No, not a hundred percent.
Q. However you got a price, whatever the initial price that you saw, that was not the price that you paid, is it?
A. I don't believe it was.
Q. Because you've already told me this morning that you had negotiated a lower price before you even went into the dealership.
A. Right.
Q. When I asked you then, you did not know what that difference was, so I'm just trying --
A. Right. I'm not sure what this cash difference is on Exhibit No. 5.
Q. Wait a minute. Let me look at it too. Okay. I have it.
A. So I don't know if 26,950 was the price on the car and the 2,000 cash -- I'm not sure. I know that I negotiated the price of the car. I would never pay full sticker price for the car. I try not to pay full sticker price for anything. So I'm sure that I negotiated the fee or the -- negotiated the

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price of the car, but I can't, with certainty, say that the negotiating price was 26,950.
Q. Well, let me go back to what you told me this morning, that you had done some price negotiation and that you had negotiated a price before you ever went into the building. You told me there wasn't anything -- you didn't see anything in writing before you went into in the building.
MR. THOMAS: Object to the form of the question.
A. What do you mean, I didn't see anything in writing?
Q. Well, I asked you if you had seen something like this out in the parking lot, and I think you indicated, no. I mean, maybe -- am I misremembering?
MR. THOMAS: Object to the form of the question. I think that mischaracterizes.
A. I don't remember you asking if I had seen this specific form out in the parking lot. I remember testifying that I negotiated the price of the vehicle prior to walking in. I can't remember if this form was shown to me.
Q. Did you have a piece of paper -- I understood you to testify that, whatever the price

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was that you had discussed, before anything got put in writing, you had already reduced the top-line price. Did I misunderstand you?
A. No, you didn't misunderstand me. But -- may I explain? I negotiated the price of the car. And I brought the $2,000 difference up and the price at the very top to say that I'm not a hundred percent sure that that is the negotiated -- I'm not sure what the cash difference is.
I can't recall what the cash difference is. And I don't know if I negotiated the car to 24,950 and they put the 2,000 cash difference in. I can't recall that. What I can recall is, I negotiated the price of the car.
Q. Okay. Can we go through an exercise in mathematics for just a moment, and maybe we'll both understand what you just said?
A. Okay.
Q. The 26,950, is the price of the vehicle, which I understood to be negotiated. But, be that as it may, set that aside. You are given $6,950 for your 1999 Suburban. Correct?
A. Yes.
Q. So if you subtract 6,950 from 26,950, that is a remaining cash difference of $20,000, is it

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not?
A. Okay. It is this summer cold and lack of food that I missed the zero. Okay. I'm following you now.
Q. Okay.
A. Okay. So the 26,950 must have been the price that I negotiated. And I apologize. Again, it is the summer cold and lack of food.
Q. I just wanted to make sure we were -- because I was having trouble, going: Where is she talking about $2,000?
A. I wanted to be here longer.
Q. We can accommodate you.
A. So I'm with you. Yes, I negotiated the 26,950.
Q. You test-drove this car?
A. I did.
Q. And you had it a few months, and you decided you didn't like it. What does that have to do with your claim about the closing fee?
A. Well, when I testified to not liking the vehicle, you asked me why I sold it back to Land Rover of Columbia. You didn't ask me what it had to do with the recording and processing fee.
I don't know that it has -- it doesn't have

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anything to do with the recording and processing fee that I was charged. But the question you posed to me was: Why did you sell the car back? And I said I disliked the car. I hated the car.
Q. You are not saying selling the car back or whatever has anything to do with the recording and processing fee?
A. That's correct. My relationship with Land Rover -- because I was very angry with them, somebody else sold it back to them for me.
Q. You said you took a significant loss. What does that mean?
A. I can't remember how much I sold the car back to Land Rover for, but it was less than $20,000. And then I really didn't think that the trade-in allowance on my Suburban was -- you know, no one thinks they get enough money for their trade-in allowance. But I took a several-thousand dollar loss in the eight months that I had the car.
Q. You didn't have it eight months.
A. Sir?
Q. You said you had it eight months?
A. I think I had it less than a year.
Q. My impression is, based on some documents you gave us, that you had it maybe less than that.

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But it really doesn't make any difference.
A. It was less than a year. I remember it was less than a year.
MR. HAMM: I have nothing further. Thank you.
FURTHER EXAMINATION
BY MR. THOMAS:
Q. I just want to clarify something you said to Mr. Hamm.
A. Sure.
Q. I think what you testified to was that -- and correct me if I am wrong -- that you are not sure of the exact form that the price was on the vehicle, but you believe the price was on the vehicle because you knew it prior to the guy coming out and talking to you?
MR. HAMM: Object to form.
MR. BECKER: Object to form. Leading.
A. And I said that --
MR. THOMAS: Let me try to rephrase it.
MR. HAMM: Why don't you?
Q. How did you know the price of the car?
A. I'm not certain how I knew the price of the car, but I know that, when I pulled up onto the lot, and I parked behind the vehicle that I ended up

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purchasing, I got out of the car, and I looked at both cars.

And I know, soon after looking at the interior and the exterior of both cars, I started calculating the amounts -- the difference between the new style of the Land Rover and the Land Rover Discovery.

And I am task-oriented. You know, I didn't malinger. I immediately went in, you know, knew what I was going to do. And I already knew the difference between the two, and was, in my mind, negotiating which one I should buy. And then Steve came out.

I don't know if he came out or he was with somebody else. But somebody approached me. And I only imagine it was Steve Bonifas because that's the name on the sheet. He didn't approach me until after I was figuring numbers in my head.

MR. HAMM: Do you have anything further?

MR. THOMAS: Yes.

Q. To the best of your recollection, you knew the price of the car prior to Mr. Bonifas coming out?

A. Yes.

Q. And, more likely than not, how did you know

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that price?

A. It had to have been --

MR. HAMM: Objection to form.

Q. Go ahead.

A. The price had to be posted on the cars, either in -- somehow, posted on the cars.

MR. THOMAS: I don't have anything further.

FURTHER EXAMINATION

BY MR. HAMM:

Q. Did you know the price for the car before you drove on the dealership?

A. No, I did not.

Q. You have testified that you negotiated a lower price.

A. Yes.

Q. So what was the original price?

A. I can't recall.

Q. Well, you are task-oriented. What kind of a minimum discount would you have been looking for in order to proceed with a possible purchase transaction? $300, $400? I'm trying to get a sense of what kind of negotiator you are.

MR. THOMAS: Object to form.

A. I don't know the initial price of the car. I don't.

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Q. So if they had negotiated a dollar, would you have been successful with a dollar reduction?

A. I don't think I would have considered myself successful with a dollar reduction.

Q. So what dollar threshold do we need to get to before you would consider that you were successful?

A. I honestly don't remember the initial price of the car. And I don't remember the discount for purchasing the car, the negotiated amount, the difference between the original price and the negotiated amount. I don't remember.

I know that I did negotiate the price of the car prior to them looking at the Suburban, but I honestly don't know the initial price of the car.

Q. The reason I'm asking is because you stated pretty assertively that you don't pay the sticker price.

A. I mean, I don't walk on to a car lot wanting to pay sticker price for a vehicle.

Q. And you have, based on the responses to discovery, purchased a lot of vehicles.

A. Yes. And a lot of them come from a wholesaler, so ...

Q. Okay. Well, I'm trying to explore that you

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don't pay sticker, and I'm trying to get a sense of what this other price would have been. You have indicated you think you saw it on some sort of sticker, and I'm just trying to understand. And you have been -- you know, you have stated that you negotiated a lower price.

Since you don't pay sticker. You've bought a lot of cars. That would suggest to me that you have some significant amount of savvy in terms of negotiation. So I'm just trying to understand is, what kind of discount would have induced you to continue to engage in discussions that ultimately ended in your buying a car.

I'm just trying to get a sense of what kind of threshold amount. What is the range? What are we talking about? Are you proud if you get a $50 reduction on car that you pay 26,950 for, or maybe it was a potentially 27,950? That's what I am trying to understand.

MR. THOMAS: I will object to the form.

A. I don't know.

Q. So you don't know, after all the cars that you bought, what kind of discount you would look for?

MR. THOMAS: Object to the form of the

question.
A. And you say "all the cars that I've bought." Not every car that I have purchased has been purchased from a dealership. I don't know how to answer your question any more -- I'll state again, I don't know the original sticker price of the car. I don't know the difference between that and the negotiated amount. I do know with certainty that I negotiated a price for the car. That's all I know.
Q. Okay. If you don't know, you don't know.
A. I don't know.
MR. HAMM: No further questions. Thank you.
(The deposition concluded at 5:15 p.m.)

CERTIFICATE OF REPORTER

I, Kenneth McClure, Registered Merit Reporter and Notary Public for the State of South Carolina at large, do hereby certify that the foregoing transcript is a true, accurate and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

WITNESS MY HAND, I have hereunto affixed my official seal this 26th day of June, 2009, at Pickens County, South Carolina.

KENNETH McCLURE
REGISTERED MERIT REPORTER
MY COMMISSION EXPIRES
SEPTEMBER 24, 2013

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Heather Herron, *et al.*,

Plaintiffs,

v.

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

Defendants.

Case No. 2006-CP-02-1230

MEMORANDUM OF DEFENDANT J.L.H. INVESTMENTS LP d/b/a HENDRICK HONDA OF EASLEY IN OPPOSITION TO PLAINTIFF JULIE FREEMAN'S MOTION FOR DECLARATORY JUDGMENT

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Defendant J.L.H. Investments LP d/b/a Hendrick Honda of Easley ("Hendrick Honda of Easley") submits this memorandum in opposition to the motion of Plaintiff Julie Freeman ("Freeman") for declaratory judgment dated May 28, 2009. As this Court has acknowledged, this case consists of seven separate actions, in which each named Plaintiff currently has standing to assert claims only against the named Defendant with which they transacted business. (Order on Plaintiffs' Rule 41(a) Motion, etc. dated January 31, 2008 p. 5.) The action at issue in this memorandum is *Julie Freeman v. J.L.H. Investments LP d/b/a Hendrick Honda of Easley.*[1]

INTRODUCTION

In the First Amended Complaint dated October 28, 2006, Plaintiff Freeman alleges that Defendant Hendrick Honda of Easley violated the provisions of S.C. Code § 37-2-307 (the "Closing Fee Statute"), which regulates the charging of closing fees on the consumer credit sales of motor vehicles, when Freeman purchased a used 2005 Honda Accord from Hendrick Honda

[1] Hendrick Honda of Easley reserves the right to assert any legal arguments made by any other Defendants, if applicable.

of Easley on July 12, 2006. Freeman asserts three causes of action against Hendrick Honda of Easley: (1) violation of a provision of the South Carolina Motor Vehicle Dealers Act, S.C. Code § 56-15-10 *et seq.*, (the "Dealers Act"), (2) civil conspiracy, and (3) for declaratory judgment. Freeman seeks damages in the form of disgorgement of the closing fees and statutory penalties under the Dealers Act.

Freeman's Motion seeks judgment solely on her third cause of action for declaratory judgment[2] on the following issues:

1. Defendant violated the Closing Fee Statute by failing to disclose its practice of charging closing fees whenever it advertised a price for its motor vehicles;

2. Defendant violated the Closing Fee Statute by charging closing fees in amounts that exceeded reimbursement of certain overhead costs;

3. Unless the Closing Fee Statute is followed, closing fees are illegal; and

4. Defendant's charging of illegal closing fees violates § 56-15-30(a) of the Dealers' Act.

The Closing Fee Statute provides 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.

S.C. Code § 37-2-307.

[2] "[T]hough Rule 57 of the South Carolina Rules of Civil Procedure governs declaratory judgment actions, and expressly provides: 'the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate,' a court should not exercise such power lightly." *Smith v. South Carolina Retirement Sys.*, 336 S.C. 505, 528, 520 S.E.2d 339, 351 (Ct. App. 1999) (quoting *MUSC v. Taylor*, 294 S.C. 99, 362 S.E.2d 881 (Ct. App. 1987)). As set forth in section 11 below, Plaintiffs' remedy for any violation of the Closing Fee Statute is under the Consumer Protection Code. Thus, Plaintiff's claim for declaratory judgment is inappropriate because a specific statutory remedy exists for Plaintiff's claims. Indeed, it is well settled that a court ordinarily will refuse to grant a declaratory judgment where a special statutory remedy has been provided. *Id.*

The relevant portions of the Dealers' Act upon which Freeman relies provides that it shall be an "unfair and deceptive act or practice," S.C. Code §§ 56-15-30(a), 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," *Id.* § 56-15-40(1), or "to resort to or use any false or misleading advertisement in connection with his business as such motor vehicle dealer." *Id.* § 56-15-40(4)(c).

As will be demonstrated herein, there is no evidence that Hendrick Honda of Easley violated the Closing Fee Statute or the Dealers Act. Furthermore, Freeman admitted that she was aware of Hendrick Honda of Easley's practice of charging a closing fee and the amount of the fee before she purchased her vehicle. Indeed, Freeman ultimately chose to purchase the vehicle and pay the fee. Freeman also testified that she was treated well by Hendrick Honda of Easley employees, pleased with the vehicle she purchased, and would shop at Hendrick Honda of Easley again.

This is a lawsuit in which a Plaintiff, who was not at all misled or harmed, is pursuing a penalty based upon a strained and distorted interpretation of consumer protection statutes. In *Davis v. NationsCredit Fin. Serv. Corp.*, 326 S.C. 83, 86-87, 484 S.E.2d 471, 472-73 (1997), our Supreme Court expressed a policy of refusing to elevate form over substance in such cases. The Court held that consumer protection statutes should not be read to protect consumers who were not misled, but merely seek a penalty for technical and manufactured statutory violations. *Id.* at 87, 484 S.E.2d at 473.

For these and other reasons stated herein, Freeman's motion should be denied.

STATEMENT OF FACTS

The facts on which Hendrick Honda of Easley relies are set forth in the filed affidavits of Don Pendleton, Randall Clemment, John Miller, Joseph Phillips, and Marcus Sanders, all current or former Hendrick Honda of Easley employees. Hendrick Honda of Easley also relies on the deposition transcripts of Plaintiff Julie Freeman, Brandon Hair, William Freeman, and Danny Collins, copies or excerpts of which are attached to this memorandum.

1. Hendrick Honda Of Easley Has Complied With The Closing Fee Statute.

Hendrick Honda of Easley charges closing fees as a means to reimburse the dealership for the costs of document preparation and retrieval involved in the sale of a motor vehicle. (Pendleton Aff. ¶¶ 6, 8.) The amount of closing fees collected each year is significantly less than the overhead expenses that are related to the preparation, processing, retrieval, and storage of documents associated with the sale of motor vehicles. (*Id.* ¶ 59.) First, as required by the Closing Fee Statute, Hendrick Honda of Easley has registered the closing fee with the Department of Consumer Affairs, and neither the amount of the fee nor the registration form has ever been rejected by the Department of Consumer Affairs. (*Id.* ¶ 12).

To comply with the second requirement of the Closing Fee Statute that the closing fee be "disclosed on the sales contract," Hendrick Honda of Easley has prominently disclosed the fee on a one-page form referred to as the Sales Worksheet, which is usually shown to a customer during the early discussions about a particular vehicle. (*Id.* ¶ 14; Clemment Aff. ¶¶ 8-9) Hendrick Honda of Easley also discloses the fee on a one page final buyer's form ("Buyer's Order"), which is reviewed with the customer by the Finance & Insurance Manager prior to the completion of negotiations for the purchase of a vehicle. (Pendleton Aff. ¶ 15.)

The third requirement of the Closing Fee Statute requires that a notice of the closing fee be "displayed in a conspicuous location in the motor vehicle dealership," and Hendrick Honda of Easley has posted numerous notices of the closing fee throughout the dealership. (*Id.* ¶¶ 16-17; ¶ Clemment Aff. ¶ 17; Miller Aff. ¶ 13; Phillips Aff. ¶ 12.) Each notice has the suggested language printed on the annual registration form submitted to and approved by the Department of Consumer Affairs. (Pendleton Aff. ¶ 17.)

Finally, Hendrick Honda of Easley has complied with the Closing Fee Statute's requirement that the fee be "included in the advertised price of a motor vehicle." Don Pendleton testified that Hendrick Honda of Easley does not understand the Closing Fee Statute to require that all advertisements separately disclose or mention the fee, or state that the fee is included. (*Id.* ¶ 18). Instead, Hendrick Honda of Easley understands the Closing Fee Statute to require that if and when a particular vehicle is sold exactly as advertised and at the price advertised, the closing fee is properly charged as long as the final sales price does not exceed the advertised price. (*Id.* ¶ 19). As Don Pendleton has explained in detail, not all vehicles sold by Hendrick Honda of Easley are advertised, not all advertisements mention price, and not all customers visit Hendrick Honda of Easley because of an advertisement. (*Id.* ¶ 20.) Regardless of whether a vehicle was advertised, most customers negotiate over everything associated with the purchase of a vehicle, including the price, additional products and services such as additional accessories, warranties, and insurance, the closing fee, and even tax, tag, and title fees. (*Id.* ¶ 23, 26; *see also* Clemment Aff. ¶¶ 14-15; Miller Aff. ¶¶ 11-12; Phillips Aff. ¶11.) Additionally, some vehicle purchases occur over several days, or even weeks. (Pendleton Aff. ¶ 26.) As a result, almost all transactions involve negotiation over price *after* the buyer is first made aware of Hendrick Honda of Easley's practice of charging closing fees. (*Id.* ¶ 27; Phillips Aff. ¶ 4; Miller Aff. ¶ 12.)

Since it began charging closing fees, Hendrick Honda of Easley has made, and continues to make, every reasonable effort to comply with the Closing Fee Statute, and any violation of the statute (which Hendrick Honda of Easley does not concede) was unintentional. (Pendleton Aff. ¶ 11). All three employees involved in Freeman's transaction testified that they understand the fee's purpose, are available to answer questions about the fee, and that each believes Hendrick Honda of Easley informs customers about closing fees through multiple methods prior to the completion of negotiations for the purchase of a vehicle. (Clemment Aff. ¶¶ 18-19; Miller Aff. ¶¶ 14, 16; Phillips Aff. ¶¶ 12-13.)

2. Julie Freeman's Purchase at Hendrick Honda Of Easley.

Julie Freeman first visited Hendrick Honda of Easley's dealership on July 11, 2006. (Freeman Depo. p. 29, ll. 20-25.) Looking for a vehicle to replace the Mazda 626 sedan she was driving at the time, Freeman had narrowed her vehicle search to a used, white, four-door Honda Accord. (*Id.* at p. 20, ll. 19-22, p. 23 ll. 3-4, 10-11, 15-16.) Freeman visited Hendrick Honda of Easley because her husband (who was her fiancé at the time), works in Easley, South Carolina, and was familiar with the dealership because of his commute to work. (*Id.* at p. 25, ll. 22-25-p. 26, ll. 1, 8-10). She did not respond to any advertisement of any kind in deciding to visit Hendrick Honda of Easley. (*Id.* at p. 27, ll. 3-25-p. 26, ll. 1-3).

When Freeman arrived at the dealership, Randall Clemment approached her and began showing her several vehicles. (*Id.* at p. 31, ll. 23-24; Clemment Aff. ¶¶ 3-4.) Freeman eventually identified a used 2005 Honda Accord in which she was interested, and took the vehicle for a test drive. (Freeman Depo. p. 29, ll. 8-10.) She testified that there was only one window sticker on the vehicle and she thought it stated that the car was a "certified used Honda" and that the price of the vehicle was listed as $18,995. (*Id.* at p. 34, ll. 21-25-p. 35, ll. 1-18.)

Freeman initially testified that she thought that the Buyer's Guide, a sticker required by federal law, was the only sticker that she saw on the vehicle. (*Id.* at p. 34, ll. 21-25-p. 35, ll. 1-18, p. 38, ll. 22-25-p. 39, ll. 1-4.) The Buyer's Guide did not mention price, but did state that the vehicle was certified. (*Id.*; Clemment Aff. ¶ 5.) However, later in her deposition, Freeman's attorney showed her an example of a window sticker for used certified cars that was produced by Hendrick Honda of Easley during discovery. (Freeman Depo. p. 115, ll. 24-25-p. 116, ll. 1-4.) Freeman contradicted her earlier testimony and stated that she had also seen the "certified" sticker, in addition to the Buyer's Guide, on the 2005 Honda Accord. (*Id.* at p. 116, ll. 4-8.)

As Randall Clemment testified, Freeman's deal jacket did not contain evidence of any window stickers or tags other than the Buyer's Guide, and he does not remember whether there were any other stickers. (Clemment Aff. ¶ 5.) Marcus Sanders, a Business Development Manager with Hendrick Honda of Easley, testified that Honda Certified used vehicles have stickers affixed to their window indicating they have undergone a certification and inspection process and have been designated as Honda Certified vehicles. (Sanders Aff. ¶ 10.) As Mr. Sanders explains in detail in his affidavit, prior to May 1, 2006, window stickers on certified vehicles on Hendrick Honda of Easley's lot did not mention price. (*Id.* ¶¶ 10-12.) On May 1, 2006, pursuant to an American Honda Motor Co., Inc. ("American Honda") directive, Hendrick Honda of Easley, through the use of a third party, began affixing window stickers on certified vehicles that did mention price. (*Id.* ¶ 13.) "Whether or not a used vehicle had a Honda Certified window sticker that mentioned price would depend on the date that the vehicle was brought into the dealership's inventory and placed on the dealership's lot for sale." (*Id.* ¶ 10.)

Freeman's vehicle came into Hendrick Honda of Easley's used car inventory on April 13, 2006, as evidenced by the vehicle's service records. (*Id.* ¶ 17.) Hendrick Honda of Easley

performed a certified pre-owned inspection on the 2005 Honda Accord, and then first offered the vehicle as a Honda Certified pre-owned vehicle. (*Id.*) Mr. Sanders testified that because the 2005 Honda Accord was on the dealership's lot before the American Honda's May 1st directive stating that price should thereafter be included in certified window stickers, it is it is highly unlikely that any certified window sticker on Freeman's vehicle would have mentioned price. (*Id.* ¶¶ 18-20.) During the time period that Freeman's vehicle came on the lot, Hendrick Honda of Easley did not generate or affix its own window stickers on used certified vehicles. (*Id.* ¶ 12). Instead, in April 2006, American Honda generated certified window stickers, and Dealer Services printed and affixed certified window stickers for vehicles on the dealership's lot. (*Id.*) It would have been unlikely that a salesman would have ordered a new sticker for a vehicle already on the dealership's lot. (*Id.* ¶ 20.)

As a result, Hendrick Honda of Easley disputes that Freeman saw a certified sticker like the type she identified in her deposition. The sticker Freeman was shown was for a 2008 vehicle, as evidenced by the face of the sticker.[3] Based on Mr. Sanders testimony, the 2008 vehicle mentioned price pursuant to the American Honda directive, whereas it is highly unlikely that any sticker on Freeman's vehicle, placed on the lot in April 2006, mentioned price.

After test driving the 2005 Honda Accord, Freeman began negotiating price with Mr. Clemment, and he showed her a Sales Worksheet at the start of the negotiation process, which had the "Administration Fee" of $299.00 preprinted in the lower right hand corner of the document. (Freeman Depo. p. 47, ll. 1-7; 17-22; *see also* Clemment Aff. ¶¶ 7-8.) Though she could not remember any details about how the final price for the vehicle was negotiated, Freeman testified that she was primarily concerned with the total monthly payment she was

[3] A black and white copy of the 2008 sticker Freeman was shown is attached as Exhibit 15 to the transcript of Freeman's deposition, and a full color copy is attached to this memorandum.

willing to pay and keeping the total price below $18,000. (Freeman Depo. p. 35, ll. 21-24, p. 51, ll. 11-19). Mr. Clemment testified that the Sales Worksheet indicates that there was a substantial amount of negotiation between himself, Freeman, and John Miller, the Sales Manager, and ultimately Hendrick Honda of Easley offered to sell the vehicle for $17,975. (Clemment Aff. ¶¶ 8, 10.) However, Freeman did not wish to purchase the vehicle that day because she did not have her Mazda 626 to trade in. (Freeman Depo. p. 54, ll. 16-19.) Freeman most likely left the dealership with a copy of the Sales Worksheet, showing her the negotiated price of $17,975.00 and disclosing the closing fee of $299.00. (*Id.* at p. 56, ll. 23-25-p. 57, ll. 1-4; Clemment Aff. ¶¶ 8-9.)

Freeman returned the following day, on July 12, 2006, having decided to purchase the vehicle. (Freeman Depo. p. 58, ll. 18-20, p. 59, ll. 22-24; Clemment Aff. ¶ 11.) Joseph Phillips, a former Finance and Insurance Manager, reviewed the Sales Worksheet and Buyer's Order with Ms. Freeman. (Phillips Aff. ¶ 8.) He testified that he believed that by the time he met with Freeman, she had already been made aware that Hendrick Honda of Easley charges closing fees multiple times because she had signed the Sales Worksheet and been in the dealership to see the notices posted on the wall regarding closing fees. (*Id.* ¶¶ 4-6.) Nevertheless, after Mr. Phillips offered Ms. Freeman certain service contracts and insurance, all of which she declined, he reviewed the Sales Worksheet and Buyer's Order side by side with her again. (*Id.* ¶¶ 7-8.) Neither Freeman nor Mr. Phillips recall her asking any questions about the fee, but both testified that Mr. Phillips was always available to answer any questions Freeman might have had. (*Id.* ¶ 9; Freeman Depo. p. 72, ll. 4-7.) Additionally, Freeman testified that she would not have completed the transaction if she was not satisfied with the terms and the price, and that she

understood she could leave the dealership at any time without buying the vehicle if she did not want to. (Freeman Depo. p. 69, ll. 4-16.)

Freeman ultimately signed the Buyer's Order and agreed to purchase the vehicle and pay the fee. (*Id.* at p. 67, ll. 23-25.) Brandon Hair, Freeman's fiancé, and William Freeman, Freeman's father, who were both with Freeman when she purchased the car, each testified that Hendrick Honda of Easley did not try to mislead or deceive Freeman. (Hair Depo. p. 37, ll. 2-5; William Freeman Depo. p. 19, ll. 19-22.) Freeman herself testified that she was treated well by Hendrick Honda of Easley employees and pleased with the vehicle she purchased. (Freeman Depo. pp. 82-83.)

3. Disputed Issues Of Material Fact.

Freeman's arguments raise the following disputed issues of material fact:

1. What price stickers, tags, etc., were on the used 2005 Honda Accord, when did Freeman first see the stickers, and did any of the stickers mention price?

2. How did Freeman first become aware of Hendrick Honda of Easley's practice of charging a closing fee, and what additional concessions from Hendrick Honda of Easley, if any, did she negotiate after becoming aware of the closing fee?

3. By proceeding to purchase her vehicle with full knowledge of the fee, and after having had a full and complete opportunity to negotiate the price she paid for the vehicle, including the closing fee, has Freeman impliedly waived her claims or is she equitably estopped from pursuing them?

4. What costs does Hendrick Honda of Easley incur with respect to preparation, storage, and retrieval of documents related to the sale of a motor vehicle, and to what extent does the closing fee Hendrick Honda of Easley charges cover these costs?

The foregoing list of disputed issues of fact is not necessarily exhaustive, but is clearly sufficient to demonstrate that regardless of how the Court might rule on the purely legal issues raised by Freeman's motion, the Court cannot properly grant Freeman judgment against Hendrick Honda of Easley.

ARGUMENT AND CITATION OF AUTHORITIES

1. Freeman's Motion Is A Motion For Summary Judgment On The Merits Of Her Claims.

Freeman's motion is, in substance, a motion for summary judgment pursuant to Rule 56, SCRCP, because it is based on the fact that there are no disputes of material fact.[4] The substance of the motion, rather than the name Freeman has given to it, controls. *Mickle v. Blackmon*, 255 S.C. 136, 140, 177 S.E.2d 548, 549 (1970) (dealing with motion based on its substance and effect as opposed to how it was captioned by party); *see Richland County v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002) (stating that when the court is able to discern the relief requested, "[i]t is the substance of the requested relief that matters regardless of the form in which the request for relief was framed.").

There is no such thing as a motion for declaratory judgment. "A declaratory judgment action may not be commenced by a motion . . . ." *Home Health & Hospice Care, Inc. v. Meyer*, 88 N.C. App. 257, 262, 362 S.E.2d 870, 873 (Ct. App. 1987). Rule 57, SCRCP, which governs declaratory judgment, does not authorize a motion for declaratory judgment. As a result, the requirements of pleading and practice in actions for declaratory relief are exactly the same as in other civil actions. 10B Wright, Miller, and Kane, *Federal Practice and Procedure: Civil* § 2768 (3d ed. 1998). This equivalence means that there are no motions available in an action for declaratory judgment that are not available in other sorts of actions. As the United States Court of Appeals for the Ninth Circuit recently stated:

> a party may not make a *motion* for declaratory relief, but rather, the party must bring an *action* for declaratory judgment. Insofar as plaintiffs seek a motion for declaratory judgment, plaintiffs' motion is denied because such a motion is inconsistent with the Federal Rules. The only way plaintiffs'

[4] Plaintiffs' Memorandum in Support of their Motions for Declaratory Judgment states that "Because 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." (Plaintiffs' Mem. p. 1 n.2.) Armstrong's Motion stated "The basis of this motion is that there is no disputed issue of fact . . . . " (Armstrong Motion p. 2.)

> motion can be construed as being consistent with the Federal Rules is to construe it as a motion for summary judgment on an action for a declaratory judgment.

Kam-Ko Bio Pharm Trading Co. v. Mayne Pharma (USA) Inc., 560 F.3d 935, 943 (9th Cir. 2009) (quoting *Int'l Bhd. of Teamsters v. Eastern Conference of Teamsters*, 160 F.R.D. 452, 456 (S.D.N.Y. 1995) (emphasis in original)). To proceed as Freeman requests would deprive Hendrick Honda of Easley of its constitutional right to a jury trial, which is specifically preserved by Rule 57, SCRCP. The "hearing" referred to in Rule 57 is an evidentiary hearing or trial, not a motion hearing.

As such, Freeman's motion must be dismissed, or can only properly be heard by the Court as a motion for summary judgment. However, summary judgment is not appropriate when further inquiry into the facts of a case is desirable to clarify the application of the law. *E.g., Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); *Schmidt v. Courtney*, 357 S.C. 310, 317, 592 S.E.2d 326, 330 (Ct. App. 2003) (citing several cases applying these principles). "At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied." *Hill v. York County Sheriff's Dep't*, 313 S.C. 303, 308, 437 S.E.2d 179, 182 (Ct. App. 1993) (emphasis added). There are numerous disputed issues of material fact between Hendrick Honda of Easley and Freeman, and as such, summary judgment is inappropriate.

2. This Court Should Not Rule Upon A Motion Dealing With The Merits Of A Claim Because Venue Is Improper In This Court.

Not long after this action was commenced, Hendrick Honda of Easley filed a Motion to Dismiss for Improper Venue, etc., dated October 6, 2006, in which Hendrick Honda of Easley sought dismissal of this action for improper venue or, in the alternative, a change of venue on the

grounds that the action must be tried in the county where each Defendant has its principal place of business. While Hendrick Honda of Easley's Motion to Dismiss was pending, the Court *sua sponte* issued an Order Establishing Complex Case Designation for Pretrial Purposes Only dated January 30, 2007, designating this case as complex "for pretrial purposes only" and assigning the case to the Honorable Doyet A. Early, III "to hear and handle all pre-trial motions."

In a subsequent Order Denying Motions to Dismiss dated July 31, 2007, the Court ruled on some of the issues raised in the foregoing motion but did not address or rule upon Hendrick Honda of Easley's objections to venue. In a later Order on Plaintiffs' Rule 41(a) Motion, etc., dated January 31, 2008, the Court acknowledged that in the order dated July 31, 2007, it had not ruled on Defendants' motions relating to improper joinder and venue, and the Court then stated as follows: "Accordingly, I will refrain from ruling on these issues *until after discovery is completed.* Defendants may refile or renew their motions related [sic] to dismiss for improper venue and improper joinder at that time." (January 31, 2008 Order p. 12 (emphasis added)).

Freeman now seeks a ruling on the merits of one of her three causes of action, but the Court should not rule upon the merits of Freeman's motion because venue is improper in this Court as to Hendrick Honda of Easley, which maintains its principal place of business in Pickens County. This Court thus must sever Freeman's claims against Hendrick Honda of Easley from the claims of the other six Plaintiffs and transfer venue of Freeman's claims to Pickens County prior to any hearing on the merits of any of Freeman's claims. *See Royster Co. v. Eastern Distrib., Inc.*, 301 S.C. 18, 20, 389 S.E.2d 863, 864 (1990) (holding that "the granting of summary judgment constitutes a trial for purposes of venue, such that a motion for summary judgment must be heard and judgment entered in the county of appropriate venue."); *Brandt v. Gooding*, 368 S.C. 618, 625, 630 S.E.2d 259, 263 (2006) ("When determining whether to grant

summary judgment, a court must examine both the facts and the law. . . . Because a court must conduct the examination of law and facts, such an examination constitutes a trial. . . . As a result, a summary judgment motion, when granted, constitutes the final determination of all the issues that exist between the parties.") (internal citations omitted)).

3. Freeman Does Not Properly And Adequately Represent Any Class Or Group Of Buyers Who Paid Closing Fees.

Freeman's motion purports to be on behalf of Freeman individually and for the benefit of all car buyers who paid administrative fees to Hendrick Honda of Easley. (Plaintiff's Mem. p. 1.)[5] The Court has recently entered its Order on Motion to Dismiss and Substitute as to Toyota of Greenville, Inc., dated October 7, 2009, which despite its title and the limited issue before the Court in the motion involving only one Plaintiff and one Defendant, appears to apply to all Plaintiffs and Defendants in each of these individual cases improperly joined together.[6] The Order effectively reinterprets the Court's earlier Order dated July 31, 2007, as "certif[ying] that the named plaintiffs could proceed *on behalf of the group* of car purchasers who paid 'administrative fees,'" and the Order dated January 31, 2008, as holding "that each named Plaintiff had standing to sue for himself *and in a representative capacity for others* against the Defendant that transacted business with that named Plaintiff." (October 7, 2009 Order p. 3 (emphasis added)).

The Order dated July 31, 2007 actually stated as follows: " I find that the 1985 Act [the Act enacting the Rules of Civil Procedure] neither repealed S.C. Code Ann. § 56-15-110(2) nor

[5] Pursuant to the Plaintiffs' memorandum, Plaintiff's Armstrong's Motion is incorporated herein. Armstrong's Motion purported to be on behalf of Armstrong "individually and for the benefit of all car buyers whom [*sic*] paid 'administrative fees'" to Galeana. (Armstrong Mot. p. 1.)

[6] Hendrick Honda of Easley served a Motion under Rule 59(e) SCRCP to alter or amend this order on October 26, 2009, within ten days after receiving notice of entry of the order.

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." (July 31, 2007 Order p. 2). The Order went on to state in conclusion: "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." (*Id.*)

Additionally, the Order dated January 31, 2008, held only 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." (January 31, 2008 Order pp. 5, 8 (emphasis added)). Notably, neither the October 7, 2009 Order nor the January 31, 2008 Order provide that the named Plaintiff could proceed *in a representative capacity*, and neither order sets forth what requirements the Plaintiff must meet in order to do so, under either the statutory claim pursuant to the Dealers Act or the other two causes of action for declaratory judgment and civil conspiracy. Even if this Court is correct in its holding that the provisions of § 56-15-110(2) do not require the Plaintiffs to plead and prove the requirements of Rule 23 SCRCP (which Hendrick Honda of Easley does not concede), there is no basis in current law to conclude that Rule 23 does not apply to the claims for declaratory judgment and civil conspiracy.

As demonstrated in Defendants' Memorandum in Support of Their Motion for Protective Order, Discovery Plan, and Case Management Order dated October 8, 2008 ("Case Management Memorandum"), a motion which the Court never ruled upon,[7] Freeman may sue as the representative of a group only if the court finds (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) the

[7] Numerous Defendants filed a Motion for Protective Order, Discovery Plan, and Case Management Order dated October 2, 2008, and this motion was argued at a hearing on November 24, 2008. The Court never ruled upon this motion.

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 interests of the class; and (5) 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 one hundred dollars for each member of the class. (Case Management Memorandum pp. 16-22). The aforementioned requirements for proceeding in a representative capacity on behalf of others originate in federal constitutional provisions guaranteeing procedural due process of law for both the defendant and the absentee plaintiffs. (*See id.* at 18-19, 21-22, and cases cited therein). Freeman, however, has not even attempted to demonstrate the existence of the foregoing constitutionally required prerequisites to a group or class action.

Additionally, Freeman has not offered any evidence that the particular factual circumstances relating to her purchase of a vehicle from Hendrick Honda of Easley are common to all buyers she seeks to represent. Such circumstances include, but are not limited to, (1) whether the price of the vehicle purchased was advertised and, if so, how; (2) whether the buyer paid the advertised price; (3) whether the buyer negotiated for, and received, goods or services that were not included in any advertised price; and (4) whether the buyer had notice of the closing fee and when. For example, Freeman purports to represent group of purchasers who paid administrative fees, and that those administrative fees were not included in the advertised price, but it is disputed as to whether the vehicle Freeman purchased was ever advertised with price. (*See* Sanders Aff. ¶ 20; Freeman Depo. pp. 34-35, 115-116.) In the absence of proof that all relevant facts relating to Freeman's purchase of a vehicle from Hendrick Honda of Easley are common to the purchases made by all buyers Freeman seeks to represent, she cannot represent a class of buyers.

The Affidavit of Don Pendleton (and others) that Hendrick Honda of Easley has filed in opposition to Freeman's motion establishes that the circumstances of every vehicle purchase are unique. Mr. Pendleton states, "Not all vehicles sold by Hendrick Honda of Easley are advertised, and not all advertisements mention price." (Pendleton Aff. ¶ 20.) For example, the Affidavit of Marcus Sanders reveals that it is highly unlikely that any window sticker on the 2005 Honda Accord purchased by Freeman mentioned price, and there is no evidence in the record that suggests that the vehicle was advertised in any other way. (Sanders Aff. ¶ 20; Clemment Aff. ¶ 6.) In addition, "most, if not all, buyers negotiate freely over everything associated with the purchase of a vehicle, including but not limited to the price of the vehicle, additional products and services such as optional equipment, warranties, and insurance, tax, title, and tags, and the closing fee." (Pendleton Aff. ¶ 23.) "No matter what factor is of most concern to any given buyer, almost all motor vehicle sales transactions involve several stages of negotiation over numerous items including the price of the vehicle, financing or lease terms, trade-in allowance, or the price for optional equipment, warranties, or insurance." (*Id.* ¶ 26.) Finally, if a buyer refuses to pay the closing fee, Hendrick Honda of Easley will not insist on charging the fee if doing so will lose the sale. (*Id.* ¶ 43.) Hendrick Honda of Easley will, however, account for payment of the closing fee in every retail sale. (*Id.* ¶ 44.)

Given the infinite variety of circumstances that can attend the sale of a motor vehicle, the existence of a uniform class of buyers who paid a closing fee under similar relevant circumstances is very unlikely. Even though it is her burden to do so, Freeman has not undertaken to define or to demonstrate that she has met the federal constitutional requirements for proceeding as a representative of a class of plaintiffs, so she cannot represent a class at this stage of the proceedings.

4. Freeman Lacks Standing To Sue As To All Of Hendrick Honda Of Easley's Practices Relating To Closing Fees.

Standing to sue is a fundamental requirement for instituting a cause of action. *Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 84, 644 S.E.2d 58, 60 (2007).[8] If Freeman did not suffer injury from a specific practice or act by Hendrick Honda of Easley, then Freeman cannot maintain an action challenging that practice.

First, Freeman was not injured by any of Hendrick Honda of Easley's practices related to new vehicles because Freeman purchased a used vehicle. (Clemment Aff. ¶ 4.) Second, Freeman admits she was not injured by any of Hendrick Honda of Easley's practices relating to television advertisements or radio advertisements because Freeman did not see any such advertisements. (Freeman Depo. p. 27, ll. 3-25-p.28, ll. 1-3.) Third, Freeman was not harmed by any of Hendrick Honda of Easley's practices relating to print advertisements because Freeman's vehicle was not advertised in any print publication. (*Id.* p. 27, ll. 7-8.) As a result, Freeman cannot claim injury from any of Hendrick Honda of Easley's practices referenced above because she had admitted she was not affected by any of those practices.

5. Freeman Impliedly Waived Her Right To Sue Regarding The Closing Fee.

Freeman waived her right to object to the closing fee by signing the Buyer's Order and purchasing her vehicle with full knowledge that Hendrick Honda of Easley was charging a closing fee. "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

[8] The constitutional requirement of standing has three components: (1) the plaintiff must have suffered an injury in fact, an invasion of a legally protected interest which is concrete and particularized, and actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the conduct complained of, that is, 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; and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Smiley v. South Carolina Dept. of Health and Environmental Control,* 374 S.C. 326, 329, 649 S.E.2d 31, 32-33 (2007).

asserted, possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended." *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 388-89 (1992) (citing Am Jur. (2d), *Estoppel and Waiver*, §§ 154, 158 (1966)). Waiver may be implied from circumstances indicating an intent to waive. *Bonnette v. State*, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981); *Lyles v. BMI, Inc.*, 292 S.C. 153, 158, 355 S.E.2d 282, 285 (Ct. App. 1987). Acts that are inconsistent with the continued assertion of a right may also give rise to a waiver. *Bonnette*, 277 S.C. at 18, 282 S.E.2d at 598.

In this case, Freeman clearly waived any right to object to Hendrick Honda of Easley's charging of the closing fee. Freeman is a mature, college educated elementary school teacher. (Freeman Depo. p. 10, ll. 14-18.) She was also accompanied through most of the transaction by her husband, Brandon Hair, who has a masters in Public Health Administration. (Hair Depo. p. 10, ll. 5-6.). Freeman admitted in her deposition that she signed both the Sales Worksheet and the Buyer's Order, both of which had the closing fee prominently disclosed in bold print. (Freeman Depo. p. 47, ll. 1-7, 17-22, p. 67, ll. 23-25.) Freeman is presumed to have read, understood, and agreed to the statements contained in the documents she signed, regardless of whether she read them or not. Under well-settled law of South Carolina, a person is bound by the documents that she signs. *See, e.g., Regions Bank v. Schmauch*, 354 S.C. 648, 664, 582 S.E.2d 432, 440 (Ct. App. 2003) ("One who signs a written instrument has the duty to exercise reasonable care to protect himself." (internal citations omitted.))

6. Freeman Is Equitably Estopped From Objecting To The Closing Fee.

Freeman is equitably estopped from objecting to her payment of the closing fee. Under South Carolina law, the essential elements of estoppel are divided between the estopped party

and the party claiming estoppel. *Southern Dev. Land and Golf Co. v. South Carolina Pub. Serv. Auth.*, 311 S.C. 29, 33, 426 S.E.2d 748, 750 (1993), *aff'g in part and rev'g in part,* 305 S.C. 507, 409 S.E.2d 428 (Ct. App. 1991). As to the estopped party, the essential elements are:

(1) conduct amounting to a concealment of material facts, or conduct calculated to convey the impression that the facts are otherwise than, and inconsistent with, the party's subsequent assertions;

(2) intention or expectation that such conduct be acted upon by the other party; and

(3) actual or constructive knowledge of the real facts.

Id. As to the party claiming estoppel, the essential elements are:

(1) lack of knowledge or the means of acquiring, with reasonable diligence, knowledge of the true facts;

(2) reasonable reliance on the other party's conduct; and

(3) a prejudicial change in position.

Id. Unlike waiver, the estopped party need not intend to relinquish or change any existing right for estoppel to arise. *Janasik,* 307 S.C. 339, 415 S.E.2d 384. The reliance by the party claiming estoppel must be reasonable, and it must proceed in good faith. *Masonic Temple, Inc. v. Ebert,* 199 S.C. 5, 17, 18 S.E.2d 584, 589 (1942).

As to Freeman, the party against whom Hendrick Honda of Easley seeks estoppel, Freeman's conduct during her transaction is completely inconsistent with her subsequent actions in bringing an action claiming illegal, unconscionable, deceptive, and misleading conduct by Hendrick Honda of Easley in charging the fee. Freeman testified that she would not have completed her transaction if the terms were not acceptable to her. (Freeman Depo. p. 69, ll. 4-16.) She also admitted that she remembered signing the Sales Worksheet and the Buyer's Order, both of which prominently disclosed the closing fee, and ultimately agreed to purchase the vehicle anyway—all of which signaled to Hendrick Honda of Easley that Freeman had no objections to the terms of the transaction. (*Id.* at p. 47, ll. 1-7, 17-22, p. 67, ll. 23-25.) If

Freeman had objections to the fee or believed that Hendrick Honda of Easley was misleading her in any way, the time to complain was before the transaction was final. Instead, Freeman knew or reasonably should have expected that Hendrick Honda of Easley would rely on her conduct in purchasing the vehicle and would conclude that Freeman had no objections to the fee. Meanwhile, Freeman apparently concealed her present claims that Hendrick Honda of Easley had "unfairly surprised" her with the fee, though she admitted she was "very satisfied" with the transaction. (*Id.* at p. 82, l. 17.)

As to Hendrick Honda of Easley, the party seeking estoppel, Hendrick Honda of Easley personnel had no way whatsoever to know of Freeman's objections to the fee, unless she told Hendrick Honda of Easley herself. Instead, Freeman remained silent about her objections throughout the transaction. Hendrick Honda of Easley reasonably relied on Freeman's conduct in concluding that Freeman had no objection to the fee, only to be prejudiced and surprised a month and a half later when Freeman filed suit. As evidenced by the Affidavits of Don Pendleton and Joseph Phillips, if Freeman had objected to the fee, Hendrick Honda of Easley likely would have reduced the purchase price to accommodate her objections (while still accounting for the fee), and Hendrick Honda of Easley would likely not have insisted on charging the fee at the risk of losing the deal with Freeman. (Pendleton Aff. ¶ 43; Freeman ¶ 10.) However, Freeman never gave Hendrick Honda of Easley the opportunity to take such actions because she misled Hendrick Honda of Easley by failing to make any objection to the fee during the transaction.

7. The Closing Fee Statute, S.C. Code § 37-2-307, Does Not Require A Closing Fee To Be Separately Disclosed Whenever The Price Of A Vehicle Is Advertised.

Freeman argues that the Closing Fee Statute, S.C. Code § 37-2-307 requires that a dealer disclose the dealer's practice of charging a closing fee and the amount of the fee whenever the

price of a vehicle is advertised in order to protect consumers from "unfair surprise." (Plaintiffs' Mem. pp. 3, 8.) This assertion is patently inconsistent with the plain language of the Closing Fee Statute and the Department of Consumer Affairs' interpretation of the statute.

a. The language of the Closing Fee Statute is unambiguous and does not require a separate disclosure of closing fees on advertisements.

The Closing Fee Statute states in relevant part, "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 § 37-2-307 (emphasis added). The Closing Fee Statute thus imposes three separate and distinct requirements on a motor vehicle dealership that charges a closing fee, and the only disclosure requirement mentioned relates to the sales contract.

The language of the Closing Fee Statute is unambiguous, so it must be given its plain, ordinary meaning. "The first question of statutory interpretation is whether the statute's meaning is clear on its face." *Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002). If the language of a statute is plain, unambiguous, and conveys a clear meaning, then "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the operation of the statute. *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

With respect to an advertised price, the Closing Fee Statute clearly requires only that the closing fee be *included in* the advertised price. The Closing Fee Statute says nothing about separately disclosing the closing fee included in the price when a price is advertised. The closing

fee must be disclosed only on the sales contract. Based on the plain language of the statute, Hendrick Honda of Easley's practice is to disclose the closing fee on both the Sales Worksheet and Buyer's Order. (Pendleton Aff. ¶¶ 14-15). Freeman also concedes that the closing fee she paid was disclosed on her sales contract.[9]

b. Hendrick Honda of Easley's interpretation of the Closing Fee Statute is supported by the Department of Consumer Affairs.

The interpretation given to the Closing Fee Statute by the South Carolina Department of Consumer Affairs supports the conclusion that disclosure of the closing fee is not required in advertising. According to the Department of Consumer Affairs, "[i]f 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*." (Administrative Interpretation 2.307-0101, p. 2 (June 7, 2001) (emphasis added.))[10]

The Department's interpretation clearly refers to "the acceptance of an *advertisement's terms*" and does not refer to a sales price arrived at through negotiation between the dealer and the consumer. The Department's explanation of the reason for the requirement that the amount of the closing fee be included in an advertised price is perfectly reasonable, and it also explains why the Closing Fee Statute does not require separate disclosure of the closing fee in advertising. Because the closing fee must be included in any advertised price, little or no purpose would be served by requiring a separate disclosure of the closing fee. The consumer is already assured

[9] A copy of Freeman's final sales contract is attached as Exhibit 6 to the transcript of Freeman's deposition, and is also attached as Exhibit D to the Affidavit of Joseph Phillips. The closing fee appears in the lower right-hand corner of the sales contract and is labeled "Procurement Fee."

[10] A copy of Administrative Interpretation 2.307-0101 is attached to Plaintiffs' Memorandum in Support of their Declaratory Judgment Motions as Exhibit 2, and Freeman quotes from the Administrative Interpretation on page 3 of Plaintiffs' Memorandum, but fails to include the italicized language as follows: "so that consumers cannot be unfairly surprised by having the closing fee added on *after the acceptance of an advertisement's terms*."

that the vehicle can be purchased for the advertised price without a closing fee being added to the advertised price, and requiring a separate disclosure of the closing fee would not materially assist the consumer in comparing advertised prices of similar vehicles or in deciding whether to accept the advertised price.

The General Assembly could have required a different scheme of disclosure if it had chosen to do so. For example, it could have required all advertisements that mention price to include an itemized list of all components of the price (for example, invoice price of the vehicle, transportation charges, dealer preparation charges, closing fee, etc.), but such a requirement would very likely have discouraged, if not completely stifled, advertising of prices, thus limiting the ability of consumers to shop for the best prices. In addition, any such requirement for disclosure of the components of an advertised price would have to be accompanied by detailed specifications of the manner in which the disclosures should be made (for example, by uniform nomenclature and minimum type sizes). The absence of any such specifications from the Closing Fee Statute and the Department of Consumer Affairs' official interpretation of the statute compels the conclusion that disclosure of closing fees in conjunction with advertised prices was not contemplated and is not required.[11]

c. The Closing Fee Statute does not require a separate disclosure on Monroney stickers.

Plaintiff Freeman contends that all "on-car" information is advertising, including Monroney stickers. Pursuant to federal law, every new vehicle sold by Hendrick Honda of

[11] North Carolina has a statute regulating the charging of administrative or other similar fees by motor vehicle dealers that is similar, but not identical, to the South Carolina Closing Fee Statute. The North Carolina statute does not require a closing fee to be included in an advertised price but instead states, "The fact that the dealer charges a fee regulated by this section and the amount of the fee shall be disclosed whenever the dealer engages in the price advertising of vehicles." N.C. Gen. Stats. § 20-101.1(a)(2). The differences between the North Carolina statute and the South Carolina statute demonstrates that the South Carolina General Assembly made a deliberate choice to require closing fees to be *included in*, rather than disclosed with, the advertised prices of motor vehicles.

Easley has a Monroney sticker affixed to its window. (Pendleton Aff. ¶ 31). A Monroney sticker is a paper window sticker prepared and affixed by the manufacturer, which discloses specified information including the retail price suggested by the manufacturer. 15 U.S.C. § 1232. Dealers are prohibited from adding anything to, or deleting anything from, the Monroney sticker, and in fact are subject to criminal prosecution. (*Id.* § 1233(c)). However, if a dealer adds accessories or equipment to the new vehicle, that dealer must disclose additions on a supplemental sticker. (Pendleton Aff.¶ 31).

First and foremost, Freeman does not have standing to allege any harm from Hendrick Honda of Easley's practices regarding Monroney stickers or new vehicles because Freeman purchased a used vehicle. Notwithstanding the above, if, as Freeman contends, a Monroney sticker is an advertisement, then a closing fee could never be charged on new cars because dealers are not allowed to remove or alter Monroney stickers. The language of the Closing Fee Statute is unambiguous, so it must be given its plain, ordinary meaning. "The first question of statutory interpretation is whether the statute's meaning is clear on its face." *Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002). If the language of a statute is plain, unambiguous, and conveys a clear meaning, then "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). If the Legislature had intended to forbid closing fees on new cars, it would have stated as much in the Closing Fee Statute. No such requirements should be imposed under the pretext of statutory interpretation.

However, despite the fact that Hendrick Honda of Easley has no control over the Monroney sticker and is not legally allowed to alter it in any way, and despite the fact that the Closing Fee Statute does not contain any requirement regarding Monroney stickers, Freeman

claims that it is an advertisement and should contain a statement disclosing the closing fee. In support of her position that a Monroney sticker is an advertisement, Freeman cites *Black's Law Dictionary* for a definition, but fails to identify any statutory definition under South Carolina, federal, or any other state law, to support her position. (Plaintiffs' Mem. p. 6.) Common sense dictates, however, that because the Monroney sticker is not a statement by Hendrick Honda of Easley or any other dealer, but rather by the manufacturer, that it should not be considered an advertisement. *See Valencia v. Crabtree Imps., Inc.*, 2004 Conn. Super. LEXIS 386, 5-6 (Conn. Super. Ct. Feb. 24, 2004) (applying a Connecticut regulations' definition of advertisement as being a "statement by a new car dealer" and finding that a Monroney sticker is not an advertisement because it is not a statement by the dealer).

d. The Closing Fee Statute should be construed against Freeman because she was not misled.

In a case involving disclosures required by another section of the Consumer Protection Code, the South Carolina Supreme Court declined to require strict compliance with the literal language of the Code where the consumer had admittedly received the required notice, but not in the exact form required by the Code. *Davis v. NationsCredit Fin. Servs. Corp.*, 326 S.C. 83, 484 S.E.2d 471 (1997) (construing the attorney-preference statute, S.C. Code § 37-10-102, as it existed prior to amendment in 1996). The Court in *Davis* stated that in order to avoid misuse of statutes requiring disclosures of particular information to consumers, the Supreme Court will construe the provisions of such statutes against consumers who were not misled by a disclosure but who merely seek a penalty for finding a technical problem with the disclosure. *Id.* at 87, 484 S.E.2d at 473 (citing and quoting from *General Motors Acceptance Corp. v. McMinn,* 285 S.C. 67, 70, 328 S.E.2d 472, 474 (1985)).

In this case, Freeman clearly received written notice that Hendrick Honda of Easley charged a closing fee before she committed herself to purchasing a vehicle, and her attention was specifically directed to the fee multiple times. Salesman Randall Clemment testified that he made Freeman aware of the fee early in the negotiations by showing her the Sales Worksheet, which she eventually signed, and Finance & Insurance Manager Joseph Phillips testified that he also reviewed the Sales Worksheet with Freeman and directed her attention to the fee before the Final Buyer's Order was signed. (Clemment Aff. ¶ 7; Phillips Aff. ¶¶ 8-9; *see also* Miller Aff. ¶ 6.) Freeman admits that she knew about the fee before she signed the Final Buyer's Order and agreed to purchase the vehicle anyway. (Freeman Depo. p. 47, ll. 1-7; 17-22, p. 67, ll. 23-25, p. 69, ll. 4-16.) Additionally, Freeman's fiancé and father, who were both with Freeman when she purchased the car, testified that Hendrick Honda of Easley did not try to mislead or deceive Freeman. (Hair Depo. p. 37, ll. 2-5; William Freeman Depo. p. 19, ll. 19-22.) Consequently, even if the Closing Fee Statute required the closing fee to be separately disclosed in advertising, which it does not, *Davis v. NationsCredit* would compel the conclusion that Hendrick Honda of Easley had nevertheless substantially complied with the Closing Fee Statute, and that the provisions of the Statute should be construed against Freeman because she was not misled.

In her motion, Freeman argues that Hendrick Honda of Easley's interpretation of the Closing Fee Statute "would render § 37-2-307 close to meaningless because very few customers pay the asking price for a vehicle." (Plaintiffs' Mem. p. 8.) This argument is erroneous. The obvious purpose of the requirement that any closing fee be included in an advertised price is to permit consumers to compare advertised prices of similar vehicles without having to be concerned about closing fees, which vary in amount from dealer to dealer. The Closing Fee

Statute serves this purpose well, and this Court cannot re-write the Closing Fee Statute to require disclosures not specified by the Statute (*e.g.*, the form of disclosure required in North Carolina).

Freeman further argues that Hendrick Honda of Easley's interpretation of the Closing Fee Statute allows a dealer to surprise a customer by adding a closing fee after the customer has agreed to a price. (*Id.* at pp. 7-8.) The Closing Fee Statute does not, however, prohibit a dealer from adding a closing fee to a negotiated price as opposed to an advertised price, and such a prohibition cannot be engrafted onto the Statute. The customer is adequately protected from surprise by the requirement that any closing fee be disclosed in the sales contract. As noted above, Freeman admitted that she knew about the fee before she signed the Buyer's Order. (Freeman Depo. p. 47, ll. 1-7, 17-22 (admitting that she was shown the Sales Worksheet on the first day she visited the dealership.)

If Freeman's assertion that a closing fee cannot be added on after an advertised price has been lowered through negotiation between the dealer and the customer were correct, then a dealer's ability to charge a closing fee as permitted by the Closing Fee Statute would be nullified because, as stated in the Affidavit of Don Pendleton, almost all motor vehicle sales transactions involve several stages of negotiation over numerous items including the price of the vehicle, financing or lease terms, trade-in allowance, or the price for optional equipment, warranties, or insurance. (Pendleton Aff. ¶¶ 23-27). It would be extremely rare for a buyer to come to Hendrick Honda of Easley and simply offer to pay the asking price for a vehicle, whether advertised or not. (Clemment Aff. ¶¶ 13-14; Miller Aff. ¶ 12; Phillips Aff. ¶ 11.) Under Freeman's interpretation of the Closing Fee Statute, a closing fee would be permissible only if the closing fee were included in an advertised price and the customer paid the advertised price without negotiating a lower price, which rarely if ever happens.

Moreover, as explained by Don Pendleton, most customers of Hendrick Honda of Easley negotiate the price of a vehicle *after* they have been informed that Hendrick Honda of Easley charges a closing fee. (Pendleton Aff. ¶¶ 27, 43.) Other customers may even use the closing fee as a specific negotiating tool to lower the price of the vehicle or to request additional products or services with the vehicle. (*Id.*) For those customers who object to the closing fee, Hendrick Honda of Easley often adjusts the price to which the customer had previously agreed, by such methods as lowering the price of the vehicle to be purchased, increasing the trade allowance for a trade-in vehicle, or providing additional products or services with the vehicle at no cost or a reduced cost to the customer. (*Id.* ¶ 43; Phillips Aff. ¶ 10.)

8. The Closing Fee Charged By Hendrick Honda Of Easley Does Not Exceed Its Costs Of Document Preparation And Processing.

As demonstrated by the Affidavit of Don Pendleton, the total amount of closing fees that Hendrick Honda of Easley collects annually is only about one half of Hendrick Honda of Easley's estimated annual costs of document preparation, processing, and storage. (Pendleton Aff. ¶¶ 59-60.) Hendrick Honda of Easley does not, however, attempt to account separately for the direct and indirect costs of document preparation, etc. because the cost of such accounting would be substantial and would greatly exceed the value in doing so. (*Id.* ¶ 60.)

9. The Closing Fee Statute Does Not Limit Closing Fees To Reimbursement Of Certain Overhead Costs.

Freeman's motion asserts that the Closing Fee Statute limits a closing fee to reimbursement of certain overhead costs. Like Freeman's assertion that a closing fee must be separately disclosed whenever the price of a vehicle is advertised, this assertion is not supported by the plain language of the Closing Fee Statute. The Closing Fee Statute is completely silent

concerning the purpose or purposes for which a closing fee may be charged, and a requirement that a closing fee be limited to reimbursement of certain overhead costs cannot be read into the Statute under the guise of statutory interpretation.

To support her argument, Freeman relies solely on a suggested form of notice to be displayed by dealers attached to Administrative Interpretation 2.307-0101 issued by the Department of Consumer Affairs (the "Department") on July 7, 2001.[12] The Administrative Interpretation, referring to the suggested form of notice, stated, "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 filed out." (Emphasis added.)

The Department also included the suggested form of notice on a printed form the Department created for motor vehicle dealers to use in registering the forms of notices they intended to display. As stated on the registration form, the disclosure language on which Freeman relies is merely "a suggested format for disclosing closing fees. *It is not required that dealers use this format and language on this form . . . .*" (Emphasis added.)[13] If the Department did not require dealers to use the suggested language, then the Department obviously did not consider anything in the suggested language to be required by law.

This conclusion is reinforced by the fact that in February 2009, the Department revised the registration form to delete the language on which Freeman relies. The disclosure that appears on the registration form as recently revised reads as follows:

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[12] A copy of the Administrative Interpretation is attached as Exhibit 2 to Plaintiffs' Memorandum in Support of their Motions for Declaratory Judgment.

[13] The quoted language appears on the printed form attached as Exhibit 1 to Plaintiffs' Memorandum in Support of their Motions for Declaratory Judgment.

Disclosure of Closing Fees Notice

> 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.[14]

This revision occurred without any change in the Closing Fee Statute, and it clearly would not have occurred if the Department believed that a closing fee can be charged only to reimburse certain overhead costs.

Freeman argues that the suggested notice that was attached to Administrative Interpretation 2.307-0101 has the force and effect of law, but this argument is erroneous. First and foremost, as previously discussed, the notice language on which Freeman relies was merely suggested, but not required, by the Department. Second, the suggested notice was never promulgated as a regulation, and only regulations duly promulgated pursuant to the Administrative Procedures Act have the force and effect of law. S.C. Code § 1-23-10(4) ("Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law."). The suggested notice thus does not have, and never did have, the force or effect of law. *Leventis v. S.C. Dep't of Health & Entl. Control*, 340 S.C. 118, 140-44, 530 S.E.2d 643, 655-57 (Ct. App. 2000).

10. The Remedies For Violations Of The Closing Fee Statute Are Provided By The Consumer Protection Code, S.C. Code § 37-5-202, And Not By The Dealers Act, and Are Limited to a Refund of "Excess Charges," of Which There are None in this Case.

The Closing Fee Statute is a part of the South Carolina Consumer Protection Code, S.C. Code § 37-1-101. The Closing Fee Statute is found in Chapter 2 of the Consumer Protection Code, which applies to consumer credit sales. S.C. Code § 37-2-102. The definition of

[14] A copy of the form as revised in February, 2009, can be accessed online at http://www.scconsumer.gov/licensing/motor_vehicle/mv_closing_fee_initial.pdf.

"consumer credit sale" set forth in S.C. Code Ann. § 37-2-104 reveals that a sale of a motor vehicle by a dealer to an individual who purchases the vehicle primarily for personal, family, or household purposes in a transaction in which the dealer extends credit (provides financing) to the buyer is subject to Chapter 2 of the Consumer Protection Code, including the Closing Fee Statute.[15]

Remedies for violations of the Closing Fee Statute are provided by Chapter 5 of the Consumer Protection Code, which states in relevant part as follows:

> (2) A consumer is not obligated to pay a charge in excess of that allowed by this title and has a right of refund of any excess charge paid. . . .
>
> (3) If a creditor has contracted for or received a charge in excess of that allowed by this title, or if a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable time after demand, the consumer may recover from the creditor or the person liable *in an action other than a class action* a penalty in an amount determined by the court not less than $100 nor more than $1,000. . . . For purposes of this subsection, a reasonable time is presumed to be 30 days.

S.C. Code § 37-5-202 (emphasis added). For the reasons that follow, these remedies in the Consumer Protection Code rather than the remedies found in the Dealers Act govern Freeman's claim against Hendrick Honda of Easley.

"The general rule of statutory construction is that a specific statute prevails over a more general one." *Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div.*, 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995). In addition, "[m]ore recent and specific legislation supersedes prior general law." *State v. Brown*, 317 S.C. 55, 58, 451 S.E.2d 888, 891 (1994). In this case, both of these established rules of statutory construction compel the conclusion that the provisions of the Consumer Protection Code quoted above, rather than the section of the Dealers Act on which Freeman relies, provides the remedy for any violation of the Closing Fee Statute.

[15] The Closing Fee Statute does not apply to sales in which the selling dealer does not provide credit (financing) to the buyer, *e.g.*, a cash deal.

Atlas Food involved facts similar to the facts of this case. In *Atlas Food*, the issue was whether actions arising under the Uniform Commercial Code (the "UCC") were governed by the then six-year statute of limitations incorporated in the UCC or by the general three year statute of limitations, S.C. Code § 15-3-530. The South Carolina Supreme Court held that the statute of limitations found in the UCC, being the more specific statute, prevailed over the general statute of limitations.

The provisions of the Consumer Protection Code quoted above are clearly specific to the Closing Fee Statute and to certain other related sections of the Consumer Protection Code. The Dealers Act, by contrast, is a more general statute aimed at a much broader range of conduct by motor vehicle dealers. The Consumer Protection Code, being the specific statute, thus prevails over the Dealers Act, which is more general. *Atlas Food, supra.* As such, the specific remedies incorporated in the Consumer Protection Code rather than the more general remedy found in the Dealers Act apply to any violation of the Closing Fee Statute, which is itself a part of the Consumer Protection Code. Additionally, if the Legislature had intended for other remedies besides those listed in the Consumer Protection Code to be available, it would have been more specific, as it has been in other sections in the Consumer Protection Code. *See, e.g.*, S.C. Code Ann. § 37-23-50(D) (providing that remedies relating to high-cost home loans are in addition to other consumer protections that may otherwise be available by law).

Additionally, the order in which the Consumer Protection Code and the Dealers Act were enacted into law further supports the conclusion that the Consumer Protection Code rather than the Dealers Act controls Freeman's claim against Hendrick Honda of Easley. The Dealers Act became law on May 22, 1972, and S.C. Code §§ 56-15-30(a) and 56-15-40(1), on which Freeman relies, have existed in their current form since that date. Act No. 1237, 1972 S.C. Acts

2419, §§ 4(a) and 5(1). The Consumer Protection Code, including the original versions of the remedy provisions quoted above, did not become law until more than two years later. Act No. 1241, 1974 S.C. Acts 2879, § 5.202(3) and (4). The Consumer Protection Code, being the more recent and specific act, thus supersedes the prior, more general Dealers Act. *State v. Brown, supra.*

Additionally, Plaintiffs' remedies should be limited only to a refund of any "excess charge." As evidenced by the Affidavit of Don Pendleton, Hendrick Honda of Easley has registered the amount of its closing fee with the Department of Consumer Affairs each year it has ever charged a closing fee, and the amount of fee charged by Hendrick Honda of Easley was approved by the Department of Consumer Affairs each year. (Pendleton Aff. ¶ 12). Additionally, the Department of Consumer Affairs does not consider closing fees less than $1,000 to be unreasonable. (Collins Depo. p. 21, ll. 12-14). As a result, because Hendrick Honda of Easley's fees have been approved throughout the relevant time period, there is no "excess charge" to be recovered by Plaintiffs.

Finally, pursuant to § 37-5-202, any claim for a refund of excess closing fees and the statutory penalty may only be brought "*in an action other than a class action.*" S.C. Code § 37-5-202 (emphasis added).

11. Hendrick Honda Of Easley Is Not Liable For A Violation Of The Closing Fee Statute If The Violation Was Not Intentional And Resulted From A Bona Fide Error Notwithstanding The Maintenance Of Procedures Reasonably Adapted To Avoid The Error.

The section of the Consumer Protection Code that contains the remedies for a violation of the Closing Fee Statute also contains the following "safe harbor" provision:

> 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.

S.C. Code § 37-5-202(7). Additionally, S.C. Code Ann. § 37-6-506(3) provides another safe harbor, stating that

> 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.

In his affidavit, Don Pendleton has explained in detail the procedures Hendrick Honda of Easley has adopted to comply with the Closing Fee Statute and the Department of Consumer Affairs' Interpretation of that statute. His affidavit expressly states, "Hendrick Honda of Easley has made, and continues to make, every reasonable effort to comply with the Closing Fee Statute, and any violation of the statute that Hendrick Honda of Easley or any of its employees might have committed was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error." (Pendleton Aff. ¶ 11.) Additionally, Randall Clemment, John Miller, and Joseph Phillips each testified that they understand the fee's purpose, are available to customers to answer questions about the fee, and that each believes Hendrick Honda of Easley tries through multiple methods to inform customers about the closing fees. (Clemment Aff. ¶¶ 18-19; Miller Aff. ¶¶ 14, 16; Phillips Aff. ¶¶ 12, 13).

The affidavits of the Hendrick Honda of Easley employees clearly raise issues of material fact with respect to whether Hendrick Honda of Easley can be held liable for any violation of the Closing Fee Statute. Freeman is thus not entitled to judgment against Hendrick Honda of Easley

for damages arising from any such violation (and Hendrick Honda of Easley denies, of course, that it has committed any such violation).

12. Freeman's Claims for Damages or Refunds of Closing Fees Are Precluded Under S.C. Code § 37-6-104(4).

Even if the Department of Consumer Affairs' interpretation of the Closing Fee Statute is overruled, any changes in the law must be applied prospectively only. As set forth herein, Freeman alleges a violation of the Closing Fee Statute, which is part of the Consumer Protection Code. As such, S.C. Code Ann. § 37-6-104(4), limits Freeman's remedy as follows:

> 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 the rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

Based on the plain language of section 37-6-104(4), neither Hendrick Honda of Easley nor any other car dealer should be held liable for actions which to date, have not been considered violations of the Closing Fee Statute by the Department of Consumer Affairs. Any interpretation adopted by the Court regarding a motor vehicle dealer'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 interpretations.

13. Hendrick Honda Of Easley Has Not Violated The Dealers Act.

Freeman asserts that by charging closing fees, Hendrick Honda of Easley has violated the Dealers Act, specifically S.C. Code § 56-15-30(a) and § 56-15-40(1). Section 56-15-30(a) states, "Unfair methods of competition and unfair or deceptive acts or practices as defined in Section 56-15-40 are hereby declared to be unlawful." Section 56-15-40(1) states, "It shall be deemed a violation of paragraph (a) of Section 56-15-30 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." And it is also a violation for a dealer "to resort to or use any false or misleading advertisement in connection with his business as such motor vehicle dealer." *Id.* § 56-15-40(4)(c).

Freeman does not discuss the Dealers Act's requirement that a dealer's actions be arbitrary, in bad faith, unconscionable, or misleading in order to violate the act. Instead, Freeman argues that if a dealer's actions violate the Closing Fee Statute, they automatically violate the Dealers Act. A violation of one statute is not automatically a violation of a separate statute, unless the statute so provides, and Freeman cannot make it so simply by *ipse dixit*. As previously demonstrated, however, Hendrick Honda of Easley has not violated the Closing Fee Statute. It is equally clear that Hendrick Honda of Easley's conduct with respect to Freeman was not arbitrary, in bad faith, unconscionable, or deceptive.

a. Hendrick Honda of Easley did not act unreasonably or arbitrarily in charging closing fees.

Even if Hendrick Honda of Easley has incorrectly interpreted the Closing Fee Statute by not disclosing the closing fee in all "on car advertising" and otherwise, (which Hendrick Honda of Easley does not concede), its interpretation of the Statute is not unreasonable. As the United States Supreme Court stated in a case construing a federal statute, "an *unreasonable* application of federal law is different from an *incorrect* application of federal law." *Williams v. Taylor*, 529 U.S. 362, 410 (2000) (concurring opinion by J. O'Connor) (emphasis in original). Further, as the Fourth Circuit stated in a case construing the same federal statute, "A state court decision is not unreasonable simply because the court applied federal law incorrectly." *Garth v. Davis*, 470 F.3d 702, 710 (4th Cir. 2006) (citing *Taylor*, 529 U.S. at 410). In this case, Hendrick Honda of

Easley's interpretation of the Closing Fee Statute is supported by a logical analysis of the language of the statute and by established rules of statutory construction, and thus is not unreasonable.

Freeman asserts that because Hendrick Honda of Easley's action is unreasonable, it is equivalent to arbitrary action for purposes of S.C. Code § 56-15-40(1). However, "[m]otor vehicle dealers are not required to deal with their customer guided solely by fixed rules and standards. Their conduct under [the Dealers] Act need only have some reasonable basis." *Taylor v. Nix*, 307 S.C. 551, 556, 416 S.E.2d 619, 621 (1992). The term arbitrary, for the purposes of the Dealers Act includes "acts which are unreasonable, capricious, or nonrational; not done according to reason or judgment; depending on will alone." *Id.* at 555, 416 S.E.2d at 621. Moreover, the charging of a motor vehicle closing fee is not *per se* unreasonable. *See Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399, 472 S.E.2d 242 (1996) (holding that the charging of a "procurement fee" with respect to vehicle sales that occurred prior to the enactment of the Closing Fee Statute was not unlawful).

b. Hendrick Honda of Easley has not acted in bad faith.

Freeman asserts that Hendrick Honda of Easley acted in bad faith for the purposes of S.C. Code Ann. § 56-15-40(1). The term "bad faith" is a contract term. As used in the Dealers Act, it means:

> [T]he opposite of good faith, generally implying or involving actual or constructive fraud, or a design to deceive or mislead another, or a neglect or refusal to [fulfill] some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive.

In re Estate of Carr v. Circle S. Enterprises, Inc., 379 S.C. 31, 43, 664 S.E.2d 83, 88-89 (Ct. App. 2008) (quotation omitted). There is no evidence of any bad faith on Hendrick Honda of Easley's part with respect to Freeman. As set forth herein, Freeman admitted she had a good

experience at Hendrick Honda of Easley and would shop there again. (Freeman Depo. p. 82, ll. 7-17.)

c. Hendrick Honda of Easley's charging of closing fees is not unconscionable.

Freeman's assertion that Hendrick Honda of Easley's actions were "unconscionable" is unsupported by evidence in the record. Like bad faith, unconscionability is a contract term. It has been recognized as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them. *Fanning*, 322 S.C. at 403, 472 S.E.2d at 245. None of the actions of which Freeman accuses Hendrick Honda of Easley has anything to do with whether Freeman had a meaningful choice in entering into the contract with Hendrick Honda of Easley, or whether the terms of the contract were oppressive. The principle of unconscionability simply does not apply. Even if it did apply, Freeman has not argued that she did not have a meaningful choice, because she herself admitted that she did. Freeman testified in her deposition that she would not have purchased the vehicle, if the terms were not acceptable to her. (Freeman Depo. p. 69, ll. 4-16.) She also admitted she was fully aware of the fee very early in the negotiations for her vehicle, and chose to purchase her vehicle anyway. (*Id.* at p. 47, ll. 17-22, p. 67, ll. 23-25.)

d. Freeman was not coerced, misled, or deceived by Hendrick Honda of Easley's practice of charging closing fees.

Finally, Freeman's assertion that Hendrick Honda of Easley has used "false or misleading advertisements" in violation of § 56-15-40(4)(c) is also misplaced. Freeman has not pointed to any advertisement that is false or misleading under the Closing Fee Statute or the Department of Consumer Affairs Interpretation or Advertising Guidelines. She conceded in her deposition that

she was treated well by Hendrick Honda of Easley's personnel, and Freeman's husband and father, who were both with her at the time of her purchase, admitted that Hendrick Honda of Easley did not try to mislead or deceive Freeman in any way. (Freeman Depo. p. 82, ll. 7-17; Hair Dep. p. 37, ll. 2-5; William Freeman Dep. p. 19, ll. 19-22.)

14. Freeman Could Have Reasonably Avoided Any Violation Of The Dealers Act.

The Dealers Act states that, in determining whether particular conduct constitutes an unfair trade practice, courts may be guided by the definitions in the Federal Trade Commission Act. S.C. Code Ann. § 56-15-30(b) (1976). Section 45(n) of the FTC Act in turn provides that the FTC shall not have the authority to declare an action an unfair trade practice unless the practice causes substantial injury to consumers "which is not reasonably avoidable by consumers themselves." 15 U.S.C. § 45(n). In other words, where the injury is reasonably avoidable, the conduct at issue should not be considered a violation of the Dealers Act.

In deciding whether an injury is reasonably avoidable, some courts have considered whether the consumer had a free and informed choice which would have allowed him or her to avoid the allegedly unfair practice. *E.g., American Fin. Serv. Ass'n v. FTC*, 767 F.2d 957, 976 (D.C. Cir. 1985); *FTC v. J.K. Publications, Inc.*, 99 F. Supp. 2d 1176, 1201 (C.D. Cal. 2000). Others have said that "[c]onsumers may act to avoid injury before it occurs if they have reason to anticipate the impending harm and the means to avoid it, or they may seek to mitigate the damage afterward if they are aware of potential avenues toward that end." *FTC. v. IFC Credit Corp.*, 543 F. Supp. 2d 925, 975 (N.D. Ill. 2008) (internal quotations omitted).

Under either definition, Freeman's injury, if any, was reasonably avoidable. The fee was disclosed to Freeman's on two different documents—the Sales Worksheet and the Buyer's Order. (Clemment Aff. ¶¶ 7-9; Phillips Aff. ¶¶ 5-8.) Freeman readily admits she had the option

to refuse to purchase the vehicle if she did not want to complete the deal. (Freeman Depo. p. 69, ll. 4-10.) In fact, she testified that if any of the terms of the transaction were *not* acceptable to her, she would have refused to purchase the vehicle. (*Id.* at p. 69, ll. 11-16) Instead, Freeman knew about the fee throughout the transaction and freely chose to purchase the vehicle and pay the closing fee. If there is any doubt whether Hendrick Honda of Easley's actions constitute violations of the Dealers Act, that doubt should be resolved against Freeman because Freeman could have avoided the injury, if any, of which she now complains.

CONCLUSION

For the foregoing reasons, Freeman's motion for declaratory judgment should be denied.

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November 16, 2009

EXHIBITS

1. **Deposition Transcript of Julie Freeman.**
2. **Excerpts from Deposition of Brandon Hair.**
3. **Excerpts from Deposition of William Freeman.**
4. **Excerpts from Deposition of Danny Collins.**
5. **Color photograph of Honda Certified Used Car Window Sticker from 2008.**

EXHIBIT 1

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF AIKEN

HEATHER HERRON, et. al.,
Plaintiffs,
vs. CASE NO. 2006-CP-02-1230
DICK DYER & ASSOCIATES, INC., et al.,
Defendants.

DEPOSITION OF: JULIE FREEMAN HAIR
DATE: June 26, 2009
TIME: 10:11 a.m.
LOCATION: Law Offices of
Haynsworth Sinkler Boyd
1201 Main Street
Greenville, South Carolina
TAKEN BY: Counsel for the Defendant,
Hendrick Honda of Easley
REPORTED BY: Carolyn M. Beam
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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ALSO PRESENT:
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Lewis & Babcock

(INDEX AT REAR OF TRANSCRIPT)

JULIE FREEMAN HAIR
being first duly sworn, testified as follows:
EXAMINATION
BY MR. BECKER:

Q. Hi, Ms. Freeman. As you know, I'm James Becker. And I represent Hendrick Honda of Easley in this -- in this lawsuit. Before we get started, I need to just go over with you a few ground rules for the deposition. Have you ever had your deposition taken before?

A. Huh-uh.

Q. Is that a no?

A. No.

Q. Okay. The first instruction I need to give you is that you please answer audibly --

A. Okay.

Q. -- to my questions, rather than with a nod or shake of the head --

A. Okay.

Q. -- so that our Court Reporter knows exactly what your verbal response is.

A. Okay.

Q. Do you understand that?

A. Yes.

Q. Okay. Second request I'll make of you

is please try to let me finish my question before you begin your answer.

A. Okay.

Q. And likewise, I'll try to finish my -- I'll try to let you finish your answer before I begin my next question. That will also make life easier for our Court Reporter.

A. Okay.

Q. You understand that?

A. Yes.

Q. All right. Do you understand that you're under oath today?

A. Yes.

Q. And do you understand she's taking down every question I ask and every answer you give?

A. Yes.

Q. And that we'll create a written record of our discussion here today?

A. Yes.

Q. Our Rules of Civil Procedure also require that I give you this instruction: If, for any reason, a question that I ask you is unclear to you, and you need any clarifications or explanations of my question, of any kind, that you please ask me for that clarification or

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explanation, rather than your attorney, Mr. Brady Thomas?
A. Yes.
Q. Do you understand that?
A. I do.
Q. Do you also understand that, since this deposition has now begun, until it's over, you are not to have any conversations with your attorney or anyone else about the substance of your testimony in this lawsuit? Do you understand that?
A. Yes.
Q. Can we have an understanding, then, that if I ask a question and you don't ask me for any clarification, that you believe you have understood the question and can answer it to the best of your ability?
A. Yes.
Q. Are you under the influence of any alcohol, medications, drugs or anything else that might affect, in any way, your ability to hear and understand my questions and to respond to them to the best of your ability?
A. No.
Q. If at any time you need to take a break, for any reason, will you please tell me, so

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that we can recess and take the break?
A. Yes.
Q. Thank you. Would you please state your full name?
A. July Freeman Hair.
Q. And are you married?
A. Yes.
Q. When were you married?
A. July 29th, 2006.
Q. And who is your husband?
A. Brandon Hair.
Q. And you bought a car from Hendrick Honda of Easley in July of 2006. Tell me again when you got married?
A. The 29th of July.
Q. Okay. So you bought this car right before you got married?
A. Yes.
Q. Where do you currently reside?
A. I live at 1016 Summit Drive in Greenville.
Q. And how long have you lived there?
A. A little over two years.
Q. And what is your date of birth?
A. 6/6/83.

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Q. And what is your Social Security number?
A. 250-65-3998.
Q. Tell me the names of your parents, please?
A. William Thomas and Valiska Freeman.
Q. And was Mr. -- was your father with you when you purchased the car from Hendrick Honda of Easley?
A. Yes, he was.
Q. Where does he currently reside?
A. He lives in Chapin, South Carolina.
Q. Okay. And you and your husband live here?
A. Yes.
Q. Okay. Does -- to your knowledge, was anyone who was involved in the sale of the Honda, which you purchased from the Hendrick Honda of Easley in July of 2006, is any one of those persons a resident of Aiken County?
A. No.
Q. You and your husband live together here in Greenville --
A. Yes.
Q. -- I take it?

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A. We do.
Q. Do you have any children?
A. No.
Q. Okay. Tell me -- I'd like to just get a little bit of your educational background. Where did you attend high school?
A. I went to Chapin High School.
Q. Okay. And when did you graduate?
A. In 2001.
Q. Did you go on to college from there?
A. I did. I went to the College of Charleston.
Q. And when did you graduate?
A. In 2005.
Q. And what was your major?
A. Early childhood education.
Q. All right. Did you get a BS or an AB degree -- BA?
A. BS.
Q. Have you had any formal education beyond college?
A. I am currently in a masters program.
Q. Okay. And where is that?
A. At Furman University.
Q. And what subject or degree?

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A. I'm getting a masters in literacy.
Q. In literacy?
A. Uh-huh.
Q. Okay. Is that involved in teaching reading?
A. It is, yes.
Q. And so you're pursuing a masters degree now at Furman?
A. Yes.
Q. How far along are you?
A. I have been in the program for a year. And I have another two years to go.
Q. Okay. Where do you currently work?
A. I work at Duncan Chapel Elementary.
Q. And you're a teacher?
A. Yes.
Q. What grade?
A. Kindergarten.
Q. Oh, great. How long have you been there?
A. I have taught there for three years.
Q. Where did you work prior to that?
A. I was a teacher in Newberry County at Newberry Elementary School.
Q. And what grade did you teach there?

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A. I taught second grade.
Q. What were the dates of your employment in Newberry?
A. In Newberry, I worked from August of 2005 until June of 2006.
Q. Okay. Prior to becoming a party in this current lawsuit for which we are here today, have you ever been a Plaintiff or a Defendant in any lawsuit before?
A. No.
Q. Okay. Have you ever made a claim for Workers' Compensation benefits of any kind?
A. No.
Q. Have you ever made a claim for unemployment benefits of any kind?
A. No.
Q. Have you ever been in an automobile accident?
A. Yes.
Q. Okay. Did litigation ensue as a result of that accident, or was it resolved through the insurance companies?
A. It was resolved through insurance companies.
Q. How many automobile accidents have you been involved in?
A. Only one.
Q. Only one. Have you ever been arrested for anything?
A. No.
Q. So I take it, then, you have never been convicted of any crime?
A. No.
Q. I don't want to ask you the substance of any conversations about -- that you have had about this lawsuit with your attorney. But I would like to ask you what did you do to prepare for the deposition today?
A. Just discuss it with my attorney.
Q. When did you meet?
A. Today.
Q. Okay. What time?
A. Eight o'clock.
Q. Okay. How long did the meeting last?
A. About an hour.
Q. Did you review -- was anyone else present at the meeting?
A. Just Melanie Blease.
Q. Ms. Blease, okay. And who is Ms. Blease?

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A. She's a paralegal for my attorney.
Q. Okay. Did you review any documents while you were there?
A. Yes.
Q. Do you recall, specifically, what those documents were?
A. I believe just the complaint, a copy of the complaint.
Q. Okay. That's the only thing you reviewed?
A. Yes.
Q. You didn't review any other documents, other than a copy of the complaint?
A. No.
Q. Had you ever reviewed the complaint before this morning?
A. Yes.
Q. Okay. When was that?
A. Just within the last month or two.
Q. Okay. And what was the occasion for you to review the complaint within the last month or two?
A. Just to discuss with my attorney.
Q. Okay. Did you request a copy of the complaint or did they send it to you?

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A. They sent it to me.
Q. You say within the last month or two. Was it within the last week or so?
A. No.
Q. Within the last month?
A. Yes.
Q. Okay. Had you ever seen the complaint prior to that time?
A. No.
Q. Okay. So your first time to see the complaint was in the last month, sometime within the last month. And then the second time you reviewed it was this morning prior to this deposition?
A. Yes.
Q. And other than the complaint, you didn't review any other documents this morning?
A. No.
Q. Is there anything else you have done to prepare for the deposition?
A. No.
Q. Did you contact your father and discuss anything with him about the transaction and -- with Hendrick Honda of Easley?
A. No.

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Q. Have you, since you bought the car, have you had any discussions with your father about what happened in the purchase of the vehicle?
A. No.
Q. Does he know that you're a Plaintiff in this lawsuit?
A. No.
Q. Okay.
MR. HAMM: What was the answer?
MR. STUDEMEYER: She said no.
BY MR. BECKER:
Q. Did you keep any documents that you may have received when you bought the car in July of 2006 from Hendrick Honda of Easley?
A. Yes.
Q. Okay. Have you turned those over to your attorneys?
A. Yes.
Q. Okay. Do you recall how many -- how many documents there were, approximately how many pieces of paper?
A. I don't remember.
Q. Okay. Do you remember what the documents were?
A. I believe just a copy of our price

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negotiation for the car.
Q. Uh-huh.
A. And a copy of the sales report.
Q. Okay. A copy of the price negotiation and the sales report?
A. Yes.
Q. Okay. All right. Well, we'll be going through some of the documents that were in the Hendrick Honda of Easley file. And I'll ask you, when we get to those, if you remember being able to provide a copy of that from your own records to your attorneys.
A. Okay.
Q. Did you keep any -- did you make any notes of your own during the time that you were working with Hendrick Honda of Easley to purchase the 2005 Honda that's the subject of the litigation?
A. No.
Q. Do you know if Mr. Hair kept any such notes or anything of that nature?
A. No.
Q. Does that mean -- does no mean neither one of you kept any notes or anything, or you just don't remember?

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A. No, we did not keep any notes.
Q. Okay. Do you -- prior to buying the car from Hendrick Honda of Easley, had you ever bought a car from anyone else?
A. No.
Q. So that was your first transaction --
A. Yes.
Q. -- purchasing a vehicle?
A. Yes.
Q. Prior to July of 2006, when you bought the car from Hendrick Honda of Easley, had you ever bought a home?
A. No.
Q. A boat?
A. No.
Q. Had you ever signed an employment contract with any of your employers?
A. Yes.
Q. Okay. Tell me about that.
A. I signed a contract with Newberry County to teach for one school year.
Q. Okay. And that was a written agreement?
A. Yes.
Q. All right. I understand that your

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father and Mr. Hair were with you, at one time or another, while you were working with the personnel at Hendrick Honda of Easley to buy the car. Why did you have them with you? What was the purpose of having them involved?

A. My husband was there just to come along with me to look at the cars. My father came with me to actually bring me the car that I was trading in when I bought the new one.

Q. Okay. Is there any other reason that you wanted your father there?

A. No.

Q. Is there any -- were you and Mr. Hair engaged at the time?

A. We were.

Q. Okay. How long were y'all engaged?

A. For about seven months.

Q. And you got married just shortly after you bought the car?

A. Yes.

Q. So you had been engaged for approximately six months before that. Tell me about Mr. Hair. What does he do?

A. He is an administrator of a retirement community.

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Q. What age is he?

A. He's 30.

Q. What about his education? Where did he attend high school?

A. He went to high school in Midland Valley in Aiken County.

Q. All right. What year did he graduate, do you recall?

A. Yes, he graduated in 1997.

Q. All right. Did he attend college?

A. Yes.

Q. Where did he go to college?

A. He went to the College of Charleston.

Q. And did he graduate?

A. He did.

Q. What year did he graduate?

A. 2002.

Q. And what is his degree in?

A. His degree is in business.

Q. All right. Has he had any formal education beyond college?

A. Yes. He has a masters from the Medical University of South Carolina.

Q. Okay. And what is that degree in?

A. It's a masters of health

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administration.

Q. So it's an advanced business degree for the health -- healthcare industry?

A. Correct.

Q. Had he finished all of that education by the time you bought the car?

A. Yes.

Q. Was he with you at every time you came to Hendrick Honda of Easley?

A. Yes.

Q. So he was there for all of the discussions that you would have had with any employee of Hendrick Honda of Easley relating to the purchase of that car?

A. For the most part, yes.

Q. All right. Well, let's move on into -- tell me -- let's just sort of start at the beginning, and what made you want a new car?

A. Well, I needed a new car. My previous car was just getting old and needed some work. So I needed a new car.

Q. Was that car a 1999 Mazda 626?

A. Yes.

Q. And that was titled in your father's name?

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A. Yes, it was.

Q. When did you first get that car?

A. Maybe when I went to college.

Q. Okay. So your plan was to trade that car in and get a new one?

A. Yes.

Q. How did you get interested in -- or, well, tell me what you did. How did you go about figuring out what car do I -- am I going to buy?

A. Well, I knew that I liked Honda Accords. So that's specifically what I was looking for. That's what I wanted to buy.

Q. Did you go test drive one anywhere else before you got to Hendrick Honda of Easley?

A. Yes, I did.

Q. Where was that?

A. I test drove a car from a Columbia Honda dealership. And then the one from Hendrick Honda.

Q. So, in July of 2006 you lived in Greenville?

A. No.

Q. Where did you live?

A. I lived in Chapin.

Q. In Chapin, okay.

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A. Yes.
Q. Did your husband live in Greenville?
A. Yes.
Q. Mr. Hair lived in Greenville?
A. Yes.
Q. All right. So, you test drove a Honda at a dealership in the Columbia area; is that right?
A. Yes.
Q. What kind of car was that?
A. It was also an Accord.
Q. Do you remember the name of the dealership where you went?
A. No, I don't remember.
Q. Do you remember what kind of Honda Accord it was? What year model or...
A. I don't remember.
Q. But it was an Accord?
A. Yes.
Q. What color was it?
A. Black.
Q. Okay. Remember the interior color?
A. No.
Q. All right. Did you like it?
A. Yes, but it wasn't exactly what I was

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looking for.
Q. What exactly were you looking for?
A. I wanted a four-door Accord, white. That was pretty much it.
Q. I'm a fan of white cars, too. I like white.
Did the interior need to be any particular color?
A. No.
Q. So you wanted a white four-door Honda Accord?
A. Uh-huh.
Q. Were you looking for a new car, a used car? Any particular requirements in that regard?
A. Well, I didn't want it to be more than a year or two old.
Q. Okay.
A. So it didn't have to be brand new, but it didn't need to be over a year old.
Q. So how soon before you came to Hendrick Honda of Easley had you narrowed your search down to that kind of car, a Honda Accord, white, no more than a couple of years old?
A. A few months before.
Q. A few months before?

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A. A month.
Q. Okay. What -- how then did you -- what happened next in your search for a car?
A. Well, I knew that I needed a new car, because my previous car was needing work. So I started to look at Accords.
Q. And how did you go about looking at Accords?
A. I first went to the dealership in Columbia and test drove that car, that's when I looked here, at Hendrick Honda.
Q. Okay. So the next place you came in your search was Hendrick Honda. How did you choose Hendrick Honda?
A. Well, since my husband lived here already, and I knew that we were going to be moving here, I just looked in the Greenville area.
Q. I see. Okay. Did you look at any other Honda dealerships in the Greenville area?
A. No.
Q. Is there any particular -- you know there is at least one other Honda dealer in the Greenville area?
A. Yes.
Q. Were you aware of that?

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A. Yes.
Q. Do you know the name of that business?
A. No, I can't remember.
Q. Do you know where it's located?
A. On Woodruff Road, yes, I've seen it.
Q. Does the word Breakaway Honda ring a bell?
A. Yes.
Q. So you had seen -- you were aware of that other Honda dealership at the time you went to Hendrick Honda of Easley?
A. At the time, no. But since I have lived in the area now, I know where it is.
Q. So your awareness of Breakaway Honda came more after you bought the car from Hendrick Honda of Easley?
A. Yes.
Q. You were not aware of Breakaway Honda before you went to Hendrick Honda of Easley; is that right?
A. No. That's correct.
Q. Well, then what -- how did you pick Hendrick Honda of Easley? Was it near where your husband lived or something like that?
A. My husband works in Easley, so I just

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knew that one was in Easley.
Q. I see. Okay. Tell me again where he works.
A. He's the administrator at Countryside Village Retirement Home.
Q. And where is it located?
A. It's in Easley on Pelzer Highway.
Q. So Mr. Hair was familiar with the Hendrick Honda of Easley location?
A. Yes.
Q. Do you know if Mr. Hair had been to Hendrick Honda of Easley before you first went there?
A. No, he had not been there.
Q. Okay. Well, tell me about that day that you first went to Hendrick Honda of Easley. Do you remember what day of the week it was or what prompted you to go there?
A. I don't remember the day of the week. But the first time we went, I test drove the car and then talked about price negotiations.
Q. So the first day you went, he was with you and you test drove the car?
A. Yes.
Q. I guess you found a car on the lot that

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met your criteria?
A. Yes.
Q. Let's back up then a minute. Had you done anything else to look for a car at Hendrick Honda of Easley before arriving at the dealership?
A. No.
Q. Had you looked at any newspaper ads?
A. No.
Q. Had you seen any TV advertisements?
A. No.
Q. Had you seen -- heard any radio ads?
A. No.
Q. Had you received anything in the mail --
A. No.
Q. -- that made you want to come to Hendrick Honda of Easley?
A. No.
Q. Had you looked on the internet at any cars offered by Hendrick Honda of Easley?
A. No.
Q. So the only thing that really brought you to the Hendrick Honda of Easley dealership was seeing that it was a Honda dealership, and they had Hondas. And you were looking for a Honda Accord,

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so you decided you'd go there and look at the cars on the lot?
A. Yes.
Q. Okay. Describe for me -- because I hate to admit this, but I have never been to Hendrick Honda of Easley. Describe for me what it looks like and where it is and, you know.
A. I know it's on the main highway that runs through Easley on Highway 123. And there's a -- it's on a steep slope hill with a lot of cars parked out front. And there's a small office building kind of right in the middle of the parking lot.
Q. Okay. So it's sort of got a steep slope to its --
A. Uh-huh.
Q. -- its car lot?
A. Yes. Like, when you pull in, you have to drive sort of up a hill.
Q. All right. About how big is it?
A. The lot in general?
Q. Yeah.
A. I mean, like a regular car dealership. There is a lot of car choices, I would say.
Q. Okay. All right. So what time of the

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morning was it -- or the day was it, when you first got there?
A. I don't remember.
Q. Okay. Do you remember what day it was?
A. No.
Q. Okay. How many days before you actually bought the car was it?
A. The first time I went, when I test drove the car and talked about price negotiations, then I went back the next day.
Q. And bought the car?
A. Yes.
Q. So it all occurred over a two-day period?
A. Yes.
Q. From the time you first set foot on their lot to the time you drove away with the car you picked?
A. Yes.
Q. So, when you got there on the first day -- well, let's see. You bought the car on July -- July 11th. That's -- excuse me, let's make absolutely sure of that date. I believe the date you actually bought the car was the 12th?
A. Yes.

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Q. And do you believe the first time you would have gone there, then, was on the 11th --
A. Yes.
Q. -- of 2006? Does that sound right?
A. That's right.
Q. Do you recall what day of the week the 11th was?
A. I don't remember.
MR. BECKER: Look on Outlook and see what day of the week.
MR. HAMM: I can give you that. July 11th was Tuesday.
MS. WESSINGER HILL: July 11th was a Tuesday and the 12th was Wednesday.
MR. HAMM: Correct.
BY MR. BECKER:
Q. Does that sound about right?
A. Yes.
Q. A Tuesday?
A. Right.
Q. It wasn't a weekend?
A. No, it was during the week.
Q. Where were you working at that time?
A. Well, it was in the summertime, so I wasn't in school.

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Q. Right. And your husband lives -- works nearby?
A. Yes.
Q. So, were you getting ready for the wedding --
A. Yes.
Q. -- that month, I guess?
A. Yes.
Q. Yeah. Where were you living at the time? Were you already living up here in Greenville?
A. No, I was living in Chapin with my parents.
Q. All right. Okay. So on Tuesday the 11th you made your first trip to Hendrick Honda of Easley. And you hadn't done any research in any advertisements or anything like that, in other media, before you got there?
A. No.
Q. Okay. Tell me, you drove -- you and your husband drove up on the lot. What happened next?
A. We looked around at a few cars and then were approached by a sales representative; then found the car that I liked; and then test drove it.

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And then after I test drove, we came back to the dealership and went inside the office to talk about price.
Q. Okay. How -- do you remember the salesman's name?
A. Yes, Randall Clement.
Q. Okay. Have you ever seen him again since you bought the car?
A. No.
Q. Okay. So you met with him on the 11th and 12th of July, 2006, and have never seen or talked with him since then?
A. Correct.
Q. Okay. So you got on the lot and you started looking around?
A. Uh-huh.
Q. About how long between the time you first got on the lot did it take before you were approached by Mr. Clement?
A. I don't remember exactly. Not very long.
Q. Okay. What did you say to Mr. Clement when he approached you? Or what did he say to you? Do you recall?
A. I don't remember.

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Q. Probably something like, can I help you?
A. Yeah, probably offered help.
Q. And what do you think you would have told him?
A. I don't remember. Probably what I was looking for.
Q. Okay. White --
A. Yeah.
Q. -- Honda Accord, four-door --
A. Uh-huh.
Q. -- not more than a couple years old?
A. Right.
Q. All right. Did he direct you to a place where you might find that car? Had you found the car you wanted before he approached you, or did you find it after he first approached you?
A. I think I had already found the car.
Q. Okay. But you had never been to the lot before?
A. Correct. That was my first time.
Q. So you had had enough time to kind of look around a little bit and --
A. Yes.
Q. -- spot the one you liked?

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A. Yes.
Q. Were there a lot of white cars on the lot?
A. Not a lot.
Q. Okay. So your eyes were pretty quickly drawn to the kind of car you wanted, because you had narrowed it down pretty closely; right?
A. Yes. Since I knew I wanted an Accord, I just looked at -- went straight to the Accord.
Q. Did you go straight to -- could you tell where the used cars were versus where the new cars were?
A. No, I did not know at the time.
Q. Were they all mixed up together or were new on one side used on the other?
A. I don't remember.
Q. Okay. When you first saw the car, what -- did anything strike you about it?
A. Well, I was glad to find something that I was looking for. That's all.
Q. Did it have any signs on it or stickers or anything of that nature?
A. There was a tag on the window.
Q. Okay. How many tags?
A. I think it was just one window. So one

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tag, I guess.
Q. Just one tag? Okay. Do you remember anything about what it said?
A. I know it said that the car was a certified used -- certified used Honda and explained what that meant. And then just the price of the car.
Q. Okay. Did you get a copy of that sticker?
A. I don't remember.
Q. Okay. But you remember there was only one, one sticker on the car?
A. Yes.
Q. Okay. And it talked about Honda certified and had the price?
A. Yes.
Q. Okay. What was the price?
A. 18,995.
Q. Okay. And do you remember that from --
A. Yes.
Q. -- then? Okay. What was your price range?
A. I didn't want to spend more than $18,000.
Q. So this was pretty close?

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A. Yeah.
Q. Did you expect to negotiate over price when you got there?
A. Yes.
Q. Okay. Once you found the car you liked, did you look at any others?
A. No, I don't think so.
Q. Okay. Did you test drive more than one?
A. That was the only one I had driven.
Q. So tell me about what happened next, as best you remember. Did you and Mr. Clement agree that you would test drive the car?
A. Yes, we did.
Q. What took place in order to be able to do that? Did he have to get your driver's license number and something like that?
A. Yes, he had a copy of my driver's license. But I think that's all.
Q. Did he go with you on the test drive?
A. Yes.
Q. Did Mr. Hair accompany you on the test drive?
A. Yes.
Q. Who sat where?

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A. I drove; the sales representative sat in the passenger seat; and my husband was in the back.
Q. Okay. How long did the test drive take?
A. Maybe 15 minutes.
Q. Where did you go?
A. At the time, I was not that familiar with Easley, so I don't know roads exactly. But I know we just drove -- it was near the dealership; it was not far.
Q. Yeah. Is there anything else about the car, or anything else about it you remember from that, before you went -- first went inside the Honda building?
A. No.
Q. Okay. What color interior did it have?
A. It has a tan interior.
Q. Have you still got that car?
A. Yes.
Q. Okay. Have you ever had it serviced at Hendrick Honda of Easley?
A. Yes.
Q. Do you continue to go back there to have it serviced?

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A. Not constantly.
Q. When was the last time you think you had it serviced there?
A. Probably about six months ago, just for an oil change, routine maintenance.
(DEF. EXH. 3, Two-page Buyers Guide, Bates Stamp Hendrick Honda Easley 000017 and 000018, marked for identification.)
BY MR. BECKER:
Q. Sure. Okay. Let me start by showing you what's been marked as Exhibit 3. Does this look like the sticker that was on the car that you recall?
A. Both pages?
Q. Yes.
A. This looks familiar.
Q. The front page?
A. The top page.
Q. Okay. The first page. Does the second page look familiar?
A. I don't remember.
Q. But otherwise, does this look like the sticker that was on the car?
A. Yes.
Q. It mentions Honda certified there in

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the middle?
A. Uh-huh.
Q. Is that what you recall?
A. Yes.
Q. Okay. So then you test drove the car and you came back to the dealership. And what happened next?
A. We negotiated the price so that it was in my monthly price range.
Q. Okay. We'll kind of end up going through that in mind-numbing detail, that negotiations process. But before we get to that, you said y'all went inside?
A. Uh-huh.
Q. Tell me about that. Because I have never been in the building. I'm just kind of wondering -- describe it for me, so I kind of have a sense of where y'all went, what it looks like inside.
A. Okay. As soon as you walk in, there is a large lobby. And there's a few desks set up, just in the front area there. And we went to one of the desks right in the front, near the door.
Q. Was that Mr. Clement's desk?
A. I don't know.

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Q. Okay. But he sat behind -- on one side of the desk --
A. Yes.
Q. -- and you and Mr. Hair sat on the other?
A. Yes.
Q. Had you had any negotiations over price or anything before you sat down at the desk?
A. No.
Q. Okay. How far into the dealership did you go?
A. Just in that front lobby part. It's just one large room that has different desks.
Q. Did you notice any -- did you observe any notices or signs or anything that were posted in the dealership?
A. No.
Q. Were you looking for that kind of thing when you went inside the dealership?
A. No.
Q. So you weren't really making it your business to be aware of anything posted in the dealership, any signs or anything at that time?
A. No.
(DEF. EXH. 1, Single-page document

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entitled Disclosure of Closing Fees Notice, marked for identification.)
(DEF. EXH. 2, Single-page document entitled Notice, Closing Fees, marked for identification.)
BY MR. BECKER:
Q. Let me show you two things that have been marked as Exhibits 1, 2. And I understand you have told me you weren't really looking for this kind of thing, which I completely understand. But I just need to ask you: Did you notice either what's been marked as Exhibit 1 or 2?
Exhibit 2 is marked notice, closing fees. Exhibit 1 is a registration form with the South Carolina Department of Consumer Affairs. Did you notice either one of those posted inside the dealership when you went in?
A. No.
Q. That's all I have on that.
MR. HAMM: Mr. Becker, these -- what you've handed out are not marked. I just want to make sure I'm writing the right exhibit number on the right one. The notice of closing fees is which exhibit?
MR. BECKER: Two.

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MS. CASKEY: This is one.
MR. BECKER: And the registration form is Exhibit 1.
BY MR. BECKER:
Q. So since you weren't looking for this kind of thing, it's possible that those things could have been posted on the wall, but you just didn't notice it; is that right?
A. Yes.
Q. All right. So you sat down at the desk with Mr. Clement. By the way, what does he look like?
A. I don't remember details exactly. But he was older than me, but not much older, I would guess. Thin guy, maybe brownish hair.
Q. Okay. Did you notice or remember anything else about him?
A. No.
Q. Okay. What happened next? You sat down at the desk. And tell me about what happened after that.
A. Well, I told him my monthly payment that I wanted to be in, the range. And then he negotiated price, lowered the price down a little, so that I was in my price range.

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Q. Were you -- so was your primary concern getting that monthly payment to a point where you felt comfortable with it?
A. Yes.
Q. So were you interested, not just in price, but also, perhaps, in the, you know, maybe the interest rate and the term of the loan and that kind of thing?
A. Yes.
Q. Now, I know you ultimately financed the purchase with South Carolina Telco Credit Union?
A. That's correct.
Q. Had you done any banking business with that credit union before this time?
A. No, that was the first time.
Q. All right. So Mr. Clement found that lender for you?
A. No.
Q. Or someone at Hendrick Honda of Easley found that lender for you?
A. No, I did that personally.
Q. Oh, you did? Tell me a little bit -- let's digress here briefly. How did you find that?
A. My father suggested that.
Q. Oh, he did?

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A. Yes.
Q. Is he a member at that credit union?
A. Yes.
Q. He is? So you would have talked to -- and we'll get to this. But you must have talked to your father later that night or later that day?
A. Yes.
Q. Okay. Had you had any thought that you might finance it through South Carolina Telco Credit Union before you got there?
A. No.
Q. So that all -- and when I say got there, I mean, made your first visit to Hendrick Honda of Easley?
A. Correct. I didn't think about it before then.
Q. So you had not had any dealings with South Carolina Telco Credit Union before you first went to Hendrick Honda of Easley on July 11th, 2006?
A. Correct.
Q. All right. Well, so, you were motivated to get the price -- get your monthly payment into a range where you felt comfortable with. And you were interested in price and

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financing terms?
A. Yes.
Q. By the time you sat down with Mr. Clement to start those discussions, had you decided that you wanted to buy that car?
A. Before I sat down with him?
Q. Yes, ma'am.
A. I had not completely decided, no.
Q. So it would depend on whether you got the right deal or not?
A. Yes.
Q. And unless you -- unless you got the right deal from Hendrick Honda of Easley, were you prepared not to buy the car?
A. Yes.
Q. So you were prepared to walk away if they didn't give you the deal you wanted?
A. Correct.
Q. Okay. All right. You started talking to Mr. Clement about those things. Did you exchange any paperwork? How did that negotiation, about where you started talking about price, how did it -- how did it move forward?
A. I remember he did some calculations just to figure out what kind of monthly payment I

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could get. So he brought the price down a little bit at the time to see what kind of monthly payment I would have.
Q. Did he show you the paper he was doing those calculations on?
A. I don't remember.
Q. But you do remember him doing some calculations?
A. Yes.
(DEF. EXH. 4, Two-page Sales Worksheet, Bates Stamp Hendrick Honda Easley 000014 and 000022, marked for identification.)
BY MR. BECKER:
Q. Okay. Let me show you what's been marked as Exhibit 4. Exhibit 4 is entitled Hendrick Honda sales worksheet. I'm handing that to you now.
MR. HAMM: Can you hold on just a second?
(Off-the-record conference.)
BY MR. BECKER:
Q. All right. Look at the -- look at the second page of Exhibit 4. Does this look familiar to you?
A. Yes.

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Q. Is this where he sort of wrote down the different payment options and discussed them with you?
A. Yes.
Q. So do you recall him showing this to you when you started the negotiations?
A. Yes.
Q. I'll represent to you, Ms. Freeman, that the second -- that these two pages are actually -- the form that they used is actually a one-page piece of paper, front and back. Let's look at the first page now. Was there a point where Mr. Freeman (sic) asked you for some personal information about yourself, like your address and phone numbers and that kind of thing?
A. Mr. Clement, yes.
Q. And did that occur when you sort of sat down and started talking?
A. Yes.
Q. And was he filling out a piece of paper as he asked you for that information?
A. Yes.
Q. The address there -- or let's start up there at the top, where it says buyer's name, Julie Freeman. Is that your handwriting?

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A. No.
Q. The address under there, 1011 West Butler Road, Apartment 419. Let me ask you: Is any of the handwriting, except for your signature down at the bottom, is any of the handwriting on here yours?
A. No.
Q. Do you believe that's all Mr. Clement's handwriting, or do you know?
A. Yes. He was the only one I talked to. So that's probably just his.
Q. And that address that's listed there, 1011 West Butler Road in Greenville, Apartment 419, is that address familiar to you?
A. Yes.
Q. Whose address is that?
A. That is where my husband lived before we got married. And then we lived at that same address after we got married.
Q. After you got married, okay. There is a cell phone listed there. Does that cell phone number look familiar to you?
A. Yes, that's my previous cell phone.
Q. And that business phone, (864) 355-2700, is that number familiar to you?

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A. Yes.
Q. What number is that?
A. That's my current work phone.
Q. So, do you believe that's the information that, when you first sat down with Mr. Clement, he was asking you and you gave him?
A. Yes.
MR. THOMAS: Jimmy, we've been going about an hour. Can we take a break?
MR. BECKER: Yeah.
(A recess transpired.)
BY MR. BECKER:
Q. We're back on the record. Ms. Freeman, when we took the break, we were talking about the -- what's been marked as Exhibit Number 4. And I think we had just gotten through the personal information you provided Mr. Clement that's listed there on the top. You see there he talks about the Honda Accord that you were negotiating over. And see where the vehicle being purchased information is filled in?
A. Yes.
Q. That's the car you ultimately bought; is that right?
A. Yes.

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Q. Now, look down below. I know you were planning to trade in the car you were currently driving, which was the 1999 Mazda 626. There is a payoff verification, and South Carolina Telco Credit Union is listed. Did you have a loan on the Mazda at that time, and was it with South Carolina Telco Federal Credit Union?
A. That car, my father bought. So he could have had the loan from there.
Q. All right. So, do you believe that you would have given that information to Mr. -- would he have asked you -- do you recall him asking you if there was a loan on the car you were trading in?
A. I don't remember.
Q. Did he ask you about insurance on the car and who that was with?
A. I don't remember.
Q. Okay. Well, at least at some point he got that information from you; would you agree?
A. Yes.
Q. Maybe not that first time you were there, but at some point before it was all over?
A. Yes.
Q. You gave him the payoff information and the -- where you had the insurance on your Mazda?

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A. Yes.
Q. Now, if you look over there on the right-hand side, it starts out with MSRP. And there is 18,995 listed. Earlier you mentioned that you had seen that price on a sticker on the window; is that right?
A. Yes, that's correct.
Q. But there was just one sticker on the window; is that right?
A. Yes.
Q. So did -- when the subject of price first came up in your discussions with Mr. Clement, how did it come up and who said what?
A. I don't remember exactly. But I told him the monthly price that I was willing to pay or that I wanted to get the price down to.
Q. So you told him a payment amount that you needed and would be most comfortable with?
A. Yes.
Q. Did you tell him -- when you first mentioned the subject of price or terms, did you say, I want to pay less than that for the car or did you tell him the payment amount you were driving for?
A. I don't remember.

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Q. Okay. But you do recall telling him the payment amount that was -- would be comfortable for you?
A. Yes.
Q. All right. Well, let's look -- let's look, then, at paragraph two. I mean, excuse me, page two of Exhibit 4. And I believe you said he showed you this?
A. Yes.
Q. Right? Do you recall anything about the explanation he may have given you about the numbers that are on page 2 of Exhibit 4?
A. No.
Q. Okay. I believe you said when you first started negotiating about price, he offered to take a little off the price of the car for you?
A. Yes.
Q. And do you see there that -- in that upper left-hand box that's entitled selling price, the first number there, that's since been marked out, is 18,295?
A. Yes.
Q. Does that ring a bell? Did he offer, kind of first, to take $700 off the price, or how did that...

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A. I don't remember. I don't know why that's there.
Q. All right. Look back for a minute at page 1. Did he -- did he show you this when he filled out page 1, to make sure he had the right information for your phone numbers or anything of that nature?
A. I don't remember.
Q. Okay. He could have done that, you just don't recall?
MR. THOMAS: Object to the form. You can answer.
THE WITNESS: Shown it to me?
BY MR. BECKER:
Q. Yeah.
A. When?
Q. Well, you say he showed you the back side of it?
A. Yes.
Q. Did you also look at the front side?
A. I don't remember.
Q. But you know you saw the back side?
A. Yes.
Q. And at some point, you signed it, there, under buyer?

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A. Yes.
Q. Do you recall when that would have occurred --
A. No.
Q. -- in the negotiation?
A. I don't remember.
Q. Okay. So, looking at page 2 of Exhibit 4, you just -- you don't recall any of the details about the negotiations that are represented here or the writings that are set forth on this?
A. No.
Q. Okay. There is a notation there that says 7/11/06, good for two weeks if this car available. Do you recall there being any discussion about a quote being good for two weeks?
A. Yes. The day that I went to first talk about this, I knew I wasn't going to buy the car that day, mainly because I didn't have my previous car to trade in with me.
Q. Okay.
A. So that's why it was there.
Q. And I see there -- do you see there where it says, payoff E-S-T 400?
A. Yes.
Q. Do you recall discussing what the

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payoff on your trade-in car might have been on that day?
A. I don't remember discussing that. And since I didn't pay for that car, I didn't know.
Q. All right. And on that day, was -- you say you didn't have your trade-in vehicle with you. So, it's written down there, not seen. Does that sound about right? Mr. Clement hadn't seen it, right, at that point?
A. Correct, I did not have it that day.
Q. Okay. Well, there is, if you look in the two boxes below, in the middle there, under cash down and payment, the middle one of $315 per month is circled, 60 times 315.02. Was that the payment amount or was that within the range of the payment amount where you would have felt comfortable?
A. Yes, that's within the range that I was looking for.
Q. Do you think that might be why it's circled?
A. I don't know.
Q. Do you know what the initials WAC might stand for that are right there by the word payment for that box, middle box?

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A. No, I don't know.
Q. There is a phone number in writing over there on the far left side 866-513-9355. Do you know what the phone number is?
A. I do not.
Q. Is Betty -- does that name ring a bell for any reason?
A. No.
Q. And how about the number 62803?
A. No.
Q. Were you discussing -- did you discuss with Mr. Clement a down payment of any kind?
A. No. Just the trade-in of my car.
Q. Okay. Is that where you were looking to get the money for a down payment, was through the trade-in?
A. Just the trade-in, yes.
Q. You were hoping not to have to come up with any more cash out of your pocket, just trade-in the car and then sign a note for a loan for the balance that might be owed?
A. Yes.
Q. Okay. All right. Did Mr. Clement give you a copy of this worksheet with the quote on it that was good for two weeks?

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A. I don't remember. I'm not sure.
Q. Is it possible that that could have happened and you just don't recall for sure?
A. It's possible, but I'm not sure.
Q. Did you -- did you leave -- okay. So you were there meeting with him beginning negotiations on the 11th. How long did that meeting go on where you were sitting at the desk in the dealership?
A. I don't remember exactly. Maybe 30 minutes, an hour. We weren't there terribly long.
Q. And Mr. Hair was there with you the whole time?
A. Yes, he was.
Q. Okay. Is there anything else about that meeting with Mr. Hair (sic) in the office on the 11th that you recall, sitting here today?
MR. THOMAS: Mr. Clement?
BY MR. BECKER:
Q. With Mr. Clement, I'm sorry.
A. No.
Q. Did you -- there came a time when you got up and left, I take it?
A. Yes.

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Q. How did you leave it with Mr. Clement?
A. Well, I was not sure that I was going to buy the car. But we told him that we would come back if we were really interested. We wanted to think about it.
Q. All right. And so you and Mr. Hair left?
A. Yes.
Q. Where did you go after that?
A. I do not remember. I don't know.
Q. Okay. Well, did you speak with -- talk with Mr. Hair after you left about whether or not you'd buy the car or anything like that, do you remember?
A. Yes, we talked about it.
Q. Do you remember what those conversations were?
A. I mean, that was basically what I was looking for, so we decided that we would probably go back and buy the car.
Q. Okay. All right. Well, what -- what plans did you make next? What did you plan to do next or what did you do next, in terms of moving forward to buy the car?
A. Well, if I was going to buy the car, I

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had to get my previous car up to Hendrick Honda, which is the reason that my dad brought it to me the next day.
Q. Okay.
A. So, I don't remember details.
Q. Okay. You don't remember details, but you must have called your dad to say, dad, bring me the car?
A. Yes.
Q. Why did you not have it with you?
A. I was just riding with Brandon.
Q. Okay. And did he -- what did he say, do you recall, when you called him?
A. No. I don't remember.
Q. You just don't remember the discussions with your dad?
A. No.
Q. Okay. What happened next?
A. My dad agreed to bring the car up to us. So we set a time for the next day to do that, and met at the dealership, at the car dealership.
Q. Okay. So you met your dad the following day at the dealership?
A. Yes.
Q. Do you remember what time of day that

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was?
A. I don't remember.
Q. And that would have been on the 12th?
A. On the 12th, yes.
Q. Which was a Wednesday?
A. (Indicating)
Q. Did your dad come up the night before or early the next morning?
A. Just that day, the 12th.
Q. Okay. On a Wednesday?
A. Yes.
Q. Was he able to get off work no problem?
A. I don't know.
Q. You don't recall?
A. No.
Q. What does your dad do?
A. He works for AT&T.
Q. What does he do for them?
A. He's a DSL internet computer installer.
Q. Is that what he was doing back in July of 2006?
A. Yes.
Q. So, in between the time you left on the 11th, left Hendrick Honda of Easley on the 11th, and the time that you met your dad back there on

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the 12th of July, did you speak with Mr. Clement?
A. No.
Q. Did you speak with anyone else from Hendrick Honda of Easley, in between the time you left on the 11th and the time you went back to Hendrick Honda of Easley on the 12th?
A. No.
Q. So you just arranged that you would meet your dad at the dealership at a certain time, but Randall Clement didn't know you were coming?
A. No, we hadn't set up any kind of arrangements.
Q. All right. So then tell me about what happened when you came back the second time?
A. I did ask for Mr. Clement specifically, since I had talked with him before. And then I drove the car again. Then after that, we went inside the office building to discuss our negotiations from the day before.
Q. Was your father present when you went back inside the building --
A. Yes.
Q. -- to have those negotiations?
A. Yes.
MR. THOMAS: Object to the form.

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BY MR. BECKER:
Q. Did he, did your father test drive the car with you the second time?
A. I don't remember if he did or not.
Q. Was Mr. Hair with you when you test drove it on the 12th?
A. I don't remember.
Q. Okay. Was Mr. Clement in the car with you --
A. Yes.
Q. -- on the 12th?
A. Yes, I believe he was. He test drove with me both times, yeah.
Q. Okay. Sat down again. Did you go back inside the dealership?
A. Yes.
Q. Did you sit at the same desk?
A. Yes, we did.
Q. Okay. Had you had any discussions about price or payments before -- on the 12th, but before you sat back down at the desk again with Mr. Clement? Had you had any further discussions with Mr. Clement about price or payment, in between the time you left on the 11th and the time that you sat back down at his desk again on the 12th?

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A. No.
Q. So tell me about the back and forth that would have occurred when you sat down with him on the 12th?
MR. THOMAS: Object to the form. Go ahead and answer.
THE WITNESS: I think that, since I already had this price that he had told me the day before, that I knew that that's what I wanted. So I don't remember if there were any further negotiations about the price.
BY MR. BECKER:
Q. You don't? Okay. All right. Did he show you any papers again?
A. I don't remember.
Q. Okay. Okay. Is the next thing that you remember that you had then agreed to buy the car on certain terms, and you set about going ahead and signing everything up?
A. Yes.
Q. So you just don't recall -- you don't have a memory of what the negotiations were on the day you were there, on the 12th; is that right?
MR. THOMAS: Object to the form. Go ahead and answer.

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THE WITNESS: You're correct, yeah.
BY MR. BECKER:
Q. All right. Then look back at what -- let me ask you this: Did you sign anything before you were there on the 12th?
A. I don't remember signing anything.
Q. You don't remember signing anything before you were there on the 12th, or you don't remember if you did or not?
A. I don't remember if I did or not.
Q. Okay. Well, look at Exhibit 4 again, first page. Is that your signature down at the bottom?
A. Yes.
Q. And the sales manager -- do you remember Mr. Clement needing to talk with his sales manager at any point during the discussions with you?
A. I don't remember.
Q. Okay. Let's look next at Defendant's Exhibit 5.
MS. CASKEY: That's the third sheet.
MR. BECKER: That's the third sheet, Brady, of your Exhibit 4. That's the last page.
(DEF. EXH. 5, Single-page document,

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Bates Stamp Hendrick Honda Easley 000023, marked for identification.)
MS. CASKEY: Are there extra copies down there?
MR. THOMAS: I don't mind sharing.
BY MR. BECKER:
Q. Do you recognize this handwriting?
A. That's my handwriting.
Q. Oh, it is? Okay. Let me -- that is your handwriting on Exhibit 5?
A. Yes.
Q. Okay. Do you know what -- what it is? How, why you wrote it or what you wrote it on?
A. I don't know. I don't remember writing this at all, no.
Q. But you do recognize it as your handwriting?
A. Yes. But that's not my current monthly payment; and the car is not a 2004. So I'm not sure why I would have written that.
Q. Right. In between the time that you left Hendrick Honda on the 11th, and the time that you came back on the 12th, did you do any research on other cars at other dealerships?
A. No, I don't remember.

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Q. Okay. Did you look at any newspaper adds or...
A. No.
Q. See anything on TV or hear anything on the radio?
A. No.
Q. Okay. Okay. So this is your handwriting, but you just don't remember where it came from?
A. No.
Q. Okay.
MR. STUDEMEYER: I'm going to step out for a second. Y'all go ahead.
MR. BECKER: Okay.
BY MR. BECKER:
Q. Ms. Freeman, I'm going to hand you, out of the original deal file on your transaction, I'm going to hand you the original of this document, which is in blue ink. It looks like the original writing. This, that Exhibit 5, is a copy of what I'm showing you right now. Is that -- is that your handwriting there?
A. Yes.
Q. And it's on the back of what is currently marked as the second page of Exhibit 4.

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A. Yes.
Q. Okay.
MR. THOMAS: Can we take a break? I would like to get a copy of that, the two-sided version.
MR. BECKER: Sure.
MR. THOMAS: Or we can do it on a break.
MR. BECKER: Can we do it on the next break?
MR. THOMAS: But I would like a copy of that.
MR. BECKER: Absolutely. That might be the easiest thing. Thank you.
(DEF. EXH. 6, Hendrick Honda document, Bates Stamp Hendrick Honda Easley 000015, marked for identification.)
BY MR. BECKER:
Q. All right. I want to show you next what has been marked as Exhibit 6. This is a copy of a document that's just got Hendrick Honda up at the top. It's an -- I'll represent to you it's a purchase agreement. Is that your signature down at the bottom?
A. Yes.

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Q. And this is dated July 12th, 2006. Take a minute and look at all the information on it. It's got all the information that you had given about yourself, that you had given Mr. Clement the day before, up at the top; is that correct?
A. Yes.
Q. And then it shows a -- it's got the information on the car you purchased, right, the 2005 white Honda Accord?
A. Correct.
Q. And it's got the information on the vehicle you were trading, the 1999 Mazda 626?
A. Yes.
Q. Okay. And it's got an MSRP for the car of 17,975; is that right?
A. Yes.
Q. And you signed it on the 12th --
A. Yes.
Q. -- is that right? Before you signed it did you review it?
A. I don't remember.
Q. Okay. Did you have an opportunity to review it?
A. I don't remember.

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Q. You knew you were entering into a contract about a car?
A. Yes.
Q. Did you -- and you understood that if you really didn't want to buy the car, you could leave the dealership; right?
A. Yes.
Q. You didn't have to go through with this purchase if you didn't want to?
A. Right.
Q. And I think, previously, you had testified that you would not have gone through with the purchase if you weren't satisfied with the terms and the price that they offered you; is that right?
A. Correct.
Q. Look there on the numbers on the left-hand column, it starts, of course, with the price. And then 900 for the trade-in allowance. Was that, the value of your trade-in, ever the subject of negotiation with you and Mr. Clement?
A. Well, the first time that I was there, they didn't have my car to look at to decide on what it was worth.
Q. Well, that's something we failed to

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talk about. When you brought your car, did they go take a look at it and have someone check it out?
A. Yes.
Q. And did they come back and tell you what the results of that inspection were?
A. Yes.
Q. What did they say?
A. They just told me what it was worth.
Q. Who was it that told you that?
A. I don't remember.
Q. Was it Mr. Clement?
A. I don't remember.
Q. Okay. But someone came back and told you that --
A. Yes.
Q. -- what your trade-in was worth? Tell me this: Approximately how many different people did you deal with at Hendrick Honda of Easley?
A. I don't know exactly. At least two.
Q. Okay. At least two?
A. Yes.
Q. All right. Do you remember -- Mr. Clement was one of those?
A. Yes.
Q. Who was the other one?

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A. I don't know his name. But it was a finance manager.
Q. Okay.
A. But I don't remember what his name was.
Q. Okay. So you started talking with the other person when you started talking about financing for the car?
A. Yes.
Q. Okay. All right. Getting back to when they told you what your trade-in was worth. And you don't recall who that was, but was there any further discussion about the value of your trade-in after they came back and told you what it was, what it was worth?
A. I don't remember discussing that any more.
Q. Okay. All right. Then the purchase agreement that you signed shows a trade-in allowance of $900. Does that sound about right? Does that refresh your recollection, maybe, about what they told you it was worth?
A. Yes, I remember that was what they told us.
Q. And then it shows a difference. And then there is something called procurement fee,

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$299 and it's bolder, it's in the bolder point-type than everything else. Do you see that?
A. I see that.
Q. Was there any discussion that day about the procurement fee that's listed on Exhibit 6?
A. No, I don't remember discussing that at all.
Q. Okay. You just don't remember any discussion about it at all?
A. No.
Q. Now, I believe you said Mr. Hair was with you and Mr. -- your father, Mr. Freeman, was with you?
A. Yes.
Q. Were they there with you when you signed the documents?
A. I don't remember.
(DEF. EXH. 7, Single-page document entitled Addendum Regarding Additional Terms and Conditions, Bates Stamp Hendrick Honda Easley 000020, marked for identification.)
BY MR. BECKER:
Q. Okay. Take a look at Exhibit 7. Ms. Freeman, I have given you what's been marked as Exhibit 7, which is called an addendum regarding

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additional terms and conditions. Is that your signature there on the bottom?
A. Yes.
(DEF. EXH. 8, Single-page document entitled Affidavit & Notification of Sale of Motor Vehicle, Bates Stamp Hendrick Honda Easley 000025, marked for identification.)
BY MR. BECKER:
Q. Okay. Let's look next at Exhibit 8. Exhibit 8 is entitled affidavit and notification of sale of motor vehicle. And let me ask you: Is that your signature which appears there in two places down at the bottom?
A. Yes.
Q. Do you recall signing this and the previous document, Exhibit 7, on the 12th?
A. Yes, I signed a lot of things.
Q. So you signed a lot of documents that day. And I'm not going to show you every document you signed. But do you have any particular recollection of signing one versus another on that day?
A. No.
Q. But that is your signature on -- you do recognize your signature on what's been marked as

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Exhibit 8?
A. Yes.
(DEF. EXH. 9, Single-page document entitled Affidavit of Notification of Sale of Motor Vehicle, Bates Stamp Hendrick Honda Easley 000016, marked for identification.)
BY MR. BECKER:
Q. All right. Look next at Exhibit 9. There is an affidavit and notification of sale of motor vehicle. And it appears to be signed by your father, William Thomas Freeman. Look at the signature right above where his name is printed at the bottom there. Does that look like his signature to you?
A. Yes.
Q. So, he was there to bring your trade-in and -- I guess, your trade, the '99 Mazda, was titled in his name?
A. Yes, it was.
Q. But you were driving it?
A. Correct.
Q. So he had to be there to, at least, sell -- sign over, convey, the 1999 Mazda to Hendrick Honda of Easley as your trade-in vehicle; right?

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A. Yes, because it was in his name.
(DEF. EXH. 10, Single-page receipt entitled Hendrick Honda Easley 000011, marked for identification.)
BY MR. BECKER:
Q. Let's look at Exhibit 10. We'll go quickly through these. This is a copy of a receipt where you provided a check through South Carolina Telco Credit Union to Hendrick Honda of Easley?
A. Yes.
Q. Does that look familiar or does it not?
A. I don't remember seeing it.
(DEF. EXH. 11, Single-page copy of South Carolina Driver's License of William Thomas Freeman, Bates Stamp Hendrick Honda Easley 000012, marked for identification.)
BY MR. BECKER:
Q. Okay. Look here at Exhibit 11. This is a copy of your -- of a driver's license of your father, it appears to be?
A. Yes.
(DEF. EXH. 12, Single-page copy of South Carolina Driver's License of Julie Valiska Freeman, Bates Stamp Hendrick Honda Easley 000013, marked for identification.)

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BY MR. BECKER:
Q. And Exhibit 12 is a copy of your driver's license; is that right?
A. Yes.
Q. Okay. Tell me, when did -- you say that you went and spoke with a finance manager; is that right?
A. I don't know if that's his correct title. But yes, I spoke with someone else.
Q. About a loan for the car?
A. Yes.
Q. Do you recall anything about those discussions with him?
A. No.
Q. You don't?
A. No.
Q. Okay. But you do know that you must have signed a loan with South Carolina Telco Credit Union?
A. Yes.
Q. And used that as the way to pay the balance on the car you were buying?
A. Yes.
Q. But you just don't remember any of the details of that -- the discussion with that person?

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A. No.
Q. Did he show you some paperwork during the discussions you had with him?
A. I don't remember exactly what they were. But he -- he did show me some papers.
Q. Okay. And obviously, you had to sign some papers to get the loan?
A. Yes.
Q. But you just don't recall what those were?
A. No.
Q. Okay. Other than Mr. Clement and the man who spoke with you about financing, is there any other person who was an employee of Hendrick Honda of Easley, that you spoke with at anytime, in the purchase of the car in July of 2006?
A. I don't remember talking to anybody else.
Q. So it was just those two people?
A. Yes.
Q. I mean, obviously, I understand you may have said hello to somebody who might have also been to the showroom or on the lot. But what I'm asking for is: Did you have any -- have substantive discussions about your purchase or

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financing of the 2005 Honda Accord that you purchased from Hendrick Honda of Easley on July 12th, 2006, other than those two people, Mr. Clement and the man whose name you don't know, but with whom you spoke about financing?
A. They were the only two.
Q. Okay. Do you know somebody named John Miller?
A. No.
Q. You don't know who that is?
A. No.
Q. Okay. And the reason I ask this is because in your -- let me just hand you what's been marked as -- well, I don't need to make this an exhibit. Do you -- do you know what answers to interrogatories are?
A. Yes.
Q. You made some answers to interrogatories through your attorneys. And there is a man named John Miller listed as someone who might be a witness concerning the facts of this case. This may be just a typo, because there are a lot of people involved, a lot of different parties. But do you know a person named John Miller?
A. Not that I remember.

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Q. To your knowledge, did someone named John Miller play any role in the purchase of your vehicle from Hendrick Honda of Easley?
A. I don't remember.
Q. Okay. Did there come a time when your attorneys asked you to provide them with copies of any documents that you had in your possession regarding the purchase of your vehicle from Hendrick Honda of Easley?
A. Yes.
(Off-the-record conference.)
BY MR. BECKER:
Q. How long ago did that occur, do you recall? Do you know?
A. I don't remember.
Q. Okay. Did you get a call from someone at Mr. Thomas' office asking you to round up your documents and send them to them?
A. I don't remember.
Q. Is it possible your husband could have gotten that call or that request, however it came? It may have been a call, a letter, an email; I don't know.
A. I don't know.
Q. Did there come a time, though, when you

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or your husband gathered together your documents regarding the purchase of the Honda from Hendrick Honda of Easley and sent them to your attorneys?
A. Yes.
Q. Did I ask you this: Do you recall when that was?
A. I don't know when that was.
Q. Did you or your husband do that? Did you round up documents and send them to your attorneys?
A. Yes.
Q. Do you remember how many documents you pulled together?
A. I do not remember.
Q. What did you do to gather those documents?
A. I don't know. I think I had them all together in a folder.
Q. Okay. Where do you keep that folder?
A. At home.
Q. Was it like in a desk drawer or in the file cabinet?
A. Uh-huh. Like in our home office.
Q. Okay. Do you still have that folder?
A. I don't know.

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(DEF. EXH. 13, Single-page Hendrick Honda document, Bates Stamp P 000034, marked for identification.)
BY MR. BECKER:
Q. All right. Let's do another one. This document I'm going to give you has been marked as Exhibit 13. This is a copy of the -- or a duplicate of what's previously been marked as Exhibit Number 6. And it appears that it was faxed from -- you see up at the top, on 8/31/2006, 2008 Countryside Park. Does that -- do you know what Countryside Park is?
A. That's where my husband works.
Q. Okay. So do you think that he would have faxed some documents to your attorneys?
A. Yes.
Q. Ms. Freeman, your interrogatory responses that have been provided to us by your attorney say this: Plaintiff, Freeman-Hair and Brandon Hair went to Defendant, JLH Investments, d/b/a Hendrick Honda of Easley's dealership and spoke with the salesman, Randall Clement, two to three days prior to purchasing the Mazda. And I think that was a typo, it should have been the Honda.

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Thinking back, do you -- do you believe that you went there just on those two days, and it was the 11th and the 12th, or do you think there may have been other days that you were there?
A. No, I only went there the 11th and 12th.
Q. Okay. All right. So you drove away and you still own the car today?
A. Yes.
Q. And is that the car you drive now?
A. Yes.
Q. Are you happy with the car?
A. Yes.
Q. Were you generally happy with the way you were treated by the people at Hendrick Honda of Easley when you bought the car?
A. Yes, I was very satisfied.
Q. Were there any questions that you asked of them that they would not answer?
A. Not that I remember.
Q. So, you were able to ask questions, if you had one, and they would answer it for you?
A. Yes.
Q. Okay. Was there anything preventing you from asking questions of them that you had and

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getting an answer that you thought was satisfactory?
A. No.
Q. Were they -- how did they treat you? Were they polite and courteous or what?
A. Yes, they were very polite.
Q. Have you ever recommended Hendrick Honda of Easley to anyone to buy a car there?
A. No. But I haven't really had the opportunity.
Q. Okay. I think you said you've had your car serviced at Hendrick Honda of Easley?
A. Yes.
Q. About how many times, would you say?
A. Two or three maybe.
Q. Okay. On those occasions, were the people at Hendrick Honda of Easley polite and courteous to you?
A. Yes, very nice.
Q. Did they service your car appropriately?
A. Yes.
Q. Have you had any problems with the service they provided on your car?
A. No.

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Q. Have you had any problems with the car?
A. No. When I was in the wreck, it was in that car. But I haven't had any problems with it after it was fixed.
Q. Where did you have it repaired?
A. At a collision repair place, because it was -- it needed bodywork.
Q. Okay. And when was the last time you had your car serviced at Hendrick Honda of Easley?
A. I don't remember.
MR. BECKER: This is probably a good time to take a break.
MR. THOMAS: Okay.
MR. BECKER: And since food's here -- I don't have a lot more to go, probably 30 to 45 minutes.
THE WITNESS: Okay.
MR. BECKER: So I don't know how many questions, if any, the other people here are going to have. I don't think those are going to be long. But I would suspect that we don't have more than about an hour to an hour-and-a-half to go. So I'm willing to make this lunch break 20 minutes. Does that work for y'all, we just get lunch and then pick right back up. Is that okay?

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THE WITNESS: Sounds good.
(A luncheon recess transpired.)
BY MR. BECKER:
Q. Okay. We're back on the record. Ms. Freeman, before we left off, we were just talking about, generally, your experience with the people at Hendrick Honda of Easley. In general, were you satisfied with the price that you ultimately arrived at for the vehicle that you bought?
A. Yes.
Q. Because I think you testified previously that if you didn't get the deal you wanted, you wouldn't buy the car; right?
A. Right.
Q. And you did buy the car, so you were satisfied with the deal you got?
A. Yes.
Q. Tell me then, when did you -- when did it first -- well, before I ask you that then:
The second day you were there, I believe you said that you don't recall what role, if any, your father may have played in the continuing discussions that you had with Mr. Clement; is that right?

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MR. THOMAS: Objection to the form.
THE WITNESS: Yes.
BY MR. BECKER:
Q. You just don't remember?
A. Correct. I don't remember.
Q. Do you remember what role your husband played, Mr. Hair, in your continuing discussions with Mr. Clement on the 12th?
MR. THOMAS: Object to the form.
THE WITNESS: No.
BY MR. BECKER:
Q. You don't?
A. No.
Q. Tell me, then, when -- how did it first come to your attention that there might be something about the transaction that you would want to bring a lawsuit for?
A. After discussing with my attorney.
Q. When did that occur?
A. Well, Brady is my friend and lawyer. And when I ask him advice, I consider him to be my lawyer.
Q. Well, I understand that. But I didn't ask you what you said. I'm asking you when did that first conversation occur?

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A. I don't remember.
Q. Okay. Tell me about how -- you say Mr. Thomas is your friend. Tell me about that, please. How do you know him?
A. Brady first knew my husband for a long time. So I met him once I met my husband.
Q. You say they have known each other for a long time. Give me a little more details. How have they known each other for a long time?
A. Over ten years. They were -- they met through friends in college.
Q. Okay. What college did your husband attend?
A. College of Charleston.
Q. And did Mr. Thomas attend College of Charleston?
A. No.
Q. He didn't? Okay. Do you know where he attended college?
A. Yes.
Q. Where?
A. Florida State.
Q. So how did they first meet?
A. My husband went to school first in Augusta; he went to Augusta State. And Brady is

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from Augusta, so they knew mutual people.
Q. Oh, I see. Do you know who their mutual friends are?
A. Yes.
Q. Who are they?
A. There is a lot of them.
Q. Well, just name the top three or four?
MR. THOMAS: I'm a popular guy.
THE WITNESS: Probably Jeff Bachelder is the one that introduced them.
BY MR. BECKER:
Q. Okay. Any others?
A. Maybe Rusty, Rusty Smith, who Brady knows from growing up, and then who my husband knew from school. So that's how they met.
Q. Any other mutual friends that you and your husband and Brady Thomas have?
A. We --
Q. Close mutual friends, the top five.
A. Top five. I would say Jeff and his wife, Tiffany, and Rusty and his wife, Stacy.
Q. What is Rusty's last name?
A. Smith.
Q. Where do those people live?
A. They live in Augusta.

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Q. And Mr. Bachelder, Jeff Bachelder? Is that spelled B-A-T-C-H-E-L-D-E-R?
A. No T.
Q. No T? Okay. B-A-C-H-E-L-D-E-R?
A. Yes.
Q. Where does he live?
A. He lives in North Augusta.
Q. Are all three of them married?
A. Yes.
Q. Mr. Bachelder, Mr. Smith, and who was the third one you mentioned?
A. Well, their -- their wives I think I said.
Q. Well, and so your husband knows them?
A. Uh-huh.
Q. So you think your husband and Mr. Thomas first met about ten years ago?
A. Probably longer than that.
Q. Okay. How often do you and your husband see Mr. Thomas and his wife?
A. Every few months.
Q. Okay. Generally, where would those --- would that be, those -- I mean, like, do they come up here and visit you, from time to time, Mr. Thomas and his wife?

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A. We see him at events with our other friends, usually.
Q. Have you ever been a guest in Mr. Thomas's home?
A. Yes.
Q. About how many times?
A. A few.
Q. Okay. Have you ever spent the night at his home?
A. No.
Q. Has he ever been a guest in your home?
A. Yes.
Q. About how many times?
A. Once.
Q. Okay. Has he ever stayed overnight at your home?
A. No.
Q. And you have seen him at various -- you have seen him at various social events in the Augusta area; is that right?
A. Yes.
Q. Over the last ten years, approximately -- have you -- how long have you known Mr. Thomas?
A. For a while, probably seven, eight years.

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Q. Okay. Approximately how many times do you think you have seen him socially during that time? Just your best guess.
A. I don't know. A few times a year.
Q. Okay. So a few times a year for the last seven years or so?
A. Yes.
Q. So, getting back to the issue of when did you first realize that there might be a reason to bring a lawsuit against Hendrick Honda of Easley. Did that occur in a conversation that you had with Mr. Thomas?
A. Yes.
Q. Okay. Where were you? I'm not asking you what was discussed, I'm just simply asking where you were when the idea first came up?
A. I don't remember.
Q. Do you know when that was?
A. No, I don't.
Q. Was it after or before you purchased the car at Hendrick Honda of Easley?
A. After.
Q. Do you believe that it was in -- at a social gathering that the idea first -- that you first had that discussion with Mr. Thomas?

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A. No, I don't think so.
Q. Well, was the discussion over the phone or in person?
A. I don't remember. It was a while back.
Q. Was anyone else present when you had that discussion with him?
A. Yes, my husband.
Q. Okay. So do you think it was in -- does that help you? Was it in person or was it over the phone?
A. I don't remember.
Q. Okay. Did Mr. Thomas contact you or did you contact him?
A. I don't know. I think it was just discussed in conversation.
Q. Okay. When did you agree to become a Plaintiff in the lawsuit that -- for which we are here today?
A. Just during conversations with Brady.
Q. Okay. Was that in the first conversation you had with him or did you -- did that occur in a subsequent conversation?
A. I don't remember.
Q. Okay. Approximately how many times do you think you may have discussed the idea of

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bringing a lawsuit with Mr. Thomas before you agreed to become a Plaintiff?
A. I don't know how many times.
Q. Okay. Did you discuss it with your husband before you agreed, or anyone else other than Mr. Thomas?
A. Yes, my husband.
Q. Okay. Was he on the phone call or in the conversation with you and Mr. Thomas when you did agree to become a Plaintiff?
A. Yes.
Q. Do you have an agreement with Mr. Thomas to represent you?
A. Yes.
Q. Have you signed a written agreement with him?
A. Yes.
Q. When did you sign that agreement?
A. I don't remember.
Q. Okay. What does that agreement say?
A. That's just a discussion with my lawyer.
Q. Well, what are the terms of the engagement? How is Mr. Thomas going to be compensated for acting as your attorney in this

lawsuit?
MR. THOMAS: I'm going to instruct the witness not to answer, assert the attorney-client privilege.
MR. BECKER: I don't -- I think, Brady, I'm entitled to know whether she knows what the terms of the engagement are.
MR. THOMAS: You can ask her that.
MR. BECKER: Well, that's what I did. I mean, I --
MR. THOMAS: You can ask her if she knows that. I'm going to assert it for the actual -- what the actual engagement is. Do you want to ask her if she knows it?
BY MR. BECKER:
Q. Do you know the terms of your engagement with Mr. Thomas?
A. No.
Q. Do you know how he is to be compensated according to the agreement?
A. No.
Q. Do you know what -- do you know when you signed the agreement?
A. No.
Q. Do you know who the parties to the

agreement are?
A. No.
Q. Do you know how many pages the agreement is?
A. No.
Q. Do you know who may have signed the agreement, other than yourself?
A. I don't know.
Q. Okay. Who are the attorneys that are representing the Plaintiffs in this action?
A. It -- defending the other car dealerships?
Q. No. Who are representing the Plaintiffs.
A. Brady is the only one I know.
Q. Do you know if there are any other attorneys representing the Plaintiffs?
A. Yes.
Q. Do you know who they are?
A. No.
Q. Can you name any of their names?
A. No.
MR. THOMAS: Can we take a quick break?
(Off-the-record conference.)
MR. THOMAS: Mr. Becker and I just had

an off-the-record conversation regarding the instruction that I had given Ms. Freeman earlier. And we agreed that a motion wasn't necessary, that we clarify what the actual question was. And there wasn't an assertion not to answer any questions.
MR. BECKER: Right. Yeah, you did not instruct her not to answer any questions. So I don't think there is a --
MR. THOMAS: Yeah, I didn't want -- just to be clear. Those are tricky rules.
MR. BECKER: I don't think there is a basis for you to file a motion for a protective -- to protect any attorney/client privilege.
MR. THOMAS: Based on the questions you had.
MR. BECKER: Based on the questions I had. Because you didn't instruct her not to answer any questions.
MR. THOMAS: Okay. That's fine.
MR. BECKER: And I have asked the questions I wanted --
MR. THOMAS: I thought that I might have, but --
MR. BECKER: No.
MS. WESSINGER HILL: James, can

Ms. Freeman talk just a little bit louder? We can hear you great. Ms. Freeman's just a little hard to hear.
THE WITNESS: I'm sorry.
BY MR. BECKER:
Q. You don't know who any of the other attorneys are?
A. No.
Q. Do you know any of the other Plaintiffs who were in this lawsuit with you?
A. I don't think so.
Q. Do you know their names?
A. I do know -- I think I know one. I'm not sure if he is considered a plaintiff. I don't know. Mike Ritz.
Q. Okay. Do you know Mike Ritz?
A. Yes.
Q. Do you know if he's a Plaintiff in this lawsuit?
A. I'm not sure. I don't know the legal term.
Q. Well, do you know if he has brought a lawsuit against a car dealer?
A. Yes.
Q. But you don't know if he -- what -- if

he's in the same suit you are or not?
A. I believe he's in the same suit.
Q. Okay. Do you know any of the other -- are there any other Plaintiffs, beside Mr. Ritz?
A. I don't know.
Q. Do you know when the complaint was filed?
A. No.
Q. Have you communicated -- have you kept in touch with Mr. Thomas about the lawsuit since the complaint was filed, or since you first agreed to become a Plaintiff?
A. Yes.
Q. How have you kept in touch with him?
A. Well, since he's my friend, I talk to him through that, because he's my friend.
Q. Other than those occasions when you have been with him in a social setting, have you communicated with him about this lawsuit?
A. Yes.
Q. When have those -- tell me, just sort of -- I don't want you to tell me what you've said, but just maybe how often you have communicated with him about the lawsuit and how you have communicated with each other. Has he called you, emailed you,

written you? Have you called him? How's it gone?
A. Through email and telephone.
Q. Okay. Other than the email and telephone communications, have you received any other written documents or anything from Mr. Thomas, from time to time, since you agreed to become a Plaintiff?
A. No.
Q. Have you received documents as attachments to emails from Mr. Thomas?
A. I don't know.
Q. Okay. Would you just explain to me, in your own words, what you believe are the claims that you've asserted against Hendrick Honda?
A. Yes. I understand that they have charged an illegal fee that was not in the original advertised sticker price on the car.
Q. Is there anything else about your understanding, about the nature of your claims against Hendrick Honda of Easley?
A. No.
Q. Do you understand how the fee might be illegal? Why do you contend that the fee that was charged is illegal?
A. Because it wasn't in the original

advertised price.
Q. And what is the fee?
A. The fee that was charged to me?
Q. Uh-huh.
A. $299.
Q. Do you know what it was called?
A. An administrative fee.
Q. Other than the fact that it wasn't disclosed on an advertised price, is that what you said?
MR. THOMAS: Objection to the form.
THE WITNESS: Yes.
BY MR. BECKER:
Q. Is there anything else about it that you contend is illegal?
A. To the best of my knowledge, it wasn't discussed during price negotiations. But other than that, no.
Q. As a result of what you claim Hendrick Honda of Easley did wrong, how have you been harmed?
A. Well, I was charged the fee without it being in the original advertised price. And I believe other customers were as well.
Q. Okay. Is there any other way that you

contend you have been harmed by what you contend Hendrick Honda did wrong?
A. No.
MR. BECKER: I may be through. Why don't we take a five-minute break and let me see if I'm through.
A. Okay.
Q. Oh, I do. Are you, do you have any knowledge of any kind, any personal knowledge, that Hendrick Honda employees may have acted in concert with employees of other dealerships to either decide to charge closing fees at their dealership or to increase the fees that they already charge?
A. Personal knowledge, no.
Q. Do you have any personal knowledge of any activity that may have been undertaken by any employee of Hendrick Honda of Easley to act in concert with other dealers in the state of South Carolina to mislead or deceive the public?
A. No.
Q. Do you have any personal knowledge of any activity or conduct that may have been engaged in by employees of Hendrick Honda of Easley in concert or combination with other dealerships in the state to violate the closing fee statute?

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A. No, that's something I leave to Brady.
Q. Are you aware that there is a statute in the Code of South Carolina, the Code of Laws in South Carolina that allows automobile dealers to charge a closing fee?
A. No.
Q. Do you have any knowledge of what the requirements of that statute are?
A. No.
Q. Do you have any knowledge of what dealers must do in order to comply with that statute?
A. I don't know.
MR. BECKER: I don't have any other questions right now. Some of the other attorneys may, so let me let them go ahead.
EXAMINATION
BY MR. STUDEMEYER:
Q. Ms. Freeman, my name is Greg Studemeyer. I represent Dick Dyer & Associates, Inc. Are you familiar with Dick Dyer & Associates?
A. Yes.
Q. What do you know about Dick Dyer & Associates?
A. I just know it's a car dealership.

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Q. Have you ever been to the Dick Dyer's place of business?
A. No.
Q. Have you ever bought a car from Dick Dyer?
A. No.
Q. Have you ever conducted any business with Dick Dyer?
A. No.
Q. Do you contend that Dick Dyer has harmed you in any way?
A. Well, I understand that they have charged the administrative fee, as Hendrick Honda has.
Q. But you've never conducted any business there?
A. No.
Q. So you don't contend that they have harmed you?
MR. THOMAS: Object to the form.
THE WITNESS: No.
BY MR. STUDEMEYER:
Q. Do you know what your duties and responsibilities are as a named Plaintiff in this case?

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A. Yes.
Q. What are they?
A. Well, I'm representing customers that were also charged this fee.
Q. So what are your duties and responsibilities?
A. I don't know.
Q. Okay. What decisions, if any, have you been asked to make as a named Plaintiff in this case?
A. I don't know.
MR. STUDEMEYER: That's all the questions I have. Thank you.
EXAMINATION
BY MS. TEER:
Q. Ms. Freeman, I represent Toyota of Greenville. Have you ever done any business with Toyota of Greenville?
A. No.
Q. Have you ever been to Toyota of Greenville?
A. No.
Q. Have you or your husband ever bought a car from Toyota of Greenville?
A. No.

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Q. Do you know of anything, personally, that Toyota of Greenville has done wrong, related to this case, of your own personal knowledge?
A. Yes. I understand that they have also charged this administrative fee without it being on the advertised price.
Q. And you have personal knowledge of that?
A. Just from observing the complaint.
Q. Do you have any personal knowledge that Toyota of Greenville acted in concert with any other dealership regarding the charging of these fees or anything related to the charging of these fees?
A. No.
Q. Do you have any knowledge of the practices and policies that Toyota of Greenville employs relating to the charging of any of these fees?
A. No.
MS. TEER: That's all I have.
EXAMINATION
BY MR. REIBOLD:
Q. My name is Rob Reibold. I represent Taylor Toyota in Aiken. Have you had any contact

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whatsoever, of any kind, with any employee or agents of Taylor Toyota?
A. No.
Q. Has your husband?
A. No.
Q. Are you aware of any actions or evidence that would indicate Taylor Toyota has combined or cooperated with other dealers in the state of South Carolina in order to increase or charge closing or document fees?
MR. THOMAS: Object to the form. Go ahead.
THE WITNESS: No.
BY MR. REIBOLD:
Q. Now, you stated you're personal friends with Mr. Thomas?
A. Yes.
Q. And he's also close personal friends with your husband?
A. Yes.
Q. Because of your friendship and your relationship with Mr. Thomas, would you be more likely to do what he says than you would any other attorney in this case?
A. He is my personal attorney. I'm not

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sure I understand what you're asking.
Q. Do you understand Mr. Thomas has other partners in his firm that are working on the case as well?
A. Yes.
Q. Because of your friendship with Mr. Thomas, would you be more likely to follow his personal advice than you would another attorney at his firm that's also working on the case?
MR. THOMAS: I'll object to the form. But I'll let you go ahead and answer it.
THE WITNESS: He's the only one I have spoken with about the case.
BY MR. REIBOLD:
Q. Does your friendship with Mr. Thomas make a difference on whether or not you will rely on his advice?
A. No.
MR. REIBOLD: No further questions.
EXAMINATION
BY MR. HAMM:
Q. Ms. Freeman, my name is Steve Hamm. And I represent Land Rover of Columbia in this matter. Are you aware that you were listed, originally, as a Plaintiff against Land Rover of

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Columbia?
A. Yes.
Q. You are aware of that?
A. Yes.
Q. You are aware of that?
A. Against Land Rover?
Q. Yes.
A. As combined in the complaint?
Q. I just want to understand what you understand.
A. Yes.
Q. Have you ever -- do you know where Land Rover of Columbia is?
A. Yes.
Q. Where is it?
A. I believe off of -- you can see it from I-26, on Frontage Road. I'm not sure where that's called. Near the Irmo area.
Q. Have you ever done business with Land Rover of Columbia?
A. No.
Q. Have you ever actually gone on to the lot of Land Rover of Columbia?
A. No.
Q. Does that mean your only exposure to

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Land Rover of Columbia is that you can visually see it as you're going down the interstate?
A. Yes.
Q. What are you aware of regarding the business practices of Land Rover of Columbia, if they charge a closing fee?
MR. THOMAS: Object to the form of the question.
THE WITNESS: From my understanding, they were also charging this administrative fee without it being advertised on the original price.
BY MR. HAMM:
Q. And help me understand how you have that understanding?
A. Just from seeing the complaint.
Q. So you agreed to be a Plaintiff in the lawsuit that included Land Rover of Columbia based on the fact that you knew where they were off of I-26?
MR. THOMAS: Object to the form.
THE WITNESS: Yes.
BY MR. HAMM:
Q. Yes? Do you, of your own personal knowledge, know of any fact that would allow you to testify in a trial that Land Rover of Columbia has

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engaged in some illegal act?
MR. THOMAS: Object to the form. Go ahead and answer that.
THE WITNESS: I don't understand what you're asking.
BY MR. HAMM:
Q. I'll be happy to -- what fact will you testify to at a trial regarding any acts or practices of Land Rover of Columbia?
A. I believe that they were also charging the administrative fee.
Q. So the only fact that you know about Land Rover of Columbia is what you read in the pleadings?
A. Yes.
Q. Were you consulted in the drafting of those pleadings?
A. No.
Q. Are you aware that certain pleadings contain allegations that automobile dealers were engaged in a conspiracy?
A. Yes.
Q. What conspiracy were they engaging in?
A. I don't know.
Q. What do you know about the actions of

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Land Rover regarding this claimed conspiracy?
A. I don't know.
Q. You don't know? Is there any other information, that you know, of your own personal knowledge, regarding the activities of Land Rover of Columbia?
A. No.
Q. I asked if you had ever been on the dealership lot and you indicated no.
A. Correct.
Q. What about your husband?
A. No, not to my knowledge.
Q. Okay. Anybody in your family ever purchased a vehicle from Land Rover of Columbia?
A. No.
MR. HAMM: I don't have anything further.
MR. BECKER: Brady, can I just do two -- a couple follow-ups before you --
MR. THOMAS: Yeah, that doesn't bother me at all.
EXAMINATION
BY MR. BECKER:
Q. Ms. Freeman, if there were going to be a trial of this case where you would have to appear

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with other witnesses and give testimony in court, in front of a judge and a jury, would it be more convenient for you if that trial occurred in Greenville County or Aiken County?
A. Greenville County.
Q. If your husband were going to be a witness at that same trial, would it be more convenient for him if the trial occurred in Greenville county or Aiken County?
A. Greenville.
Q. If your father were going to be a witness at that trial, would it be more convenient for him if the trial were held in Greenville County or Aiken County?
A. Greenville.
Q. Do you -- if you were to win this lawsuit, what is your understanding of what you would get?
A. I would just like my $299 back, as well as the other customers.
Q. Okay. Is there anything else that you would expect to receive if you won this lawsuit?
A. No.
Q. Is there any additional payment that you might receive, as opposed to everybody else who

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bought a car from Hendrick Honda of Easley if this lawsuit -- if you won this lawsuit?
A. I don't know.
Q. You don't know that, one way or the other?
A. Could you say it again?
Q. Yeah. If you won this lawsuit, would you get anything more or less than the other people who bought cars from Hendrick Honda of Easley?
A. No.
Q. You would expect to receive the same thing they got?
A. Yes.
Q. Okay. Would you expect to be compensated in any way for acting as the named Plaintiff to represent their interests?
A. No.
Q. Does Mr. Thomas represent you in any other matters besides this lawsuit?
A. No.
Q. Has he ever represented you in any other matters, besides this lawsuit?
A. No.
Q. Do you have another attorney?
A. No.

Q. Does your husband have another attorney?
A. No.
Q. Have you ever needed an attorney?
A. No.
Q. Do you and your husband have wills?
A. No.
Q. You don't have children?
A. Correct. We don't have children.
MR. BECKER: Thank you. That's all I have.
MR. THOMAS: Jim, I want to take a quick break.
MR. BECKER: Okay.
(A recess transpired.)
(DEF. EXH. 14, Double-sided document, Bates Stamp Hendrick Honda Easley 000022 and 000023 marked for identification.)
EXAMINATION
BY MR. THOMAS:
Q. Ms. Freeman, I'm going to ask you just a couple of quick questions. I'm going to -- we got some copies of this document Mr. Becker showed you earlier. I think that it had some writing that you had identified as some original handwriting on

it. Can you look at Exhibit 14. Is that the document that you were looking at earlier?
A. Yes.
Q. And what's that on the front side of that document?
A. On the front is where we were negotiating the price of the car.
Q. And where is the -- where, if any place, is the procurement fee or administrative fee shown on the front of that?
A. Not included in the price of the car.
Q. And what's on the back of the document?
A. Obviously my handwriting of something. I don't know what it was about.
Q. And the copy you saw earlier had your original handwriting on it; is that correct?
A. Yes.
(DEF. EXH. 15, Copy of photographs, Bates Stamp Hendrick Honda Easley 000889, marked for identification.)
BY MR. THOMAS:
Q. Let me show you one more document here. I'm going to hand you what we've marked as Exhibit 15. It's a document that says at the bottom, Honda certified used car window sticker

with pricing showing disclosure. What, if anything, does this -- have you ever seen anything like this before?
A. Yes.
Q. And when did you see something similar to this?
A. I think this is similar to what was on the car that I bought.
Q. And Mr. Becker asked you some questions. I think you testified that whatever was on your car was on one window; is that correct?
A. Yes, I just remember it being on one window.
MR. THOMAS: And I have got no further questions.
MR. BECKER: Okay. I don't have any further questions.
(The witness, after having been advised of her right to read and sign this transcript, waives that right.)
(The deposition was concluded at 1:30 p.m.)

CERTIFICATE OF REPORTER

I, Carolyn M. Beam Court Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 10th day of July, 2009, at Lexington, Lexington County, South Carolina.

_____
Carolyn M. Beam
Court Reporter
My Commission expires
October 24, 2016

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EXHIBIT 2

STATE OF SOUTH CAROLINA — IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN — C.A. NO.: 06-CP-02-1230

HEATHER HERRON, et al.,

Plaintiffs,

vs.

DICK DYER & ASSOCIATES, INC., et al.,

Defendants.

DEPOSITION OF: BRANDON HAIR

DATE: July 29, 2009

TIME: 10:50 a.m.

LOCATION: Offices of
HAYNSWORTH, SINKER, BOYD, P.A.
75 Beattie Place, 11th Floor
Greenville, SC 29601

TAKEN BY: Counsel for the Defendant

REPORTED BY: MICHELE E. BECKER,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast Accurate & Friendly

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A I do not.
Q Were you close enough to look at any of the paperwork they were signing as they signed it?
A I was close enough to see the paper, but I wouldn't have been able to have read anything.
Q Okay. Do you know if the subject of a document fee, or administrative fee, or procurement fee, or anything like that came up during the conversations between Miss Freeman and the personnel of Hendrick Honda of Easley?
A I do not.
Q After the first day after you test drove the vehicle and met with the sales person inside the building and then left, did Miss Freeman leave with any paperwork? Did she take anything home with her to look at and consider?
A I do not know. I don't remember.
Q Okay. I take it on the second day after she did purchase the vehicle she did leave with some paperwork?
A Yes. I'm sure, yes.
Q Okay. Do you know where that paperwork is today?
A I do not. I would assume it's in our

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home somewhere.
Q Okay. Have you or she made an attempt to retrieve that paperwork?
A I retrieved some paperwork to send to Brady at one time for the case, but I don't know where -- I'm just not sure where it is now.
Q Did you fax that to him?
A I think I did. Yes. Yeah.
Q Do you know what you did with it after you faxed it to him?
A I do not. I assume I brought it back home and put it somewhere with some of our records or bills. I don't know.
Q Do you know how many pages of documents you may have faxed to Mr. Brady --
A I do not know.
Q -- Mr. Thomas, excuse me?
A I do not.
Q Was it more than one page?
A I don't know. I really don't know.
Q Okay. As you observed Miss Freeman and her father there as they were purchasing the vehicle from Hendrick Honda of Easley, did they have -- did Miss Freeman and her father have an opportunity to ask questions about things that may

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have been of concern to them?
A I would assume they would. They were in conversation. But I don't know if any questions were asked. It didn't seem like a situation where they couldn't have.
Q Okay. So there didn't seem to be -- did the Hendrick Honda of Easley personnel, how did they impress you? Were they helpful and cooperative or difficult to deal with?
A They were fine. Yeah. I mean, nothing hard to deal with just, you know, like most salesmen in most different industries, I don't have a lot of experience buying cars. But they were fine.
Q Okay. You didn't have any personal objection to the way they were acting and treating Miss Freeman and her father?
A No.
Q Okay. Was there any reason that if Miss Freeman or her father were dissatisfied with the way they were being treated, could they have walked away and gone somewhere else?
A Yeah. I would assume so.
Q They weren't being coerced or pushed into buying the car in any undue fashion, were they?

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A Not that I'm aware of, no.
Q Did you get the sense that any of the employees there were trying to mislead or deceive Miss Freeman or her father?
A No.
Q How did Miss Freeman -- I take it she drove away in the car that day?
A Uh-huh.
Q Did she like the car?
A Yes.
Q And she still has the car?
A She does.
Q Okay. Has she taken it back to Hendrick Honda of Easley for service at any time?
A She has.
Q Okay. Are there other places where she's had the car serviced too?
A Yes.
Q Okay. Do you assist her at all with deciding where and when to get her car serviced?
A Not really. It's more so just for an oil change than anything. I think we've taken it there for one thing that I thought we felt would be best for the manufacturer to look at. I don't know what it was, but normally just for normal oil

EXHIBIT 3

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

C.A. No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiff,

v.

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

Defendants.

AFFIDAVIT OF RANDALL CLEMMENT

I, the undersigned Randall Clemment, being duly sworn, state under oath as follows:

1. I am a salesperson at Hendrick Honda of Easley, an automobile dealership located at 4609 Calhoun Memorial Highway in Easley, South Carolina. I have held the position of salesperson, among others, at this dealership since March 2001.

2. I have personal knowledge of the facts set forth in this affidavit to the extent specified and, if called as a witness, I could competently testify to these facts.

3. Based on a review of Hendrick Honda of Easley's records, I know that on July 11, 2006, Julie Freeman visited the dealership. I do not have an independent recollection of this sale. My testimony about Ms. Freeman's sale is based on the documents contained in the sales file and my knowledge of how I usually process a sales transaction. I sell about a dozen vehicles each month, which means that I have sold hundreds of vehicles since Ms. Freeman's transaction.

4. It is not clear from the deal jacket whether Ms. Freeman had a specific vehicle in mind, or whether she stated that she was interested in any specific model. She eventually settled on a 2005 Honda Accord. Our deal file does not show exactly what information was displayed on the used 2005 Honda Accord that Ms. Freeman purchased, but I do know that there was no Monroney sticker on the vehicle because Monroney stickers are placed, by the manufacturer, only on new vehicles.

5. The Buyer's Guide, a sticker required by federal law, was affixed to the 2005 Honda Accord and was included in the deal jacket. The Buyer's Guide does not mention the price of the vehicle and does not disclose any information about the closing fee. A true copy of the Buyer's Guide attached to the 2005 Honda Accord, which was a certified vehicle, is attached hereto as Exhibit A. The deal file does not mention whether there were any other stickers or printed information on the vehicle. However, based on Hendrick Honda of Easley's practices at the time, if there was a sticker on the vehicle, it is highly unlikely that the sticker would have mentioned price.

6. I do not recall and the deal jacket does not show whether Ms. Freeman identified or made any reference to any advertisement, on the Internet or otherwise, of any vehicle.

7. Once Ms. Freeman expressed interest in purchasing the 2005 Honda Accord, Ms. Freeman and I began negotiating the terms and conditions, including what amount Ms. Freeman might receive for her existing car as a trade-in. Based on my practice, I would have shown Ms. Freeman the Sales Worksheet as we started negotiations. The Sales Worksheet is one of the first documents I usually show to a

customer, and I handwrite the terms of the deal on the form and review it multiple times with the customer as negotiations progress.

8. The Sales Worksheet is a two-sided document, and the back of the Sales Worksheet divides the terms of the deal into four categories: selling price, trade, cash down, and payment. From reviewing the back of the Sales Worksheet in Ms. Freeman's case, I know that Ms. Freeman and I negotiated a price of $17,975.00 for the 2005 Honda Accord on July 11th. However, I wrote "7/11/06 Good For 2 Weeks if this car available" on the Sales Worksheet, which indicates to me that Ms. Freeman did not wish to purchase the car that day. I likely would have given the Sales Worksheet or a copy of it to Ms. Freeman to take home while she considered whether to purchase the vehicle, and I would have retained the original or a copy. Before making the car available to Ms. Freeman at the price of $17,975.00, I would have had to get the price approved by my Sales Manager, John Miller, who ultimately signed the Sales Worksheet.

9. The Sales Worksheet clearly disclosed the "procurement" fee of $299. The deal jacket does not show that Ms. Freeman asked any questions about the fee, or objected in any way to the charging of the fee, but if she had, I would have explained that the closing fee is charged to all customers and is used to help reimburse the dealership for costs related to document preparation, storage, and retrieval. I would not have said that the closing fee was required by law, and I have never made such a statement to any Hendrick Honda of Easley customer.

10. From reviewing the Sales Worksheet, I know there was a substantial amount of negotiation about the price of the 2005 Honda Accord between myself, Mr. Miller, and Ms. Freeman. The Sales Worksheet shows that the initial asking price on Ms.

Freeman's vehicle was $18,995, but Mr. Miller and I eventually agreed to sell the vehicle to Ms. Freeman for $17,975. Based on my practice and habit, I am certain that Hendrick Honda of Easley's practice of charging a closing fee of $299 would have been disclosed to Ms. Freeman by Mr. Miller or me before the negotiations over the price of the vehicle were concluded.

11. According to the deal jacket, Ms. Freeman returned to the dealership on July 12th and completed the deal. After accounting for the value of Ms. Freeman's trade-in and deducting amounts for all taxes, license and title fees, Ms. Freeman paid a total of $18,613 for the 2005 Honda Accord. The total amount of $18,613 included the $299 closing fee, and is $382 less than the original asking price of $18,995.

12. The deal jacket does not indicate that either Ms. Freeman or any other person with her ever questioned the purpose or amount of the closing fee. At all times, both participants in the deal were free to ask any questions they wanted, and if I could not answer them, I would have asked a manager for help. At all times, Ms. Freeman was free to leave Hendrick Honda of Easley without purchasing the vehicle if she decided that she did not want it for any reason.

13. In my experience, the vast majority of customers never offer to pay the asking price or advertised price for a vehicle and generally engage in negotiations with salespersons at various stages of the transaction. Most buyers negotiate over every charge associated with the purchase of a vehicle, including but not limited to the price of the vehicle, additional products and services such as optional equipment, warranties, and insurance, and the closing fee. In many instances, buyers restart or continue negotiations over prices *after* being informed of the closing fee.

14. It would be extremely rare for a buyer to come to Hendrick Honda of Easley and simply offer to pay the asking price for a vehicle, whether the vehicle price is advertised or not. Most customers also negotiate the price or addition of optional equipment, warranties, or other services, to be included in the price of the vehicle.

15. In my experience, almost every price ever advertised or displayed by Hendrick Honda of Easley is negotiable, and almost always is negotiated at great length by most buyers. For example, Ms. Freeman substantially negotiated the asking price of the 2005 Honda Accord from $18,995 to $17,975.

16. I am informed that the relevant time period for this lawsuit is August 29, 2002, to November 30, 2008.

17. During the relevant time period, a notice that Hendrick Honda of Easley charges a closing fee has been conspicuously posted in the dealership, the fee has been prominently disclosed on the buyer's order and final invoice forms signed by each customer, and I, sales managers, and finance and insurance managers have always been available to explain the fee and answer any questions about it.

18. During the relevant time period, there was never a prepared script for me to use to explain the closing fee. I was instructed to say to customers that the fee is not required by law and to explain that Hendrick Honda of Easley's policy was to account for the fee in every transaction. I understood that the fee did not have anything to do with obtaining state title or tags, and have never told a customer that the fee was to cover such costs.

19. During the relevant time period, I do not believe that there is any way that a customer could purchase a vehicle from me and not be aware that Hendrick Honda of

Easley charges closing fees and why those fees are charged. By the time the customer leaves the dealership, the customer has been informed of the closing fee by myself, by notices posted throughout the dealership, and by multiple forms signed by the customer.

WITNESS my hand this 23rd day of October, 2009, at Easley, South Carolina.

Randall Clemment

Randall Clemment

SWORN TO and subscribed before me
this 23rd day of October, 2009.

Dena Bayne

Notary Public for the State of South Carolina
My commission expires 9-11-09

DENA BAYNE
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXP. 09-11-2017

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

HONDA	ACCORD	2005	1HGCM56445L000230
VEHICLE MAKE	MODEL	YEAR	VIN NUMBER

061001A
DEALER STOCK NUMBER (optional)

WARRANTIES FOR THIS VEHICLE:

☐ AS IS-NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about this vehicle.

☒ WARRANTY

☐ FULL ☒ LIMITED WARRANTY.

The dealer will pay 100% of the labor and 100% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

HONDA CERTIFIED

Your Honda Certified Used Car is covered by the following Honda Certified Used Car Limited Warranty: * **POWERTRAIN COVERAGE:** 7 Years or 100,000 miles from original warranty registration date. **NON-POWERTRAIN COMPONENT COVERAGE :** An additional 12 months or 12,000 miles after the new car warranty expires. **ELIGIBLE VEHICLES:** Current model years and up to 5 previous years vehicles with 80,000 miles or fewer at time of certification. **START OF COVERAGE:** Expiration of the Honda New Car Limited Warranty , or the Honda Certified Used Car Retail Delivery date, whichever is later. **SEE CONTRACT FOR FULL DETAILS OF COVERED PARTS.**

COVERAGE DURATION: 84 Months or 100,000 Miles whichever occurs first.

☒ **SERVICE CONTRACT.** A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE-PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

EXHIBIT A

Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body
Frame—cracks, corrective welds, or rusted through
Dogtracks—bent or twisted frame

Engine
Oil leakage, excluding normal seepage
Cracked block or head
Belts missing or inoperable
Knocks or misses related to camshaft lifters and push rods
Abnormal exhaust discharge

Transmission & Drive
Improper fluid level or leakage, excluding normal seepage
Cracked or damaged case which is visible
Abnormal noise or vibration caused by faulty transmission or drive shaft.
Improper shifting or functioning in any gear
Manual clutch slips or chatters

Differential
Improper fluid level or leakage excluding normal seepage
Cracked or damaged housing which is visible.
Abnormal noise or vibration caused by faulty differential

Cooling System
Leakage including radiator
Improper functioning water pump

Electrical System
Battery leakage
Improperly functioning alternator, generator, battery or starter

Fuel System
Visible leakage

Inoperable Accessories
Gauges or warning devices
Air conditioner
Heater & Defroster

Brake System
Failure warning light broken
Pedal not firm under pressure (DOT specs.)
Not enough pedal reserve (DOT specs.)
Does not stop vehicle in straight line (DOT specs.)
Hoses damaged
Drum or rotor too thin (Mfgr. specs.)
Lining or pad thickness less than 1/32 inch
Power unit not operating or leaking
Structural or mechanical parts damaged

Steering System
Too much free play at steering wheel (DOT specs.)
Free play in linkage more than 1/4 inch
Steering gear binds or jams
Front wheels aligned improperly (DOT specs.)
Power unit belts cracked or slipping
Power unit fluid level improper

Suspension System
Ball joint seals damaged
Structural parts bent or damaged
Stabilizer bar disconnected
Spring broken
Shock absorber mount loose
Rubber bushings damaged or missing
Radius rod damaged or missing
Shock absorber leaking or functioning improperly

Tires
Tread depth less than 2/32 inch
Sizes mismatched
Visible damage

Wheels
Visible cracks, damage or repairs
Mounting bolts loose or missing

Exhaust System
Leakage

DEALER

ADDRESS

SEE FOR COMPLAINTS

Receipt of copy Acknowledged Julie Freeman
(TRANSFEREE'S SIGNATURE-BUYER)

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for the purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

C.A. No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiff,

v.

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

Defendants.

AFFIDAVIT OF JOHN MILLER

I, the undersigned John Miller, being duly sworn, state under oath as follows:

1. I was a Sales Manager at Hendrick Honda of Easley, located at 4609 Calhoun Memorial Highway in Easley, South Carolina, from May 2000 to November 2004, and from February 2005 to January 2008.

2. I have personal knowledge of the facts set forth in this affidavit to the extent specified and, if called as a witness, I could competently testify to these facts.

3. According to the deal jacket kept in Hendrick Honda of Easley's records, on July 11, 2006, I assisted Randall Clemment in the sale of a 2005 Honda Accord to Julie Freeman. I do not have an independent recollection of this sale, and my testimony about Ms. Freeman's sale is based on the documents in the deal jacket, my habits in processing a sale transaction, and my general knowledge of Hendrick Honda of Easley's sales practices.

4. Based on the deal jacket, I believe Ms. Freeman originally visited the dealership on July 11, 2006, and began negotiations for a 2005 Honda Accord with Randall. The deal jacket indicates she returned on July 12, 2006, accompanied by her father, William Freeman, and completed the necessary financing documents to close the deal.

5. The original asking price for Ms. Freeman's vehicle was $18,995, but the Sales Worksheet shows that there was a substantial amount of negotiation. Ms. Freeman negotiated from $18,995.00 to $18,695.00, to $18,295.00, to $17,295.00. I am confident that that Hendrick Honda of Easley's practice of charging a closing fee of $299 would have been disclosed to Ms. Freeman by Randall before the negotiations over the price of the vehicle were concluded. The closing fee would have been shown to Ms. Freeman on the Sales Worksheet, which was used throughout the negotiations process. Additionally, Ms. Freeman likely would have seen notices posted throughout the dealership on both days she visited before deciding to purchase the vehicle. A true copy of the Sales Worksheet is attached hereto as Exhibit A.

6. I do not recall the specific details of the negotiation, and based on the Sales Worksheet, I know that Randall and a Sales Manager finally agreed to sell Ms. Freeman the vehicle for $17,295.00. Randall would have reviewed the Sales Worksheet with Ms. Freeman before she and a Sales Manager both signed the Sales Worksheet. The information from the Sales Worksheet was eventually incorporated into the final Buyer's Order, which was completed by Joseph Phillips, the Finance and Insurance Manager who completed Ms. Freeman's deal.

7. The deal jacket shows that after accounting for the value of Ms. Freeman's trade-in and all other fees and services, Ms. Freeman ultimately paid $18,613.00 for her vehicle—a price which included the $299 closing fee and is $382.00 less than the original asking price of $18,995.00.

8. While I was employed at Hendrick Honda of Easley, I worked with Randall Clemment numerous times. Randall was an experienced salesman and required little supervision. By the time Randall brought a deal to me for approval, he usually would have already completed the Sales Worksheet and substantially negotiated the price with the customer. On sales where Randall was the salesperson, I would have had relatively little interaction with the customer.

9. The deal jacket from the sale of the 2005 Honda Accord to Ms. Freeman shows that I completed the trade appraisal on Ms. Freeman's trade-in and approved the Sales Worksheet. A true copy of the trade appraisal is attached hereto as Exhibit B. It does not appear from the deal jacket that I signed any other documents. Based on my practice when Randall was the salesperson, and the small number of documents I signed, it is unlikely I had any significant interaction with Ms. Freeman.

10. With regards to the types of window stickers and other information that would have been displayed on the vehicle Ms. Freeman purchased, the only sticker that I am reasonably certain would have been on the vehicle is the Buyer's Guide, which was placed in the deal jacket and signed by Ms. Freeman. The Buyer's Guide is required by federal law to be displayed on used vehicles and does not state the vehicle's price. Other than the Buyer's Guide, I do not know exactly what information was displayed on the 2005 Honda Accord. There may have been a Honda Certified window sticker on the

vehicle because the deal jacket indicates that the vehicle was certified prior to being sold by Hendrick Honda of Easley. However, regardless of what information might have been on vehicle, I do not believe there would have been any mention of price on any window sticker, based on Hendrick Honda of Easley's practices at the time.

11. In my experience at Hendrick Honda of Easley, most buyers negotiated almost every charge associated with the purchase of a vehicle. For example, a buyer might have offered to pay $10,000 but might bargain over which services and accessories were included in the $10,000 price. Another buyer might specifically have wanted a Honda Certified vehicle and be willing to pay the asking price for a vehicle if the car could be certified. A buyer might even have negotiated the closing fees, offering to pay it only if certain accessories, such as new floor mats or striping, were added to the deal.

12. No matter what factor was of most concern to any given buyer, most motor vehicle sales transactions involved several stages of negotiation including the price of the vehicle, financing or lease terms, trade-in allowance, or the price for optional equipment, warranties, or insurance. Most motor vehicle sales transactions involved negotiation over the price of one or more of these items *after* the buyer was first made aware of Hendrick Honda of Easley's practice of charging a closing fee. Some buyers even used the closing fee as a negotiating tool to lower the price of the vehicle or to request additional products or services with the vehicle. Almost every price of every product or service ever offered or advertised by Hendrick Honda of Easley was negotiable and very often was negotiated. The ability of every buyer to negotiate every part of a deal made every sale different.

13. While I was employed at Hendrick Honda of Easley, a notice that Hendrick Honda of Easley charges a closing fee was conspicuously posted in the dealership, the fee was prominently disclosed on the buyer's order and final invoice forms signed by each customer, and I and other sales managers and finance and insurance managers were available to explain the fee and answer any questions about it.

14. While I was employed at Hendrick Honda of Easley, there was never a prepared script for me to use to explain the closing fee. I was instructed to say to customers that the fee is not required by law and to explain that Hendrick Honda of Easley's policy was to account for the fee in every transaction. I understood that the fee did not have anything to do with obtaining state title or tags, and never told a customer that the fee was to cover such costs.

15. While I was employed by Hendrick Honda of Easley, it was my experience that most customers did not object to the fee and were satisfied with the explanation of the fee offered by salespersons and sales managers throughout the negotiation of the deal. Most customers signed the final buyer's order being fully aware of the fee and willing to pay the fee.

16. While I was employed by Hendrick Honda of Easley, I do not believe that there is any way that a customer could have purchased a vehicle from me and not have been aware that Hendrick Honda of Easley charged closing fees and why those fees were charged. By the time the customer left the dealership, the customer had been informed of the closing fee by our salespeople, managers like myself, by notices posted throughout the dealership, and by multiple forms signed by the customer. Further, all customers

were given all the time necessary to review all fees and language included on any form used for the vehicle purchase.

WITNESS my hand this 23 day of October 2009, at Greenville, South Carolina.

John Miller

SWORN TO and subscribed before me
this 23 day of Oct, 2009.

Thomas D. Holtzclaw
Notary Public for the State of South Carolina
My commission expires Dec, 14, 2017

Thomas D. Holtzclaw
State of South Carolina
Commission and Appointment Date Expires:
December 14,2017

FAX 271-4181.

Hendrick HONDA

Where it's Easy to Buy

SALES WORKSHEET

DATE 7/11/06.

SALESPERSON Randall #

BUYER'S NAME Julie Freeman

EMAIL @

376-92 CO-BUYER'S NAME

CELL PHONE (803) - 381-1[redacted]

ADDRESS [redacted]

RES. PHONE ( ) -

CITY, ST, ZIP [redacted] 29607 Greenville SC

COUNTY Greenville

BUS. PHONE [redacted]

16536

VEHICLE BEING PURCHASED			
STOCK # 06100M	NEW ☑	USED ☐	HN
YEAR 2005	MAKE Honda	MILES 26,553	
MODEL Accord	2DR ☐	4DR ☑	
TRIM LX	MT ☐	AT ☑	COLOR White
VIN 1HGCM56445L000023			

USED VEHICLE BEING TRADED		
YEAR 99	MAKE Mazda	MODEL 626.

PAYOFF VERIFICATION	
ACCOUNT # [redacted]	
BANK: [redacted]	
PHONE: [redacted]	
ADDRESS: [redacted]	
CITY, ST, ZIP: [redacted]	
QUOTED BY: Susan / ATTN: Sylvia	
PAYOFF AMT 377.57	
GOOD UNTIL (10 DAY) 7/22/2006	

INSURANCE VERIFICATION		
COMPANY Nationwide.		
AGENT Mike Boyd.	PHONE (803) - 738-7022	
ADDRESS 5205 FOREST DR		
CITY, ST, ZIP Columbia SC 29206		
COMPANY		
POLICY # [redacted]		
EFFECTIVE DATES	FROM 7/13/06	TO 9/8/06
DEDUCT	COMP 100	COLL 200
QUOTED BY: Mike / Randall C.		

MSRP	$ 18,995
EQUIPMENT TO BE ADDED OR REMOVED	↓
	18,695
	↓
	18,295
TOTAL COST	$

NOTES

9171 PAYMENT INFORMATION

RETAIL	LEASE
TERM	TERM
CASH DOWN	CASH DOWN
PAYMENT	PAYMENT

CASH PRICE OF VEH. AND ACCESS.	$ 17,975.00
TRADE – IN ALLOWANCE	$ 900.00
DIFFERENCE	$ 17,075.00
ADMINISTRATION FEE	$ 299.00
STATE TAX	$ 300.00
LIC/TRANSFER/TITLE/REG FEES	$ 39.00
TOTAL PRICE OF UNIT	$ 17713.00
LIEN PAYOFF	$ 377.57
DOWN PAYMENT	$ 0
BALANCE	$ 18,090.57

SIGNATURES

DEAL NUMBER

SALES MANAGER / DATE 07/11/06

BUYER Julie V. Freeman

CO-BUYER

Reynolds and Reynolds

EXHIBIT A

MSRP	$ 18,995
EQUIPMENT	
TOTAL COST $	

816-513-9356
Kathy
6803

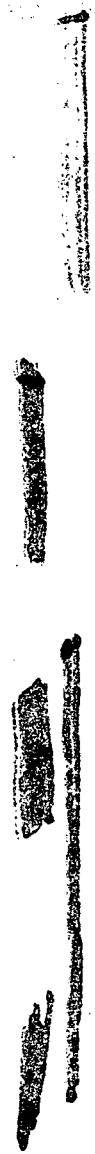
SELLING PRICE	TRADE
$ ~~18,995~~ 17,975.00 7/11/06 Good for 2 weeks if this car Available.	$ 1200 Not seen. Payoff est 400.00
CASH DOWN	PAYMENT WAC
A) _____ 1500 Down 500 Down	A) 60 X 350.20 B) 60 X 315.02 60 X 334.35
CASH ON DELIVERY	MONTHLY LEASE PAYMENT
$ 0 Down	$ 60 X 344.02

Providing all terms are agreeable, I will purchase this vehicle now.

Signature: _____

White
2004 Accord LX
26,000 miles

17,975
344/mo



Hendrick AUTOMOTIVE GROUP www.hendrickauto.com

VEHICLE APPRAISAL

Hendrick Dealer Location

Date 2/11/06

Salesperson Randall Appraised by John Miller

Customer Name Julie Freeman Interested in

Address [redacted] City [redacted]

State [redacted] Zip [redacted] Phone [redacted] (home) (work)

Y 1999 Make Mazda Model 626 E-Mail Address Aftermarket Conversion ○

Trim Level Trim Pkg. LX

VIN 1YVGF22C9X5884963 Miles 134,207 Actual ● Over ○ Unknown ○

ACV $ 900.00

10th Digit: K=89 L=90 M=91 N=92 P=93 R=94 S=95 T=96 V=97 W=98 X=99 Y=00 Z=01

RVLS $

RETAIL $

ADD THIS TO THE "NEED TO MOVE" LIST ○

DEALER STOCK # NOT YET TRADED ○

CAR / TRUCK / VAN

Hatchback/Liftback ○ Coupe ○ Sedan ● Doors 4 (3,4)

Station Wagon ○ Fastback ○ Convertible ○

Cab Type: Standard ○ Extended ○ Crew ○ Sport Utility ○ Doors (2,4)

Box Options: Long Wide ○ Dually ○ Short Wide ○ Short Narrow ○

No Box ○ Payload: 1/2 Ton ○ 3/4 Ton ○ 3/4 Ton H.D. ○ 1 Ton ○

Std. Length ○ Ext. Length ○

Payload: 1/2 Ton ○ 3/4 Ton ○ 3/4 Ton H.D. ○ 1 Ton ○

Sliding Side Door ○ Cargo Side Doors ○

Primary Exterior Color (Select One Number From Color Group) 13 (Lt. ○ Md. ○ Dk. ○)

Secondary Exterior Color (For Two-Tone Vehicle Select Additional Color) 16 (Lt. ○ Md. ○ Dk. ○)

Interior Color (Select One Number From Color Group) (Lt. ○ Md. ○ Dk. ○)

1. White 2. Black 3. Red 4. Blue 5. Grey 6. Brown 7. Silver 8. Yellow 9. Teal 10. Gold 11. Tan 12. Maroon 13. Green 14. Charcoal 15. Woodgrain

Engine Options:

Liters/Displacement .

Cylinders (3,4,5,6,8,8.10,12) 04

Factory Turbo Charged ○

Factory Super Charged ○

Factory High output ○

Gasoline ●

Diesel ○

Other ○

Transmission Type:

Automatic ○

Automatic Overdrive ●

Manual/Stickshift 3 speed ○

Manual/Stickshift 4 speed ○

Manual/Stickshift 5 speed ○

Manual/Stickshift 6 speed ○

Rear Axle Ratio:

(For 3/4 & 1-Ton only) .

Drive Train Options:

4X4 /All Wheel Drive ○

Traction Control System ○

Power Steering ●

Four Wheel Steering ○

Power Brakes ●

Anti-Lock Brakes ○

Camper/Tow Package ○

Wheel and Cover Type:

Standard Steel Wheels ○

Deluxe Wheel Covers ○

Factory Upgrade Wheels ○

Wire Wheel Covers ○

Chrome Wheels ○

Alloy Wheels ●

Interior Options:

Tilt Wheel Steering ●

Cruise Control ●

Power Windows ●

Power Locks ●

Air Conditioning ●

Climate Control ○

Rear Air Conditioning ○

Privacy Glass ○

Power Driver Seat ○

Power Passenger Seat ○

Power Rear Seat ○

Driver Airbag ●

Passenger Airbag ●

Seating Options:

Bench Seat ○

Split Bench Seat ○

Bucket Seats ●

Third Seat ○

Captain's Chairs (Truck) ○

Van Seating Options:

Seating Capacity (1,2,5,7,11,15)

2 Bucket Seats ○

2 Captains Chairs ○

4 Captains Chairs ○

Seating Material Type:

Vinyl Upholstery ○

Cloth Upholstery ●

Leather Upholstery ○

Stereo Options:

No Radio ○

AM Only ○

AM/FM ○

AM/FM Cassette ○

Compact Disc ●

Factory Highline Stereo ○

Roof Options:

Vinyl Top ○

Flip-up Glass Sunroof ○

Sliding Sunroof ○

T-Top/Targa Top ○

Removable Glass Roof ○

Removable Hardtop ○

Luggage Rack ○

Canopy/Shell ○

Raised Roof ○

Rear Door Type:

(Suburban & Tahoe Only)

Tailgate ○

Cargo Doors ○

Additional options:

Running Boards ○

Bed Liner ○

Roll Bar ○

Sliding Rear Window ○

Optional Fuel Tank ○

Television ○

Video Cassette Player ○

Rear Stereo System ○

ASSESSMENT

1. How many miles on your car? 134,000
2. Is this true mileage? Yes ● No ○ 3. When was the last oil change?
4. How many miles on tires? 2 yrs old. Are there any problems with the car?
6. Has your car been accident or flood damaged or theft returned? No
7. If so, give details.
8. Did you buy vehicle new? Yes ○ No ●
9. What equipment will be removed? none.
10. Who holds title? SC Telco Credit Union
11. Does car have a service contract? no
12. Condition: Above Avg. Avg. Below Avg.
13. What brought you to our dealership?

Signature

	ENG.	FRONT		METAL	
	TRANS.			PAINT	
	DIFF.			GLASS	
	EJECT.			TOP	
	TIRES			UPHOL.	
	DETAIL			SHOCKS	
	BRAKES			MUFFLER	
	AXLE			CLUTCH	

Reynolds and Reynolds

RVLS Fax Number: (704) 563-8527

RVLS-2 (06/00)

EXHIBIT B

R.001212

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

C.A. No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiff,

v.

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

Defendants.

AFFIDAVIT OF JOSEPH PHILLIPS

I, the undersigned Joseph Phillips, being duly sworn, state under oath as follows:

1. I was a Finance and Insurance Manager and Floor Manager at Hendrick Honda of Easley, located at 4609 Calhoun Memorial Highway in Easley, South Carolina, from April 2005 to March 2007. Hendrick Honda of Easley is owned by J.L.H. Investments, LP, which is part of the Hendrick Automotive Group.

2. I have personal knowledge of the facts set forth in this affidavit to the extent specified and, if called as a witness, I could competently testify to these facts.

3. On July 12, 2006, I assisted John Miller & Randall Clemment in completing the sale of a 2005 Honda Accord to Julie Freeman. I do not have an independent recollection of this sale, and my testimony about Ms. Freeman's sale is based on the documents in the sales file, my habits in processing a sale transaction, and my general knowledge of Hendrick Honda of Easley's sales practices.

4. I believe that Ms. Freeman, like almost every Hendrick Honda of Easley customers, was made aware that Hendrick Honda of Easley charges closing fees and the purpose of those fees very early during negotiations for the sale of her vehicle. First, before agreeing to purchase the 2005 Honda Accord, Ms. Freeman would most likely have seen notices of the closing fees posted throughout the dealership.

5. Second, Ms. Freeman, like almost all customers, was shown the Sales Worksheet, which is usually discussed by salespersons and sales managers several times during the negotiations for the sale of a vehicle. The Sales Worksheet prominently shows the administrative fee of $299.00, and is signed by the customer before the customer is taken back to the finance and insurance office to complete the deal. The Sales Worksheet is also signed by the sales manager, who approves the final negotiated price for a vehicle, which includes all physical equipment added to a vehicle. I do not believe there is any way that Ms. Freeman could have agreed to the price in the Sales Worksheet and not already have been informed about the closing fee multiple times.

6. After John and Randall had successfully negotiated a final price for the 2005 Honda Accord with Ms. Freeman, as evidenced by the Sales Worksheet, I met with Ms. Freeman to complete the deal in the Finance and Insurance office. Once Ms. Freeman entered the office, she could have seen a notice about the closing fee, posted in an 8 ½ x 11 glass frame on the wall.

7. Ms. Freeman did not elect to purchase any service contracts or insurance policies that I offered. While discussing the final terms of the deal with her, I reviewed and discussed several documents with Ms. Freeman, including a the Ownership Menu of Options, the Addendum Regarding Additional Terms and Conditions, and the Affidavit

& Notification of Sale of Motor Vehicle, true copies of which are attached as Exhibits A, B, and C, respectively.

8. I also would have reviewed the handwritten Sales Worksheet side by side with the typed Buyer's Order, which I completed based on the handwritten version of the Sales Worksheet. I usually reviewed the Buyer's Order line by line with each customer, explaining each item and amount listed, and answering any question the customer might have regarding any particular charge. The customer and I both sign the Buyer's Order. A true copy of the Buyer's Order signed by Julie Freeman and me is attached as Exhibit D.

9. I do not recall whether Ms. Freeman asked any questions regarding the closing fee. At all times, however, Ms. Freeman was free to ask any question she wanted and was free to leave Hendrick Honda of Easley without purchasing the vehicle.

10. On the rare occasions where a customer might object to the closing fee, the customer and the Sales Manager or Salesperson would likely have negotiated the total price of the vehicle to accommodate the customer's objections to the fee. The closing fee of $299.00 is not enough money to lose a deal over, and I do not know of any Salesperson or Sales Manager who ever refused to make a sale because a customer refused to pay the fee.

11. In my experience, almost every car transaction involved some form of negotiation about price. I do not believe I ever took part in a transaction in which a car was sold to a customer at the sticker price listed on the vehicle.

12. During the period of my employment at Hendrick Honda of Easley, a notice of the closing fee was conspicuously posted in the dealership, the fee was

prominently disclosed on the sales worksheet, buyer's order, and final invoice, and I and other sales managers and finance and insurance managers were always available to explain the fee and answer any question about it.

13. During the period of my employment with Hendrick Honda of Easley, I do not believe there is any way that a customer could have purchased a vehicle from me and not have been aware that Hendrick Honda of Easley charges closing fees and why those fees are charged. By the time the customer left the dealership, the customer had been informed of the closing fee by myself, by notices posted throughout the dealership, and by multiple forms signed by the customer.

WITNESS my hand this 22nd day of Oct 2009, at Greenville, South Carolina.

Joseph Phillips

SWORN TO and subscribed before me
this 22nd day of October 2009.

Kimberly West Bailey
Notary Public for the State of South Carolina
My commission expires

My Commission Expires
January 16, 2018

HENDRICK AUTOMOTIVE INC.

Base Payment: _____

A Higher Level of Protection

Ownership Menu Options

Option 1	Option 2	Option 3	Option 4
Hendrick Extended Service Agreement	Hendrick Extended Service Agreement	Hendrick Extended Service Agreement	Hendrick Extended Service Agreement
Hendrick Manufacturer's Specific Maintenance	Hendrick Manufacturer's Specific Maintenance	Hendrick Manufacturer's Specific Maintenance	Hendrick Manufacturer's Specific Maintenance
Environmental Car Care System	Environmental Car Care System	Environmental Car Care System	
Guaranteed Asset Protection Program	Guaranteed Asset Protection Program		
Smart Security Protection Program			
LoJack			
Mos _____ Pymt _____	Mos _____ Pymt _____	Mos _____ Pymt _____	Mos _____ Pymt _____
Mos _____ Pymt _____	Mos _____ Pymt _____	Mos _____ Pymt _____	Mos _____ Pymt _____
Addition to Payment Life, A & H	Addition to Payment Life, A & H	Addition to Payment Life, A & H	Addition to Payment Life, A & H

Customer Signature _____ **Option #** Non

This is not a contract nor an offer to purchase. You do not have to purchase any of these products to secure financing. Products may be purchased separately. See Product Agreement for details. You must qualify to secure financing as payments vary depending upon credit. Products do not reflect interest rate nor approval. Finance charge, amount financed, total of payments and total sale price will be clearly displayed on your actual contract.

R.001217

EXHIBIT A

ADDENDUM REGARDING
ADDITIONAL TERMS AND CONDITIONS

The undersigned agree that the Buyer's Order, Lease Agreement, Retail Installment Contract and/or any other agreements between the parties entered into this date involving the sale or lease of a vehicle is hereby modified and amended to add the following additional terms and conditions:

1) Though this Addendum refers to buyer/seller, it applies to either a purchase or lease of a vehicle. If the transaction is a lease, all references in this addendum to buyer include lessee and all references to seller include a lessor.

2) The seller will make reasonable efforts to assign buyer's retail installment contract or lease to a bank or sales finance company. The parties agree that the seller does not make any representations regarding whether its attempts to assign the retail installment contract or lease will be successful. The ultimate decision with respect to such assignment is with the bank or sales finance company.

3) If the seller is unable to assign the buyer's retail installment contract or lease, the buyer agrees to promptly return the vehicle to the seller. Upon prompt return of the vehicle, seller will refund the buyer's down payment less any costs incurred and either: (a) the buyer's trade-in vehicle upon deduction from the down payment of a reasonable charge for storage and repairs or (b) the actual cash value of the trade-in as previously determined in the transaction documents.

4) The buyer understands and agrees that in the event the vehicle is not promptly returned pursuant to this Addendum the seller has the right to proceed without judicial process to recover the vehicle under South Carolina Code of Laws Section 36-9-609.

5) Buyer agrees that if buyer is in default under this or any other agreement with the seller, buyer will pay all costs incurred by seller and permitted by law for collection, damages or otherwise, including reasonable attorney fees.

6) The terms of this Addendum may not be changed or modified by any salesman. Any change or modification must be in writing and signed by the seller.

7) The buyer understands the payoff information for the liens on any trade-in may be an estimate. The financial institution holding the lien will be contacted for the exact figures required to execute a release of lien so seller will receive a free and clear title to the trade-in. The buyer is responsible for any difference between the estimated amount and any higher pay-off amount. Any overage will be refunded by the bank, the sales finance company or the seller to the buyer. The seller may require that buyer re-execute the transaction documents containing the correct pay-off amount.

7-12-06
Date

Julie Freeman
Buyer

Date

Co-Buyer

Hendrick
Seller:

By: Joe Phillips
Title: Finance Mgr

HEN-SDA-SC

Reynolds and Reynolds

TO ORDER: www.reysource.com; 1-800-344-0996; fax 1-800-531-9055
LENDER

EXHIBIT B

SCADA

AFFIDAVIT & NOTIFICATION OF
SALE OF MOTOR VEHICLE
(Entire Form Must Be Typed or Printed)

No. 35890809

Personally appeared before me WILLIAM THOMAS FREEMAN (Seller) (Dealer Retail Tax #)

[redacted] (Address)

who being duly sworn deposes and says that on the 12th day of JULY [redacted] 20 06 ,

he sold the following motor vehicle: Make MAZDA Model 626

Year 1999 Identification (Serial) No. 1YVGF22C9X5884463

License No. _____ to HENDRICK HONDA (Buyer)

4609 CALHOUN MEMORIAL HWY EASLEY SC 29640
(Street) (City) (County) (State) (Zip)

Special Mailing Address

Deponent further states that there are no liens or encumbrances on the said vehicle except as listed below:

Lienholder _____ Amount _____

Address _____ Date 07/12/06

I certify that the odometer now reads 134302 (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

☐ (1) I hereby certify that to the best of my knowledge, the odometer reading reflects the amount of mileage in excess of its mechanical limits.

☐ (2) I hereby certify that the odometer reading is NOT the actual mileage. WARNING - ODOMETER DISCREPANCY

Federal law (and State law, if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

(Signature of Seller)

WILLIAM THOMAS FREEMAN
(Print Seller's Name)

(Signature of Buyer)

HENDRICK HONDA
(Print Buyer's Name)

Property Tax Section

Check One:

_____ Purchase License Plate

D.L. Number_____

License Plate Issued_____

_____ Transfer License Plate

_____
Signature of Buyer/if purchasing plates

Property taxes will be due in 120 days

TOP COPY - TO DIVISION OF MOTOR VEHICLES WITH TITLE AND LICENSING APPLICATION. YELLOW COPY - FOR DEALER'S FILE. PINK COPY - TO DIVISION OF MOTOR VEHICLES IF NEW TAGS ARE TO BE OBTAINED. GOLDENROD COPY - TO BUYER.

EXHIBIT C

HONDA

JL Hendrick MANAGEMENT CORPORATION

Hendrick HONDA

4609 CALHOUN MEMORIAL HIGHWAY
EASLEY, SC 29640
TELEPHONE (864) 855-1234 TOLL FREE 1-800-829-1815
WEBSITE: www.hendrickhondasc.com

It's Easy in Easley

PURCHASER'S NAME JULIE VALISKA FREEMAN [redacted] DATE 07/12/06

PURCHASER'S ADDRESS [redacted] RES. PHONE [redacted]

CITY, STATE & ZIP [redacted] BUS. PHONE [redacted]

VEHICLE BEING PURCHASED	
STOCK NO. 061001A	
YEAR 2005	MAKE HONDA
MILEAGE 26553	
MODEL ACCORD	BODY TYPE ☐ 2 DR. ☐ 4 DR. ☐ WAGON, VAN ☐ TRUCK
SERIES	TRANS
COLOR WHITE	
SER. NO. 1HGCM56445L000230	

USED VEHICLE WARRANTY DISCLAIMER

I UNDERSTAND THAT THIS VEHICLE IS BEING SOLD **"AS IS"** WITH ALL FAULTS AND IS NOT COVERED BY ANY DEALER WARRANTY. I UNDERSTAND THAT THE DEALER IS NOT REQUIRED TO MAKE ANY REPAIRS AFTER I BUY THIS VEHICLE. I WILL HAVE TO PAY FOR ANY REPAIRS THIS VEHICLE WILL NEED.

SIGNATURE OF BUYER

VEHICLE BEING TRADED	
YEAR 1999	MAKE OF TRADE-IN MAZDA
MODEL OR SERIES 626	BODY TYPE 4 DOOR SEDAN
COLOR GREEN	
SER. NO. 1YVGF22C9X5884463	ENG. TYPE
LIENHOLDER SC TELCO FED CREDIT UNION	PAYOFF $ 377.57 THRU
ADDITIONAL LIENS:	

MSRP	$ 17975.00
INSTALLED ACCESSORIES	$ N/A
ACCESSORIES TO BE ADDED	$ N/A
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

SECURITY AGREEMENT: Purchaser hereby grants Seller, its successors and assigns, a security interest in the motor vehicle, equipment and accessories to be purchased pursuant to this agreement, and such security interest shall remain in effect until all sums due hereunder have been paid in full.

FOR SALES INVOLVING DEALER ARRANGED FINANCING ONLY: This sale is conditioned upon approval of your proposed retail installment sale contract or lease as submitted to or through the dealer. If that proposed retail installment sale contract or lease is not approved under the terms agreed to with the dealer, you may cancel this sale and any down payment and/or trade-in you submitted will be returned to you, provided that any vehicle delivered to you by the dealer pursuant to this agreement is returned to the dealer in the same condition as delivered to you within twenty-four hours of written or oral notice to you of the credit denial.

RANDALL A CLEMMENT
Salesperson

Manager

This order is not valid unless signed and accepted by the Dealer or his authorized representative.

Signed (1) JULIE VALISKA FREEMAN Julie Freeman
Purchaser

(2) _____
Purchaser

Reynolds and Reynolds RO612325 C (06/06)

EXHIBIT D

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

C.A. No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiff,

v.

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

Defendants.

AFFIDAVIT OF DON PENDLETON

I, the undersigned Don Pendleton, being duly sworn, state under oath as follows:

1. I am the dealer manager of Hendrick Honda of Easley, an automobile dealership owned by J.L.H. Investments, LP, which is part of the Hendrick Automotive Group. Hendrick Honda of Easley is located at 4609 Calhoun Memorial Highway in Easley, South Carolina. I have held the position of general manager at this dealership since 2000.

2. I have personal knowledge of the facts set forth in this affidavit to the extent specified and, if called as a witness, I could competently testify to these facts.

3. For purposes of this affidavit, the relevant time period is August 29, 2002, to November 30, 2008.

4. I have reviewed Plaintiff's motion for a declaratory judgment against Hendrick Honda of Easley, and I make this affidavit in opposition to Plaintiff's motion.

Charging of Closing Fees by Hendrick Honda of Easley

5. I am familiar with S.C. Code Ann. § 37-2-307 (2002) (the "Closing Fee Statute"), which allows motor vehicle dealers to charge closing fees.

6. Hendrick Honda of Easley has charged a closing fee since I came to work at the dealership in 2000. Since that time, including during and at the time of the motor vehicle sale to Plaintiff Julie Freeman, Hendrick Honda of Easley's policy has been to account for a closing fee on all motor vehicle sales, except on multiple-vehicle fleet sales, used vehicles sold to wholesale buyers, and vehicles sold under specific factory-employee programs. From August 29, 2002, to January 19, 2005, Hendrick Honda of Easley charged a closing fee of $249.00, and from January 20, 2005, to the present, Hendrick Honda of Easley has charged a closing fee of $299.00.

7. Hendrick Automotive Group has established a cap for closing fees of $399.00, as stated in the Hendrick Automotive Group Transaction Compliance Policy manual. As general manager of the dealership, it is my responsibility to choose whether to charge a closing fee and to choose the amount, as long as it does not exceed $399.00.

8. Although the Closing Fee Statute does not state the purposes for which a closing fee may be charged, Hendrick Honda of Easley charges closing fees primarily as a means of reimbursing the costs of document retrieval and preparation. I established the amount of the closing fee that Hendrick Honda of Easley charges based on my knowledge of Hendrick Honda of Easley's costs related to document preparation, storage, and maintenance, and what I believed customers would consider a reasonable fee to reimburse Hendrick Honda of Easley for such costs.

9. I have never discussed the amount of the closing fee with other automobile dealers with which Hendrick Honda of Easley competes in its market area, and I have never conspired with any automobile dealer to establish or increase the closing fee.

Hendrick Honda of Easley's Compliance with S.C. Code Ann. § 37-2-307

10. I am familiar with the following four requirements with which a dealer must comply in order to charge closing fees:

a. the dealer must annually register with the Department of Consumer Affairs;
b. the closing fee must be "disclosed on the sales contract";
c. the closing fees must be "displayed in a conspicuous location in the motor vehicle dealership"; and
d. the closing fee must be "included in the advertised price of a motor vehicle."

11. Since it began charging closing fees, Hendrick Honda of Easley has made, and continues to make, every reasonable effort to comply with the Closing Fee Statute, and any violation of the statute that Hendrick Honda of Easley or any of its employees might have committed was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. I am not aware of any such violations, however, and I believe that Hendrick Honda of Easley has fully complied in good faith with the Closing Fee Statute.

Registering with the Department of Consumer Affairs

12. With respect to the first requirement that each dealer must annually register with the Department of Consumer affairs, during the entire relevant time period, Hendrick Honda of Easley has properly registered the closing fee each year with the S.C. Department of Consumer Affairs. Hendrick Honda of Easley has also posted copies of the S.C. Consumer Affairs registration forms in the dealership in plain view of customers.

True copies of the registration forms for the relevant time period are attached hereto collectively as Exhibit A.

13. Although Hendrick Honda of Easley's registration forms from 2006 to the present have stated that the closing fee would not exceed $399, Hendrick Honda of Easley has never charged a closing fee over $299.

"Disclosed on the Sales Contract"

14. With respect to the second requirement of the Closing Fee Statute, requiring the closing fee to be "disclosed on the sales contract," Hendrick Honda of Easley has prominently disclosed the closing fee in bold print on a one-page form referred to as the Sales Worksheet during the entire relevant time period. The Sales Worksheet, which refers to the closing fee as a "procurement fee" is usually shown to a customer during early discussions about a particular vehicle, and sales persons complete the form by hand as negotiations progress. However, the fee is preprinted on the Sales Worksheet, and salespersons are trained to show customers the fee and explain it to them. After a final price for a vehicle is reached, with all the additional equipment and accessories included, both the sales manager and the customer sign the Sales Worksheet, affirming that the form accurately reflects the terms of the deal up to that point. However, a complete Sales Worksheet may not be used in every deal (*e.g.*, if a customer has already negotiated a price over the internet or over the phone).

15. Hendrick Honda of Easley has also prominently disclosed the closing fee on a one-page buyer's order form ("Buyer's Order") during the entire relevant time period. After the sales manager approves the price of the vehicle on the Sales Worksheet, the customer meets with the Finance & Insurance manager, who offers additional

products, such as credit insurance, gap waiver insurance, and other service contracts. The Finance & Insurance manager reviews the Buyer's Order in detail with the customer, often comparing the Sales Worksheet and Buyer's Order side by side. Each manager is trained to explain each item of information as needed and to review any questions the customer may have, including any questions about the fee. Both the Sales Worksheet and the Buyer's Order disclose the fee, and both are signed by the customer. True copies of a sample Sales Worksheet and sample Buyer's Order are attached hereto as Exhibits B & C, respectively.

"Displayed in a conspicuous location"

16. With respect to the third requirement of the Closing Fee Statute that notice of the closing fees be "displayed in a conspicuous location in the motor vehicle dealership," Hendrick Honda of Easley has, during the entire relevant time period, posted numerous notices of closing fees throughout the dealership. Notices have been posted in the showroom and in each of the two Finance & Insurance offices, all in plain view of customers. The notices have been displayed on the wall in an 8 1/2 x. 11-inch glass frame. True copies of the types of notices that have been displayed during the relevant time period are attached hereto collectively as Exhibit D.

17. Each notice posted by Hendrick Honda of Easley has used the suggested language printed on the annual registration form submitted to and approved by the Department of Consumer Affairs. The form of the notice currently in use at the dealership states:

NOTICE
CLOSING FEES
THIS DEALERSHIP CHARGES A **$299.00** CLOSING 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 FULL CASH PRICE CHARGED AT ANY DEALERSHIP DEPENDS ON MANY FACTORS, INCLUDING ALL PRODUCTS AND SERVICES BOUGHT WITH THE VEHICLE.

"Included in the Advertised Price"

18. With respect to the final requirement of the Closing Fee Statute providing that the closing fee must be "included in the advertised price of a motor vehicle," I do not interpret this requirement to mean that every advertisement must mention or describe the closing fee, or affirmatively state that the closing fee was included in the advertised price.

19. Instead, I believe the statute means exactly what it says: "The closing fee must be *included in* the advertised price of the motor vehicle . . . ." Thus, when a particular vehicle is sold exactly as advertised (*i.e.*, nothing is added to or taken from the vehicle as advertised) and at the price advertised, if any, the closing fee is properly charged as long as the final sales price does not exceed the advertised price.

20. Not all vehicles sold by Hendrick Honda of Easley are advertised, and not all advertisements mention price. The only way to determine whether a vehicle has been sold at an advertised price is to review each sale file individually, review any available advertisements at the time to determine whether and how the particular vehicle was advertised, and at what price and terms. It may also be necessary to interview the sales staff and customer as needed. Moreover, many customers do not view or respond to any advertisement before coming to Hendrick Honda of Easley, and they instead choose Hendrick Honda of Easley because of the brands it offers, its location, and its reputation. Additionally, when options and features are added to or taken from the vehicle (*e.g.*, accessories, warranties, and the like) during the negotiation of a sale, then the advertised

price becomes moot because the dealership and the customer are negotiating the price of a vehicle different from the one originally advertised.

21. For example, assume that Hendrick Honda of Easley advertises a particular Honda vehicle with all standard accessories for $24,500, and a customer purchases that vehicle for $25,000 after negotiating the addition of a special wheels and tires costing $2,000. The final sales price, which would include the closing fee, would exceed the original advertised price. However, there is no violation of the statute because the vehicle purchased (a vehicle with special wheels and tires) is *not* the vehicle that was advertised (vehicle without special wheels and tires).

22. Similarly, if a vehicle is advertised for sale at $24,500 and the customer negotiates the price downward to $24,000, no violation of the Closing Fee Statute occurs if the customer then pays a closing fee of $299 in addition to the price of $24,000 because the customer has paid less than the advertised price and the sum of the price paid, $24,000, plus the closing fee paid, $299, is less than the advertised price, $24,500. Moreover, as mentioned above, a customer is advised of the closing fee almost as soon as the customer enters the dealership through the notices posted in the dealership, and at an early stage of negotiations with the salesman through the pre-printed notice of the fee on the Sales Worksheet. As a result, most, if not all, customers negotiate all terms of their purchase knowing that Hendrick Honda of Easley charges a closing fee.

23. In my experience, most, if not all, buyers, negotiate freely over every charge associated with the purchase of a vehicle, including but not limited to the price of the vehicle, additional products and services such as optional equipment, warranties, and insurance, tax, title, and tags, and the closing fee. It would be extremely rare for a buyer

to come to Hendrick Honda of Easley and simply offer to pay the asking price for a vehicle, whether advertised or not.

24. For example, some buyers are "bottom line" or "out-of-the-door" buyers and visit Hendrick Honda of Easley knowing exactly which type of vehicle they would like to purchase and exactly how much they would like to pay. The "bottom-line" buyer typically negotiates down the cost of certain services and fees because those fees must be lowered in order to make a deal at the price the "bottom line" buyer has offered (*i.e.*, I only have $10,000 to spend).

25. Other buyers may come to the dealership knowing how much per month they would like to pay to finance or lease a vehicle, offering, for example, to purchase or lease a certain vehicle as long as their monthly payment does not exceed $250.00. Other buyers are most concerned with the value of their trade-in vehicle.

26. No matter what factor is of most concern to any given buyer, almost all motor vehicle sales transactions involve several stages of negotiation over numerous items including the price of the vehicle, financing or lease terms, trade-in allowance, or the price for optional equipment, warranties, or insurance. Many deals occur over several days, or even weeks.

27. As a result, almost all motor vehicle sales transactions involve negotiation over the price of one or more of these items *after* the buyer is first made aware of Hendrick Honda of Easley's practice of charging a closing fee. Some buyers even use the closing fee as a negotiating tool to lower the price of the vehicle or to request additional products or services with the vehicle. Such negotiations are standard for almost all vehicle purchases. Almost every price of every product or service ever offered

or advertised by Hendrick Honda of Easley is negotiable and very often is negotiated. The ability of every buyer to negotiate every part of a deal makes every sale different.

28. As mentioned above, I do not understand the Closing Fee Statute to require a disclosure of Hendrick Honda of Easley's practice of charging a closing fee or the amount of the fee every time the price of a vehicle is displayed, whether in a paid advertisement or on the vehicle. Additionally, I do not consider every display of the price of a vehicle to be an advertisement.

29. Hendrick Honda of Easley has used a variety of methods to display information on some, but not all, vehicles on its lot. During the relevant time period, Hendrick Honda of Easley may have displayed price information on certain vehicles using paint on windows, paper window stickers, or hang tags, depending on whether the vehicle was new or used, whether the vehicle was on sale or not, and whether there were accessories or equipment added to the vehicle. For some vehicles, it is possible that a price display would change during the time that the vehicle was on the Hendrick Honda of Easley lot.

30. For most of the relevant time period, Hendrick Honda of Easley did not mention the closing fee when it displayed the price of the vehicle using the various methods described in paragraph 29 because I do not believe the Closing Fee Statute requires a disclosure of the closing fee every time the price of a vehicle is displayed.

31. In addition to methods used by Hendrick Honda of Easley to display information regarding price on a vehicle, federal law also requires the use of several window stickers, including a Buyer's Guide and a Monroney sticker. A Monroney sticker is a paper window sticker prepared and affixed by the manufacturer. Dealers are

prohibited from adding anything to, or deleting anything from, the Monroney sticker. If Hendrick Honda of Easley adds accessories or equipment to a new vehicle, Hendrick Honda of Easley must disclose such additions on a supplemental sticker. The supplemental sticker is not intended to be a disclosure of all services, fees, and charges ultimately included in the final price of a vehicle. Instead, it is intended to provide the customer with information about equipment added to or removed from a vehicle. Not all new vehicles have supplemental dealer stickers. If Hendrick Honda of Easley does not add any accessories to a vehicle, then it would not have a supplemental sticker affixed to its window.

32. The vehicle that Julie Freeman purchased from Hendrick Honda of Easley did not have a Monroney sticker or any other supplemental sticker because the vehicle was a used vehicle when Julie Freeman purchased it from Hendrick Honda of Easley.

33. Similarly, a Buyer's Guide is required for all used vehicles by the Federal Trade Commission's Used Car Rule. A Buyer's Guide does not state the vehicle's price or mention the closing fee, and it is not a method used by Hendrick Honda of Easley to advertise the price of a vehicle.

34. With respect to advertisements generally during the relevant time period, Hendrick Honda of Easley's advertisements usually did not mention the charging of a closing fee because I do not believe that the Closing Fee Statute requires that the closing fee be disclosed with the advertised price.

35. Hendrick Honda of Easley has not, at any time during the relevant time period, advertised vehicle price on television and has not mentioned the charging of a closing fee. In fact, Hendrick Honda of Easley only began advertising on television in

April 2008. Our new vehicle television advertisements typically directed customers to the dealership or its website. To my knowledge, our television advertisements have never mentioned price. Similarly, Hendrick Honda of Easley has not advertised vehicle prices on the radio and has not mentioned the charging of a closing fee in such advertisements. Hendrick Honda of Easley uses both television and radio advertisements primarily to enhance the dealership's image and inform potential customers of the existence and location of the dealership.

36. To my knowledge, Hendrick Honda of Easley has not advertised on billboards during the relevant time period and has not advertised vehicle prices on billboards.

37. With respect to newspaper advertisements and other print publications, Hendrick Honda of Easley has not usually included the price of new vehicles in such advertisements during the relevant time period, although it occasionally has done so. Instead, new vehicle advertisements typically described the vehicle or special offers on interest rate or leasing terms. Hendrick Honda of Easley has occasionally used display advertisements in the newspaper to describe used vehicles with prices listed, and these advertisements usually did not mention the closing fee.

38. Hendrick Honda of Easley has included short descriptions and prices of used vehicles in certain classified advertisements since August 2002, but has never listed or mentioned the closing fee in classified advertisements. To my knowledge, no South Carolina dealership has ever listed a closing fee in classified advertisements. It is not practical to do so, given the limited space and abbreviated nature of such advertisements.

39. With respect to Internet advertisements, Hendrick Honda of Easley has listed its inventory of new and used vehicles on its website, www.hendrickhondasc.com, since August 2002, but for most of the relevant time period, did not mention the charging of closing fees.

How Closing Fees are Explained to Customers

40. If questioned about the closing fee, the Hendrick Honda of Easley sales staff is instructed to tell the customer that the closing fee is charged on the sale of every vehicle as a way to reimburse the dealership for certain overhead costs such as document preparation, storage, and retrieval. The sales staff is informed and knows that the closing fee is not required by law, and they do not try to make customers believe it is required by law. Hendrick Honda of Easley does not have a written, scripted response which salespersons are instructed to use when asked by customers about the closing fee.

41. During the relevant time period, salespersons and managers received training on how to explain the closing fees. Salespersons and managers were always instructed to say to customers that the fee is not required by law and to explain that Hendrick Honda of Easley's policy was to account for the fee in every transaction. I made every effort to insure that all salespersons and managers understood that the closing fee was in no way related to obtaining state title or tags, which are separately-charged, state-imposed fees.

42. After the fee is explained to customers by a salesperson or manager, most customers do not object to the fee or ask any other questions. However, some customers do object to the fee and have used the fee as a means to negotiate a lower price for the vehicle or for additional products and services.

43. If a customer does object to the closing fee, Hendrick Honda of Easley would rarely, if ever, insist on charging the fee and losing the sale. As explained in

greater detail above, some customers, *after* being informed of the closing fee, will restart or continue negotiations over the price of the vehicle, financing or lease terms, trade-in allowance, or the price for optional equipment, warranties, or insurance. Thus, for those customers who do object to the closing fee, Hendrick Honda of Easley often adjusts the price to which the customer had previously agreed, by such methods as lowering the previously-agreed price of the vehicle to be purchased, increasing the previously agreed trade allowance for a trade-in vehicle, or providing additional products or services with the vehicle at no cost or a reduced cost to the customer.

44. Nevertheless, even though Hendrick Honda of Easley may ultimately renegotiate the price of the vehicle, a trade allowance, or additional products and services sold with the vehicle for those customers who do object to the closing fee, it is Hendrick Honda of Easley's practice to account for the payment of the closing fee in every retail transaction except on multiple-vehicle fleet sales, used vehicles sold to wholesale buyers, dealer trades, and vehicles sold under specific factory-employee programs.

The Sale of Plaintiff Julie Freeman's Vehicle

45. From Hendrick Honda of Easley's records, I am aware that Julie Freeman purchased a 2005 Honda Accord on July 12, 2006. I was not present at the time of the sale, but Hendrick Honda of Easley's records show that Randall Clemment was the Salesperson who assisted Ms. Freeman with her purchase. John Miller, a former Sales Manager, and Joseph Phillips, a former Finance & Insurance Manager also assisted Ms. Freeman with her vehicle purchase.

46. I have reviewed Hendrick Honda of Easley's advertising records and Hendrick Honda of Easley does not have any records showing that the used 2005 Honda Accord sold to Julie Freeman on July 12, 2006, was advertised.

Dealership Overhead Costs Covered by the Closing Fee

47. It is my understanding and belief that the Closing Fee Statute does not prohibit a dealership from making a profit from the closing fee, if possible. In any event, as explained below, Hendrick Honda of Easley does not make a profit by charging the closing fee.

48. Although Hendrick Honda of Easley has not hired a consultant or performed a study to determine the specific costs of the daily administrative tasks performed by its employees or any "time-and-motion" studies on document preparation, retrieval, and storage, I am certain that Hendrick Honda of Easley's overhead costs associated with preparing, storing, and, when necessary, retrieving the documents relating to the sale of a vehicle greatly exceed the closing fee that Hendrick Honda of Easley charges. Competition from other dealers, however, limits the amount of the closing fee that Hendrick Honda of Easley can charge its customers to significantly less than the total overhead costs associated with preparing, storing, and, when necessary, retrieving the documents relating to the sale of a vehicle.

49. During my nine years as general manager of Hendrick Honda of Easley, and my many years in the car business before that, the documentation associated with the sale of a vehicle has increased dramatically. When I started in this business, a car sale basically involved a handshake and perhaps a half-dozen documents—an invoice form,

an insurance form, a loan contract from a bank, and warranty-related paperwork from the manufacturer.

50. However, the many laws affecting this business and the level of documentation required have increased exponentially. For example, after the September 11, 2001, attacks, the federal government implemented several new laws with comprehensive requirements pertaining to document storage, document security, and secure maintenance of customer information. As a result of the increase in document management that the laws required, our staffing needs have greatly increased.

51. Documents which may currently be required in the sale of vehicles by Hendrick Honda of Easley include the following:

1. New Vehicle Delivery Report
2. Used Vehicle Delivery Report
3. Sales Commission Slips
4. Deal Recap Forms
5. Vehicle inventory journal verification
6. New vehicle sale journal verification
7. Tag deposit refund check to customer
8. Tribute Warranty Transmittal
9. Honda Warranty Transmittal
10. AutoGuard Warranty Transmittal
11. Wynn's Warranty Transmittal
12. Honda Service Contracts Transmittal
13. AutoGuard Service Contracts Transmittal
14. AutoGuard Gap Insurance Transmittal
15. Copy of purchased vehicle registration
16. Duplicate Title Form
17. Temporary Tag
18. Out of State Temporary Tag
19. Out of state temporary tag - registration filing
20. Contract EFT funding
21. Fax Cover Sheet
22. Pay Off Difference
23. Pay Off Checks
24. Out of State Sales Tax
25. Bank Fee Check
26. Accounts Payable Voucher

27. Deposit Slip
28. Return Deposit Notice Bank
29. Warranty Request Form (National Check Trust)
30. Solicitors Worthless Check Unit
31. FEDEX of Contracts
32. Copier Paper
33. Gas Record Books
34. Service contract refund HONDA
35. Service contract refund AUTOGUARD
36. GAP Refund AUTOGUARD
37. Check Requests
38. Direct of Refund on Warranty & GAP
39. Process Credit Card
40. Retail Installment Contract Security Agreement
41. Authorization Form for Loan Payment
42. Salesperson document checklist
43. Deal Jackets
44. Buyers orders
45. Dealer Invoices
46. PTO Form for sold vehicle
47. PTO Form for trade vehicle
48. Form 400
49. Copy of Drivers License
50. Copy of Insurance Card
51. Copy of trad tag registration
52. Bank Contracts
53. GAP Insurance Forms
54. Service Contract Forms - All companies
55. Out of State Affidavit of Sale
56. One in the same form
57. Power of Attorney
58. Co-Signor Form
59. OFAC check report
60. Substitution of Collateral Form
61. Credit Union Membership applications
62. Credit Applications
63. Credit Report
64. Adverse action letter
65. Insurance verification form
66. Payoff Form
67. Lender stipulation Agreements
68. F&I Deal document checklist
69. Special rebate eligibility form - CDI etc.
70. Fax Cover Sheet
71. Delivery Envelopes
72. We Owe Form

73. Privacy Act Notice
74. IRS Form 8300
75. Prior Damage Disclosure
76. National Check Trust Guarantee Form
77. Used Vehicle Appraisals
78. Trade In Wholesale Order
79. Vehicle Cleanup Order - Delivery
80. Receipt Books
81. Receipt Books - After Hours
82. Office Receipt
83. Credit Insurance Refund
84. Lease End Verification Form
85. Early Termination Report
86. Odometer Disclosure Statement
87. Honda Warranty Refund
88. AutoGuard GAP Refund
89. Wynn's Warranty Refund
90. Lease End Statement
91. Check Requests
92. Copier Paper
93. Sales Commission Forms
94. Secure documents log
95. repair Order forms
96. Internal expense memo

52. Not all of these forms listed above are required in every vehicle sale, although some are, such as the Buyer's Order, Sales Worksheet, OFAC, insurance, and title forms. Additionally, some documents may be used multiple times on a single transaction. Even if not all documents are used on every sale to every customer, in order to be competitive and competent as a dealership, Hendrick Honda of Easley and its employees must be trained and prepared to complete each form depending on the type of deal made with each customer.

53. When completed, most of the completed forms listed above must be stored in hardcopy or electronic format for a period of at least six years.

54. The documents and forms that are part of a vehicle sale are not limited only to those provided to a customer in a deal, but also include documents related to the

acquisition, maintenance, and inspection of vehicles. For example, Hendrick Honda of Easley prepares or inspects each vehicle prior to sale and that inspection becomes part of the deal document file and service history on that vehicle. Hendrick Honda of Easley is required to keep such inspection records for seven (7) years.

55. Itemized below are the amounts that Hendrick Honda of Easley has recently calculated that were directly or indirectly related to the costs of document purchase, electronic access to online forms, and processing of documents, in 2008.

a. Purchase of necessary forms and documents of all types—$8,416.00.

b. Cost of copiers, toner, fax machines, paper supplies, postage, etc.—$29,483.00.

c. Cost to operate and maintain computerized accounting and database systems used to prepare, process, retrieve and store various documents and forms—$72,461.00.

d. Auditor Fees—$35,400.00

e. Building overhead expenses attributable to square footage of document storage areas—$47,278.00.

56. Almost every person who works at Hendrick Honda of Easley, from the "runners" to the top managers, is involved in some way with the preparation, processing, retrieval and storage of documents at some level. As a result, a portion of every employee's salary is attributable to the preparation, processing, retrieval, and storage of documents. Below is a partial list of dealership personnel dedicated to document preparation and storage for the year 2008 based on the payroll amount for each category and the percentage of time each type of personnel dedicates to document preparation and storage. In 2008, the total cost to Hendrick Honda of Easley was $665,133.70, itemized as follows:

a. Approximately 45% of the time of the New and Used Car Sales staff is dedicated to document preparation and storage, resulting in $209,250.00 in document costs.

b. Approximately 65% of the time of personnel in the accounting office is dedicated to document preparation and storage, resulting in $99,495.50 in document costs.

c. Approximately 80% of the time of Finance Managers is dedicated to document preparation and storage, resulting in $120,451.20 in document costs.

d. Approximately 65% of the time of Dealer Trade Drivers is dedicated to document preparation and storage, resulting in $22,231.30 in document costs.

e. Approximately 65% of the time of Sales Managers in the accounting office is dedicated to document preparation and storage, resulting in $213,705.70 in document costs; and

57. The estimated figures listed above indicate that Hendrick Honda of Easley's overhead expenses directly and indirectly related to the preparation, processing, retrieval and storage of documents for the year 2008 was $858,171.70

58. During the relevant time period, Hendrick Honda of Easley collected the following amounts in closing fees:

a. August 29, 2002, to December 31, 2002: $127,239

b. 2003: $305,523

c. 2004: $304,029

d. 2005: $449,098

e. 2006: $433,849

f. 2007: $495,742

g. January 1, 2008, to November 30, 2008: $411,125

59. Simple math shows that the amount collected each year in closing fees is significantly less than the overhead expenses that are directly and indirectly related to the preparation, processing, retrieval, and storage of documents. For example, the difference between the amounts collected in closing fees in 2007 ($495,742.00) between the amount of costs to Hendrick Honda of Easley for document preparation, storage, and retrieval in

2008 ($858,171.70) was $362,429.70. It is unlikely that the actual costs for 2007 are significantly or materially lower than the costs for 2008.

60. Consequently, Plaintiff's assertion that Hendrick Honda of Easley's charging of a closing fee is not tied to the reimbursement of any overhead costs or results in an impermissible profit is absolutely wrong. Hendrick Honda of Easley does not separately account for the direct and indirect costs associated with document preparation, storage, and retrieval for each individual motor vehicle transaction because the cost of performing such cost accounting would be substantial, would prevent Hendrick Honda of Easley from remaining competitive, and would greatly exceed any value in doing so.

Further affiant sayeth not.

WITNESS my hand this 23rd day of October 2009, at Easley, South Carolina.

Don Pendleton

SWORN TO and subscribed before me
this 23rd day of October 2009.

Notary Public for the State of South Carolina
My commission expires 9-11-2017

DENA BAYNE
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXP. 09-11-2017

03/03

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

JUN 27 2002

SC DEPT. OF CONSUMER AFFAIRS

Note: This original form must accompany a $10.00 filing fee

JLH Investments LP
Business Name Used in S.C.
Hendrick Honda
Company Name

931476
Registration No.

Easley SC 29640
City State Zip

Telephone Number 864-855-1234

Contact Person Don Pendleton

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: Hendrick Honda
Dealer Address: 4609 Calhoun Memorial Hwy
City, State Zip: Easley SC 29640

Will not exceed $ 249.00
Prior to July 1, 2003

6-24-02
Date

Don Pendleton
Signature

Don Pendleton
Name of Officer (Typed)

Title GM

FILE BY AUGUST 31 OF EACH YEAR
(Display in a conspicuous location of dealership)

02MVCF2

EXHIBIT A

04 04

CERTIFIED MOTOR VEHICLE DEALER CLOSING FEE

JUN 27 2003

SC DEPT. OF CONSUMER AFFAIRS

S.C. Department of Consumer Affairs

Registration Fee and Disclosure for Motor Vehicle Dealer Closing Fees

(S.C. Code Ann. Section 37-2-307)

Note: This original form must accompany a $10.00 filing fee

MV01 9315476
HENDRICK HONDA
4609 CALHOUN MEMO HWY
EASLEY SC 29640

9315476
Registration No.

(864) 855-1234
Telephone Number

Don Pendleton
Contact Person

City State Zip

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: Hendrick Honda

Dealer Address: 4609 Calhoun Memorial Hwy

City, State Zip: Easley, SC 29640

Will not exceed $ 299.00
Prior to July 1st, 2004

06-25-2003
Date

Signature

Don Pendleton
Name of Officer (Typed)

Title GM

FILE BY AUGUST 31 OF EACH YEAR
(Display in a conspicuous location of dealership)

02MVCF2

R.001242

05 05

STATE OF SOUTH CAROLINA
DEPARTMENT OF CONSUMER AFFAIRS

Registration Fee and Disclosure for
Motor Vehicle Dealer Closing Fees
S.C. Code Ann. § 37-2-307

NOTE: THIS ORIGINAL FORM MUST ACCOMPANY A $10.00 FILING FEE

CERTIFIED MOTOR VEHICLE DEALER CLOSING FEE
AUG 0 4 2004
SC DEPT. OF CONSUMER AFFAIRS

Bu: 9315476 S MV 39 040602
HENDRICK HONDA
Co: 4609 CALHOUN MEMO HWY
EASLEY SC 29640
Ad:
City: _____ State: ___ Zip: _____

Registration No.: _____
Contact Person: Vicki R. Edgerton
Telephone No.: (864) 855-1234

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 Hendrick Honda
Physical Address 4609 Calhoun Memorial Hwy.
City, State Zip Easley SC 29640

Mailing Address Hendrick Honda 4609 Calhoun Memorial Hwy Easley SC 29640

Will not exceed $ 299.00
Prior to July 1, 2005

Signature

Don L. Pendleton
Name of Officer (Typed)

8-3-04
Date

GM
Title

FILE BY AUGUST 31 OF EACH YEAR
(Display in a conspicuous location of dealership)

06 06

~~CERTIFIED MOTOR VEHICLE~~
DEALER CLOSING FEE

STATE OF SOUTH CAROLINA
DEPARTMENT OF CONSUMER AFFAIRS

JUN 17 2005

SC DEPT. OF CONSUMER AFFAIRS

Motor Vehicle Dealer Closing Fees
S.C. Code Ann. § 37-2-307 et seq. (Supp. 2004)
www.scconsumer.gov
803-734-4264/800-922-1594

Mailing Address
P.O. Box 5246
Columbia, SC 29250-5246

Physical Address
3600 Forest Drive
Columbia, SC 29204-4006

NOTE: THIS ORIGINAL FORM MUST ACCOMPANY A $10.00 FILING FEE

Business Nam	9315476 S MV 39 053105	Registration No.	9315476
Company Nan	HENDRICK HONDA	Contact Person:	Don L. Pendleton
Address:	4609 CALHOUN MEMO HWY	Telephone No.:	(864)855-1234
City, State Zi	EASLEY SC 29640		

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	Hendrick Honda	Mailing Address	Hendrick Honda
Physical Address	4609 Calhoun Memorial Hwy		4609 Calhoun Memorial Hwy
City, State Zip	Easley, SC 29640		Easley, SC 29640

Will not exceed $ 399.00

Prior to July 1, 2006

Signature

Don L. Pendleton
Name of Officer (Typed)

June 15, 2005
Date

General Manager
Title

FILE BY AUGUST 31 OF EACH YEAR
(Display in a conspicuous location of dealership)

STATE OF SOUTH CAROLINA
DEPARTMENT OF CONSUMER AFFAIRS

07 07

Motor Vehicle Dealer Closing Fees

S.C. Code Ann. § 37-2-307 et seq. (Supp. 2004)

www.scconsumer.gov

803-734-4264/800-922-1594

Mailing Address
P.O. Box 5246
Columbia, SC 29250-5246

Street Address
3600 Forest Drive
Columbia, SC 29204-4006

NOTE: THIS ORIGINAL FORM MUST ACCOMPANY A $10.00 FILING FEE

Busin 9315476 S MV 39 060429
Comp HENDRICK HONDA
Addre 4609 CALHOUN MEMO HWY
City, EASLEY SC 29640

Registration No. 9315476
Contact Person: DON L. PENDLETON
Telephone No.:

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	HENDRICK HONDA	Mailing Address	4609 CALHOUN MEMORIAL HWY
Physical Address	4609 CALHOUN MEMORIAL HWY		EASLEY, SC 29640
City, State Zip	EASLEY, SC 29640		

Will not exceed $ 399.00

Prior to July 1, 2007

Signature

DON L. PENDLETON
Name of Officer (Typed)

GENERAL MANAGER
Title

JUNE 15, 2006
Date

FILE BY AUGUST 31 OF EACH YEAR
(Display in a conspicuous location of dealership)

CERTIFIED MOTOR VEHICLE DEALER CLOSING FEE
JUN 19 2006
SC DEPT. OF CONSUMER AFFAIRS

STATE OF SOUTH CAROLINA
DEPARTMENT OF CONSUMER AFFAIRS

Renewal Motor Vehicle Dealer Closing Fee Filing
S.C. Code Ann. § 37-2-307 et seq. (Supp. 2004)
www.scconsumer.gov
803-734-4264/800-922-1594

Mailing Address
P.O. Box 5246
Columbia, SC 29250-5246

Street Address
3600 Forest Drive
Columbia, SC 29204-4006

NOTE: THIS ORIGINAL FORM MUST ACCOMPANY A $10.00 FILING FEE

HENDRICK HONDA
4609 CALHOUN MEMORIAL HWY
EASLEY SC 29640

Federal ID No.	56-1794384
SSN (Sole Proprietor Only)	- -
Registration No.	9315476
Contact Person	DON PENDLETON
Telephone No.	(864)855 -1234

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	HENDRICK HONDA	Mailing Address	4609 CALHOUN MEMORIAL HWY
Physical Address	4609 CALHOUN MEMORIAL HWY		EASLEY, SC 29640
City, State Zip	EASLEY, SC 29640		

Will not exceed $ 399.00

Prior to July 1, 2008

Signature

DON L. PENDLETON
Name of Officer (Typed)

GENERAL MANAGER
Title

JULY 18, 2007
Date

CERTIFIED MOTOR VEHICLE DEALER CLOSING FEE
JUL 20 2007
SC DEPT. OF CONSUMER AFFAIRS
For Department's Use

The South Carolina Freedom of Information Act may require the Department to release a copy of your filing as a public record. Personal identifying information will be released only if required by law.

FILE BY AUGUST 31 OF EACH YEAR
(Display in a conspicuous location of dealership)

Hendrick HONDA

Where It's Easy to Buy

SALES WORKSHEET

DATE 7-10-08 SALESPERSON Patrick #276

BUYER'S NAME [redacted] EMAIL [redacted]

CO-BUYER'S NAME CELL PHONE [redacted]

ADDRESS [redacted] RES. PHONE ( ) -

CITY, ST, ZIP Simpsonville SC 29681 COUNTY BUS. PHONE ( ) -

VEHICLE BEING PURCHASED

STOCK # [redacted]	N (U) D	HN	
YEAR 2003	MAKE Chevrolet	MILES 61,560	
MODEL Blazer	2DR☐ 4DR☑		
TRIM LS	MT ☐ AT ☑	COLOR Red	
VIN [redacted]			

USED VEHICLE BEING TRADED

YEAR	MAKE	MODEL
	X	

PAYOFF VERIFICATION

ACCOUNT #	
BANK:	X
PHONE:	
ADDRESS:	
CITY, ST, ZIP:	
QUOTED BY:	
PAYOFF AMT	
GOOD UNTIL (10 DAY)	/ / 200

INSURANCE VERIFICATION

COMPANY Allstate [redacted]		
AGENT Stacy Orr	PHONE (864) -234-4923	
ADDRESS 2096 Woodruff Rd		
CITY, ST, ZIP Greenville S.C. 29607		
COMPANY		
POLICY # [redacted]		
EFFECTIVE DATES	FROM 5-28-08	TO 11-28-08
DEDUCT	COMP 500	COLL 500
QUOTED BY: Maria		

MSRP	$ 9995.00
EQUIPMENT TO BE ADDED OR REMOVED	
TOTAL COST	$ 9995.00

NOTES

PAYMENT INFORMATION

RETAIL	LEASE
TERM	TERM
CASH DOWN	CASH DOWN
PAYMENT	PAYMENT

CASH PRICE OF VEH. AND ACCESS.	$ 9212
TRADE – IN ALLOWANCE	$ —
DIFFERENCE	$
ADMINISTRATION FEE	$ 299.00
STATE TAX	380.
LIC/TRANSFER/TITLE/REG FEES	$ 39.
TOTAL PRICE OF UNIT	$ 9850.
LIEN PAYOFF	$ —
DOWN PAYMENT	$ 3000.
BALANCE	$ 6850.

SIGNATURES

DEAL NUMBER 62224

SALES MANAGER + DATE 7/10/08

[redacted]

CO-BUYER

Reynolds and Reynolds CDS0000 0 05/00

EXHIBIT B

MSRP	$
EQUIPMENT	
TOTAL COST $	

SELLING PRICE	TRADE
~~9995.00~~ $ 7995.00	$
CASH DOWN	**PAYMENT**
A)	A)
	B)
CASH ON DELIVERY	**MONTHLY LEASE PAYMENT**
$	$

Providing all terms are agreeable, I will purchase this vehicle now.

Signature: _____

[redacted]

R.001248

HONDA AUTOMOBILES

HENDRICK HONDA

4609 Calhoun Memorial Highway
Easley, South Carolina 29642
Telephone (864) 855-1234
www.HendrickHondaSC.com • email: SCHendrickHonda@aol.com

Simply the Best

PURCHASER'S NAME [redacted] DATE 05/24/04

PURCHASER'S ADDRESS [redacted] RES. PHONE [redacted]

CITY, STATE & ZIP [redacted] BUS. PHONE [redacted]

VEHICLE BEING PURCHASED	
STOCK NO. 04803A	
YEAR 2003 MAKE CHEVROLET TRUCK MILEAGE 11372	
MODEL TAHOE BODY TYPE ☐ 2 DR. ☐ 4 DR. ☐ WAGON, VAN ☐ TRUCK	
SERIES [redacted] TRANS COLOR SILVER	
SER. NO.	

USED VEHICLE WARRANTY DISCLAIMER

I UNDERSTAND THAT THIS VEHICLE IS BEING SOLD **"AS IS"** WITH ALL FAULTS AND IS NOT COVERED BY ANY DEALER WARRANTY. I UNDERSTAND THAT THE DEALER IS NOT REQUIRED TO MAKE ANY REPAIRS AFTER I BUY THIS VEHICLE. I WILL HAVE TO PAY FOR ANY REPAIRS THIS VEHICLE WILL NEED.

SIGNATURE OF BUYER

VEHICLE BEING TRADED	
YEAR 1998 MAKE OF TRADE-IN CHEVROLET TRUCK	
MODEL OR SERIES SUBURBAN 150 BODY TYPE 4 DOOR UTILI	
COLOR WHITE	
SER. NO. [redacted] ENG. TYPE	
LIENHOLDER PAYOFF $ 10000.00 THRU	
ADDITIONAL LIENS:	

MSRP	$ 31500.00
INSTALLED ACCESSORIES	$ N/A
ACCESSORIES TO BE ADDED	$ N/A
CASH PRICE OF VEHICLE & ACCESSORIES	$ 31500.00
TRADE-IN ALLOWANCE	$ 10000.00
DIFFERENCE	$ 21500.00
PROCUREMENT FEE	$ 249 00
STATE TAXES	$ 300.00
LICENSE, LICENSE TRANSFER, TITLE, REGISTRATION FEE	$ 18.00
TOTAL PRICE OF UNIT	$ 22067.00
LIEN PAYOFF OWED CUSTOMER GUARANTEES	$ 10000.00
DOWN PAYMENT	$ 32067.00
BALANCE	$ N/A

SECURITY AGREEMENT: Purchaser hereby grants Seller, its successors and assigns, a security interest in the motor vehicle, equipment and accessories to be purchased pursuant to this agreement, and such security interest shall remain in effect until all sums due hereunder have been paid in full.

FOR SALES INVOLVING DEALER ARRANGED FINANCING ONLY: This sale is conditioned upon approval of your proposed retail installment sale contract or lease as submitted to or through the dealer. If that proposed retail installment sale contract or lease is not approved under the terms agreed to with the dealer, you may cancel this sale and any down payment and/or trade-in you submitted will be returned to you, provided that any vehicle delivered to you by the dealer pursuant to this agreement is returned to the dealer in the same condition as delivered to you, within twenty-four hours of written or oral notice to you of the credit denial.

CHADWICK R PERKINS
Salesperson

Manager
This order is subject to and becomes binding only when signed and accepted by the Dealer or his authorized representative.

Signed (1) [redacted]
Purchaser

(2) [redacted]
Purchaser

EXHIBIT C

NOTICE

CLOSING FEES

THIS DEALERSHIP CHARGES A **$299.00** CLOSING FEE AS MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS SUCH AS DOCUMENT RETREIVAL 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.

JANUARY 1, 2005

EXHIBIT D

NOTICE

CLOSING FEES

THIS DEALERSHIP CHARGES A **$299.00** CLOSING FEE AS MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS SUCH AS DOCUMENT RETREIVAL 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.

JANUARY 1, 2005

NOTICE
CLOSING FEES

THIS DEALERSHIP CHARGES A **$299.00** CLOSING FEE AS MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS SUCH AS DOCUMENT RETREIVAL 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.

JANUARY 1, 2005

on the walls of the dealership showroom & in offices

NOV-02-2005 08:48PM FROM-HENDRICK AUTOMOTIVE GROUP 704-566-1352 T-416 P.003 F-420

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

C.A. No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiff,

v.

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

Defendants.

AFFIDAVIT OF MARCUS W. SANDERS

I, the undersigned Marcus W. Sanders, being duly sworn, state under oath as follows:

1. I am the Business Development Manager at Hendrick Honda of Easley, located at 4609 Calhoun Memorial Highway in Easley, South Carolina. I have held the position of Business Development Manager at Hendrick Honda of Easley since April, 2002.

2. I have personal knowledge of the facts set forth in this affidavit to the extent specified and, if called as a witness, I could competently testify to these facts.

3. I am informed that the relevant time period for this lawsuit is August 29, 2002, to November 30, 2008.

4. In my position as Business Development Manager, I am familiar with the window stickers affixed to vehicles on Hendrick Honda of Easley's lot during the relevant time period. Window stickers are usually affixed to the driver's side window of vehicles.

5. During the relevant time period, not every car on Hendrick of Honda of Easley's lot would have had a window sticker on it. Even if a window sticker was affixed to a vehicle, the type of sticker and what information it contained would depend on whether the car was new or used, and whether a used car was Honda Certified or not.

6. All new vehicles have Monroney stickers affixed to the driver's side window by the manufacturer. Monroney stickers are required by federal law and may not be altered by a dealer. A Monroney sticker does state the manufacturer's suggested retail price for the vehicle.

7. In compliance with federal law, if Hendrick Honda of Easley adds accessories or equipment to a new vehicle, it must disclose such additions or removals on a supplemental sticker. The supplemental sticker is intended to provide the customer with information about equipment added to or removed from a vehicle. Supplemental stickers are added to the vehicle after the vehicle is delivered to the dealership, and they do not mention the price of the vehicle.

8. All used vehicles have a Buyer's Guide affixed to a driver's side window. A Buyer's Guide is required by federal law and provides certain disclosures including whether the vehicle is sold "as is" with no warranty or with a warranty. The Buyer's Guide does not now and has never stated the vehicle's price.

9. During the relevant time period and continuing until today, some, but not all, used vehicles which are not Honda Certified, may also have an additional window sticker affixed to the vehicle at some time before or during the time that it is placed on the dealership's lot for sale. These additional window stickers usually list information regarding the vehicle's attributes (such as model, year, mileage, size of engine, type of

transmission, etc.) and accessories and optional equipment (such as CD player, sunroof, leather upholstery, power seats, etc.). These additional window stickers placed on used vehicles which are not Honda Certified have never mentioned the price of the vehicle or any accessories or optional equipment.

10. Honda Certified used vehicles have stickers affixed to their windows that indicate they have undergone a certification and inspection process and have been designated as Honda Certified vehicles. For most of the relevant time period, Honda Certified window stickers did not state the vehicle's price. Whether or not a used vehicle had a Honda Certified window sticker that mentioned price would depend on the date that the vehicle was brought into the dealership's inventory and placed on the dealership's lot for sale, as explained more fully below.

11. Prior to November 2005, Hendrick Honda of Easley's personnel generated, printed, and affixed its own window stickers for used vehicles on the dealership's sales lot, including both the Buyer's Guides and Honda Certified window stickers. Prior to November 2005, the Honda Certified window stickers did not mention price.

12. On or about November 16, 2005, Hendrick Honda of Easley hired Dealer Services, a franchisee of AutoUplink USA, to generate window stickers for non-certified vehicles on its lot. Also in 2005, American Honda Motor Co., Inc., began generating the window stickers for all Honda Certified vehicles, and made the window stickers available through a dealer portal on Honda's interactive website. Dealer Services personnel printed all noncertified and certified window stickers and affixed them to the appropriate vehicles on the dealership's sales lot. From November 2005 to April 2006, none of the

window stickers affixed by Dealer Services mentioned price, but instead presented information about the vehicle's attributes and accessories.

13. On or about May 1, 2006, American Honda Motor Co., Inc. directed that all Honda dealers begin including the asking price on all certified used vehicles offered for sale at the dealership, and shortly thereafter, Hendrick Honda of Easley began complying with this directive.

14. Hendrick Honda of Easley continued to use Dealer Services to generate its window stickers until October 2008 for all non-certified Honda vehicles. American Honda Motor Co., Inc. continued to generate window stickers for Honda Certified vehicles. All window stickers were printed and affixed to vehicles by Dealer Services personnel, and from May 1, 2006, to October 2008, the only window stickers affixed by Dealer Services that mentioned price were the Honda Certified window stickers, as required by American Honda Motor Co., Inc.

15. Since October 2008, Hendrick Honda of Easley has used a third party vendor, Ebiz Autos, to generate its window stickers for non-certified vehicles. American Honda Motor Co., Inc. continues to generate the Honda Certified window stickers, and as previously stated, began including price on the Honda Certified window stickers after May 1, 2006. Since October 2008, Hendrick Honda of Easley has used Marcus L. Sanders to print and affix all of its certified and non-certified window stickers The only stickers affixed by Marcus L. Sanders that mention price are the Honda Certified stickers, as required by American Honda Motor Co., Inc.

16. I have reviewed Hendrick Honda of Easley's records regarding the acquisition, inspection, and servicing of a 2005 Honda Accord, Vin no. 1HGCN56445L000230 ("the 2005 Honda Accord"), which was purchased by Julie Freeman on July 12, 2006.

17. According to Hendrick Honda of Easley's service records, the 2005 Honda Accord came into the dealership's used car inventory on or about April 13, 2006. On April 25, 2006, Hendrick Honda of Easley performed a certified pre-owned inspection on the 2005 Honda Accord, and then first offered the vehicle for sale as a Honda Certified pre-owned vehicle. A true copy of the service records evidencing the certification inspection is attached hereto as Exhibit A.

18. Although I do not know whether a window sticker was affixed to the 2005 Honda Accord, I do know that if there was, it would be very unlikely that the sticker would have mentioned price in any way because it was placed on the dealership lot in April 2006—before American Honda Motor Co., Inc.'s directive that all Honda Certified stickers mention price.

19. American Honda Motor Co, Inc.'s directive went into effect on May 1, 2006, and Hendrick Honda of Easley began including price in its Honda Certified stickers *after* that date. Neither I nor any of the other employees of Hendrick Honda of Easley made any effort to replace window stickers that were affixed to used vehicles placed on the lot for sale prior to May 1, 2006. Vehicles usually do not stay on the lot more than 60 days, and we felt that it would be unnecessary and inefficient to try and replace all the window stickers on vehicles placed on the lot prior to May 1st.

20. Consequently, because the 2005 Honda Accord purchased by Julie Freeman was placed on the lot on or about April 13, 2006, which was before American Honda Motor

Co., Inc.'s directive of May 1, 2006 to include price on window stickers for Honda Certified vehicles, and because Hendrick Honda of Easley's employees did not change the window stickers on vehicles placed on the lot prior to May 1, 2006, it would be very unlikely that any window sticker on the vehicle purchased by Julie Freeman would have mentioned price in any way.

WITNESS my hand this 23rd day of October 2009, at Easley, South Carolina.

Marcus Sanders

SWORN TO and subscribed before me
this 23rd day of October, 2009.

Notary Public for the State of South Carolina
My commission expires 9-11-2017

DENA BAYNE
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXP. 09-11-2017

HONDA

Hendrick HONDA

J. Hendrick MANAGEMENT CORPORATION

4609 CALHOUN MEMORIAL HIGHWAY
EASLEY, SC 29640
TELEPHONE (864) 855-1234 TOLL FREE 1-800-829-1815
WEBSITE: www.hendrickhondasc.com

CUSTOMER NO.	SERVICE ADVISOR	TAG NO.	INVOICE DATE	INVOICE NO.
41897	RODNEY SHIRLEY 170	5363	11/05/07	HOXS150549

JULIE HAIR
[redacted]

LABOR RATE	LICENSE NO.	MILEAGE	COLOR	STOCK NO.
		49,673	WHITE/	

YEAR / MAKE / MODEL	DELIVERY DATE	DELIVERY MILES
05/HONDA/ACCORD/4 DR	07/12/06	[redacted] 26,553

VEHICLE I.D. NO.	SELLING DEALER NO.	PRODUCTION DATE
1HGCM56445L000230		

F.T.E. NO.	P.O. NO.	R.O. DATE
		11/05/07

[redacted]

COMMENTS [redacted] NO.: 19673

LABOR & PARTS

J# 1 10HOZI 3750 OR VIP TECH(S):162 INTERNAL

() CHANGE OIL AND FILTER
() CHECK FLUID LEVELS AND REPLENISH AS NECESSARY
() SET TIRE PRESSURE
() RESET MAINTENANCE LIGHT
() FINAL ROAD TEST
SERVICE INCLUDES A CAR WASH
COMPLETED

PARTS	QTY	FP NUMBER	DESCRIPTION	UNIT PRICE	
JOB # 1	1	15400-PLM-A01A	OIL FILTE		INTERNAL
JOB # 1	1	94109-14000	WASHER, D 90400		INTERNAL
			JOB # 1 TOTAL PARTS		0.00
			JOB # 1 TOTAL LABOR & PARTS		0.00

J# 2 37HOZINSPECT MULTIPOINT INSPECT. TECH(S):162 INTERNAL

PERFORM A FREE MULTIPOINT INSPECTION
AND FILL OUT CHECK SHEET
THANK YOU FOR USING HENDRICK HONDA AS YOUR SERVICING DEALER.

PARTS	QTY	FP NUMBER	DESCRIPTION	UNIT PRICE	
			JOB # 2 TOTAL PARTS		0.00
			JOB # 2 TOTAL LABOR & PARTS		0.00

G.O.G. & SUPPLIES

JOB # 1 4.5 VIP OIL CHANGE @ /UNIT INTERNAL
TOTAL - GOG 0.00

COMMENTS
WAIT

TOTALS

[]CASH []CHECK []CREDIT CARD []CHARGE

TOTAL LABOR....	0.00
TOTAL PARTS....	0.00
TOTAL SUBLET...	0.00
TOTAL G.O.G....	0.00
TOTAL MISC CHG.	0.00
TOTAL MISC DISC	0.00
TOTAL TAX.....	0.00
TOTAL INVOICE $	**0.00**

HENDRICK HONDA WE NEED AND APPRECIATE YOUR BUSINESS
VISIT OUR WEB SITE-WWW.HENDRICKHONDASC.COM
THANK YOU AND PLEASE IF YOUR NOT SATISFIED 100%
CONTACT TOM LAPOINTE AT 864-855-1234
PLEASE NOTIFY ONE OF OUR SERVICE STAFF OF ANY ADDRESS CHANGES SO THAT YOU CAN BE ON OUR MAILING LIST.
IF YOU HAVE AN E-MAIL ADDRESS PLEASE LET US KNOW.
YOU MAY RECEIVE FREE GIFTS AND SPECIAL DISCOUNTS!!!!!
ASK ABOUT OUR NEW SERVICE REWARDS MEMBERSHIP.

CUSTOMER SIGNATURE

********** DUPLICATE INVOICE **********

PAGE 1 OF 1 CUSTOMER COPY [END OF INVOICE] 05:37pm

DISCLAIMER OF WARRANTIES

The only warranties applying to this part(s) are those which may be offered by the manufacturer. The selling dealer hereby disclaims all warranties, either express or implied (including any implied warranties of merchantability or fitness for a particular purpose and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this part(s) and/or service. Buyer shall not be entitled to recover from the selling dealer any consequential damages to property, damages for loss of use, loss of time, loss of profits, or income, or any other incidental damages.

IMPORTANT
You may receive a questionnaire by mail from Honda Motors. Please return the completed survey to Honda Motors. Thank you, Hendrick Honda

THANK YOU
FOR THIS OPPORTUNITY
TO SERVE YOU.

SERVICE DEPT. HOURS
MONDAY THRU FRIDAY
7:30 A.M. – 6:00 P.M.
SATURDAY
8:00 A.M. – 5:00 P.M.
SHUTTLE SERVICE AVAILABLE
SEE REVERSE SIDE FOR IMPORTANT INFORMATION →

EXHIBIT A

HONDA

Hendrick HONDA

4609 CALHOUN MEMORIAL HIGHWAY
EASLEY, SC 29640
TELEPHONE (864) 855-1234 TOLL FREE 1-800-829-1815
WEBSITE: www.hendrickhondasc.com

HOIS150549

J. Hendrick MANAGEMENT CORPORATION

HOIS150549

0201HOIS150549

CUSTOMER NO.	ADVISOR	TAG NO.	INVOICE DATE	INVOICE NO
41897	RODNEY SHIRLEY 170	5363	11/05/07	HOIS150549

LABOR RATE	LICENSE NO	MILEAGE	COLOR	STOCK NO.
		49,673	WHITE/	

YEAR / MAKE / MODEL	DELIVERY DATE	DELIVERY MILES
05/HONDA/ACCORD/4 DR	07/12/06	[redacted]

VEHICLE I.D. NO.	SELLING DEALER NO.	PRODUCTION DATE
1HGCM56445L000230		

F.T.E. NO.	P.O. NO.	R.O. DATE
		11/05/07

JULIE HAIR
[redacted]
[redacted] SC 29509-3864

[redacted] BUSINESS PHONE [redacted]

COMMENTS

MI 49673

LABOR & PARTS

J# 1 10HOZ1 3750 OR VIP HOURS: TECH(S):162 3.90

() CHANGE OIL AND FILTER
() CHECK FLUID LEVELS AND REPLENISH AS NECESSARY
() SET TIRE PRESSURE
() RESET MAINTENANCE LIGHT
() FINAL ROAD TEST
SERVICE INCLUDES A CAR WASH
COMPLETED

PARTS	QTY	FP NUMBER	DESCRIPTION	UNIT PRICE	
JOB # 1	1	15400-PLM-A01A	OIL FILTE	1.99	1.99
JOB # 1.	1	94109-14000	WASHER, D 90400	0.17	0.17
			JOB # 1 TOTAL PARTS		2.16
			JOB # 1 TOTAL LABOR & PARTS		6.06

J# 2 37HOZINSPECT MULTIPOINT INSPECT HOURS: 0.00 TECH(S):162 0.00

PERFORM A FREE MULTIPOINT INSPECTION
AND FILL OUT CHECK SHEET
THANK YOU FOR USING HENDRICK HONDA AS YOUR SERVICING DEALER.

JOB # 2 TOTAL LABOR & PARTS 0.00

G.O.G. & SUPPLIES

JOB # 1, 4.5 VIP OIL CHANGE @ 1.830 /UNIT 8.24
TOTAL - GOG 8.24

COMMENTS
WAIT

TOTALS

CONTROL#	ACCOUNT NUMBER	AMOUNT
	1079	14.30

TOTAL LABOR....	3.90
TOTAL PARTS....	2.16
TOTAL SUBLET...	0.00
TOTAL G.O.G....	8.24
TOTAL MISC.CHG.	0.00
TOTAL MISC.DISC	0.00
TOTAL TAX.....	0.00
TOTAL INVOICE $	**14.30**

APPROVED BY SIGNATURE

********** DUPLICATE INVOICE **********

PAGE 1 OF 1 ACCOUNTING COPY-1 (END OF INVOICE) 05:37pm

DISCLAIMER OF WARRANTIES

The only warranties applying to this part(s) are those which may be offered by the manufacturer. The selling dealer hereby disclaims all warranties, either express or implied including any implied warranties of merchantability or fitness for a particular purpose and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this part(s) and/or service. Buyer shall not be entitled to recover from the selling dealer any consequential damages to property, damages for loss of use, loss of time, loss of profits, or income, or any other incidental damages.

IMPORTANT

You may receive a questionnaire from Honda Motors. Please return the completed survey to Honda Motors. Thank you. Hendrick Honda

THANK YOU

FOR THIS OPPORTUNITY

TO SERVE YOU.

SERVICE DEPT. HOURS

MONDAY THRU FRIDAY
7:30 A.M. - 6:00 P.M.

SATURDAY
8:00 A.M. - 5:00 P.M.

SHUTTLE SERVICE AVAILABLE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

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HONDA

Hendrick HONDA

JL Hendrick MANAGEMENT CORPORATION

4609 CALHOUN MEMORIAL HIGHWAY
EASLEY, SC 29640
TELEPHONE (864) 855-1234 TOLL FREE 1-800-829-1815
WEBSITE: www.hendrickhondasc.com

CUSTOMER NO.	ADVISOR	TAG NO.	INVOICE DATE	INVOICE NO.
41897	RODNEY SHIRLEY 170	3226	06/12/08	HOXS159298

JULIE HAIR
[redacted]
GREENVILLE, SC 29609-3864

LABOR RATE	LICENSE NO.	MILEAGE	COLOR	STOCK NO.
		59,358	WHITE/	

YEAR/MAKE/MODEL	DELIVERY DATE	DELIVERY MILES
05/HONDA/ACCORD/4 DR	07/12/06	26,553

VEHICLE I.D. NO.	SELLING DEALER NO.	PRODUCTION DATE
1HGCM56445L000230		

P.T.S. NO.	P.O. NO.	R.O. DATE	
		06/12/08	REPRINT# 1

AUTOMOBILE PHONE	BUSINESS PHONE	COMMENTS
[redacted]	[redacted] 27	TECH NO: 59358

LABOR & PARTS

J# 1 01HOZSPECIAL EXPRESS O&F TECH(S):272 10.00

() CHANGE ENGINE OIL
() CHANGE ENGINE OIL FILTER
() CHECK TIRE PRESSURE AND CORRECT
() CHECK FLUID LEVELS AND CORRECT
() PERFORM 19 POINT INSPECTION
THANK YOU FOR USING HENDRICK HONDA FOR YOUR SERVICING DEALER

PARTS	QTY	FP	NUMBER	DESCRIPTION	UNIT PRICE	
JOB # 1	1		PK1	HONDA OF & SEAL	****	****
JOB # 1	1		15400-PLM-A02	FILTER, O 15400	11.33	11.33
JOB # 1	1		94109-14000	WASHER, D 90400	0.72	0.72
				JOB # 1 TOTAL PARTS		12.05
				JOB # 1 TOTAL LABOR & PARTS		22.05

J# 2 08HOZ1 WIPER INSERTS TECH(S):272 10.00

REPLACE WIPER INSERTS
BAD WIPER INSERTS
REPLACED WIPER INSERTS

PARTS	QTY	FP	NUMBER	DESCRIPTION	UNIT PRICE	
JOB # 2	1		76622-S5A-003	RUB, BLAD 38472	7.40	7.40
JOB # 2	1		76632-S5A-003	RUB, BLAD 38472	7.40	7.40
				JOB # 2 TOTAL PARTS		14.80
				JOB # 2 TOTAL LABOR & PARTS		24.80

J# 3 37HOZZ27P MULTI POINT TECH(S):272 INTERNAL

PERFORM A FREE MULTI POINT INSPECTION
COMPLETED
THANKS YOU FOR YOUR BUISNESS

PARTS	QTY	FP	NUMBER	DESCRIPTION	UNIT PRICE	
				JOB # 3 TOTAL PARTS		0.00
				JOB # 3 TOTAL LABOR & PARTS		0.00

J# 4 04HOZFREE FREE CAR WASH TECH(S):293 INTERNAL

PERFORM EXTERIOR CAR WASH AS PART OF SERVICE
WASH COMPLETE. THANK YOU FOR USING HENDRICK HONDA

PARTS	QTY	FP	NUMBER	DESCRIPTION	UNIT PRICE	
				JOB # 4 TOTAL PARTS		0.00
				JOB # 4 TOTAL LABOR & PARTS		0.00

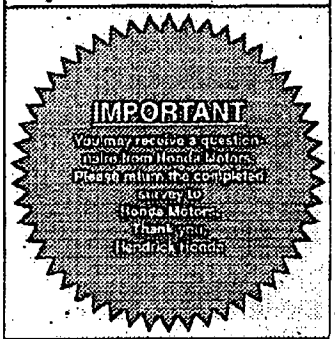
G.O.G. & SUPPLIES

JOB # 1	5.0		AUTOMOTIVE OIL	@ 3.020 /UNIT		15.10
				TOTAL - GOG		15.10

MISC	CODE	DESCRIPTION	CONTROL NO	
JOB # A	SHOP	SHOP SUPPIES		1.10
JOB # 1	10PX	10% PARTS DISCOUNT EXPRESS		-10.20

Reminder and Reminder ERASURE/CONTROL DEFACE

DISCLAIMER OF WARRANTIES
The only warranties applying to this part(s) are those which may be offered by the manufacturer. The selling dealer hereby disclaims all warranties, either express or implied including any implied warranties of merchantability or fitness for a particular purpose and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this part(s) and/or service. Buyer shall not be entitled to recover from the selling dealer any consequential damages to property, damages for loss of use, loss of time, loss of profits, or income, or any other incidental damages.



THANK YOU

FOR THIS OPPORTUNITY

TO SERVE YOU.

SERVICE DEPT. HOURS

MONDAY THRU FRIDAY
7:30 A.M. – 6:00 P.M.

SATURDAY
8:00 A.M. – 5:00 P.M.

SHUTTLE SERVICE AVAILABLE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION →

(CONTINUED ON NEXT PAGE) 05:38pm

HONDA

Hendrick HONDA

JL Hendrick MANAGEMENT CORPORATION

4609 CALHOUN MEMORIAL HIGHWAY
EASLEY, SC 29640
TELEPHONE (864) 855-1234 TOLL FREE 1-800-829-1815
WEBSITE: www.hendrickhondasc.com

CUSTOMER NO. 41897	ADVISOR RODNEY SHIRLEY 170	TAG NO. 3226	INVOICE DATE 06/12/08	INVOICE NO. HOXS159298
JULIE HAIR [redacted] GREENVILLE, SC 29609-3864	LABOR RATE	LICENSE NO.	MILEAGE 59,358	COLOR WHITE/
	YEAR/MAKE/MODEL 05/HONDA/ACCORD/4 DR		DELIVERY DATE 07/12/06	DELIVERY MILES 26,553
	VEHICLE I.D. NO. 1HGCM56445L000230		SELLING DEALER NO	STOCK NO
	F.T.E. NO	P.O. NO.	R.O. DATE 06/12/08	REPRINT# 1
[redacted]	BUSINESS PHONE 404 333-2710	COMMENTS		[redacted] 59358

MISC	CODE	DESCRIPTION	CONTROL NO	
JOB # 1	58A	LABOR EXPRESS		-2.00
			TOTAL - MISC	-11.10

COMMENTS
WAITER

RECOMMENDATIONS
VEHICLE DUE FOR 60,000 MILE MAJOR SERVICE - $345.00+ TAX.

TOTALS

[]CASH []CHECK []CREDIT CARD []CHARGE

HENDRICK HONDA: WE NEED AND
APPRECIATE YOUR BUSINESS
VISIT OUR WEB SITE-WWW.HENDRICKHONDASC.COM
THANK YOU AND PLEASE IF YOUR NOT SATISFIED 100%
CONTACT TOM LAPOINTE AT 864-855-1234
PLEASE NOTIFY ONE OF OUR SERVICE STAFF OF ANY ADDRESS
CHANGES SO THAT YOU CAN BE ON OUR MAILING LIST.
IF YOU HAVE AN E-MAIL ADDRESS PLEASE LET US KNOW,
YOU MAY RECEIVE FREE GIFTS AND SPECIAL DISCOUNTS!!!!!
ASK ABOUT OUR NEW SERVICE REWARDS MEMBERSHIP.

TOTAL LABOR....	20.00
TOTAL PARTS....	26.85
TOTAL SUBLET...	0.00
TOTAL G.O.G....	15.10
TOTAL MISC CHG.	1.10
TOTAL MISC DISC	-12.20
TOTAL TAX.....	2.22
TOTAL INVOICE $	**53.07**

CUSTOMER SIGNATURE

********** DUPLICATE INVOICE **********

DISCLAIMER OF WARRANTIES

The only warranties applying to this part(s) are those which may be offered by the manufacturer. The selling dealer hereby disclaims all warranties, either express or implied, including any implied warranties of merchantability or fitness for a particular purpose and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this part(s) and/or service. Buyer shall not be entitled to recover from the selling dealer any consequential damages to property, damages for loss of use, loss of time, loss of profits, or income, or any other incidental damages.

IMPORTANT

You may receive a questionnaire from Honda Motors. Please return the completed survey to Honda Motors. Thank you, Hendrick Honda

THANK YOU

FOR THIS OPPORTUNITY

TO SERVE YOU

SERVICE DEPT. HOURS

MONDAY-THRU FRIDAY
7:30 A.M. - 6:00 P.M.

SATURDAY
8:00 A.M. - 5:00 P.M.

SHUTTLE SERVICE AVAILABLE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION →

CUSTOMER COPY

[END OF INVOICE] 05:38pm

EXHIBIT 4

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
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. CIVIL ACTION NO. 06-CP-02-1230

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., CENTURY BMW a/k/a SONIC AUTOMOTIVE

Defendants.

DEPOSITION OF: WILLIAM T. FREEMAN, SR.

DATE: August 27, 2009

TIME: 10:34 a.m.

LOCATION: Haynsworth Sinkler Boyd, P.A.
1201 Main Street
22nd Floor
Columbia, SC 29201

TAKEN BY: Counsel for Defendant
J.L.H Investments, LP

REPORTED BY: RITA A. DEROUEN, Professional Shorthand Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES
Fast, Accurate & Friendly

Charleston, SC (843) 722-8414
Hilton Head, SC (843) 785-3263
Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224
Greenville, SC (864) 234-7030
Charlotte, NC (704) 573-3919

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Q. So you would have gone to Hendricks Honda, agreed on the trade-in value, then gone to the credit union and then come back to Hendricks Honda of Easley; is that how it worked?
A. That's correct.
Q. How did she select the SC Telco Federal Credit Union for financing?
A. I don't recall specifically.
Q. I take it you've been a member for a long time?
A. 30 years. Yes.
Q. Do you do a lot of your banking business with SC Telco Federal Credit Union?
A. Not a lot. I have an account, but I don't do a lot of banking with them.
Q. Did the credit union have a lien on the Mazda she was trading in?
A. No, sir. It was paid for.
Q. Did you suggest that she try the SC Telco federal Credit Union for her financing?
A. Probably.
Q. So you would have come back to Hendricks Honda of Easley, probably, with a check from the credit union to pay for the car; is that what you recall?

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A. Yes, that's what I recall, yes.
Q. First of all, was Julie excited about the new car she was buying?
A. Yes.
Q. Had she found a car that she liked?
A. Yes.
Q. Did she appear satisfied with the terms of her transaction or deal that she had struck with Hendricks Honda of Easley?
A. I'm not going to answer how she felt. I don't recall.
Q. Were the personnel at Hendricks Honda of Easley, did they treat her fairly and -- or respectfully?
A. I actually don't recall.
Q. Was anyone rude to her or unkind in any way?
A. Once again, I actually don't recall.
Q. Did it appear to you that anyone was trying to mislead or deceive her at Hendricks Honda of Easley?
A. Not that I recall, no.
Q. Did she drive away with the car that day?
A. To my recollection, yes.

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Q. Had she, say, within the first three to four months after the transaction where she purchased the car from the Hendricks Honda of Easley, did she voice any complaints to you about the terms of her deal with Hendricks Honda of Easley?
A. Not that I recall.
Q. I think you've said you were present for at least part of the time when she was signing paperwork with the Hendricks Honda of Easley personnel on that day.
Do you remember or do you know any of the topics that were discussed between Ms. Freeman and the Hendricks Honda of Easley personnel?
A. I don't recall, no.
Q. Let me give you this preface: One of the allegations in the complaint that's been filed against all the defendants is that they conspired with each other, the defendant automobile dealerships, to charge or increase closing fees charged by the various dealerships that do charge closing fees.
Were you aware of that?
A. No.

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Q. Do you know what a closing fee is?
A. It's probably safest to say no.
Q. Did you know that Julie Freeman paid a closing fee, or it's called an admin fee, when she purchased the car -- or procurement fee when she purchased the car from Hendricks Honda of Easley?
A. I didn't have any knowledge of it. No, I don't recall.
Q. Was the subject of a closing fee discussed during the time that you were present and Julie Freeman was negotiating her transaction with the personnel at Hendricks Honda of Easley?
A. I don't recall, actually.
Q. Well, then let me ask you: Do you know whether or not any personnel of the Hendricks Honda of Easley have communicated with employees or agents of any other dealership in South Carolina for the purpose of conspiring together to charge or increase closing fees at their dealerships?
A. That -- I wouldn't have any knowledge of that, no. I wouldn't have any idea.
Q. When you got to Hendricks Honda of Easley and you first saw the car that Julie had

EXHIBIT 5

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF AIKEN

HEATHER HERRON,

Plaintiff,

vs. CASE NO. 2006-CP-02-1230

DICK DYER & ASSOCIATES, INC., ET AL,

Defendants.

DEPOSITION OF: DANNY R. COLLINS

DATE: June 24, 2009

TIME: 10:00 a.m.

LOCATION: Law Offices of
Haynsworth Sinkler Boyd
1201 Main Street 22nd Floor
Columbia, SC

TAKEN BY: Counsel for the Defendant,
Land Rover of Columbia

REPORTED BY: L. Skyler Hare,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES
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composition or what the fee might include or not include?
MR. SPEARS: Object to the form.
THE WITNESS: We have not. The only thing that we have issued other than advertising compliance letters that I'm aware of before this started, was that administrative interpretation.
BY MR. HAMM:
Q. All right. And you're referring to the 2001 administrative interpretation?
A. Right.
Q. And that -- is the administrative interpretation issued in 2001 on closing fees the official interpretation of the Department of Consumer Affairs?
A. That one was primarily set up as guidance for the industry to comply with the law.
Q. And if the industry complied with that administrative interpretation, what is the effect of doing what the Department of Consumer Affairs has set?
A. Except for the advertising, I've not looked at anything else until this case was brought to our attention.
Q. Let me go back to the question. If an

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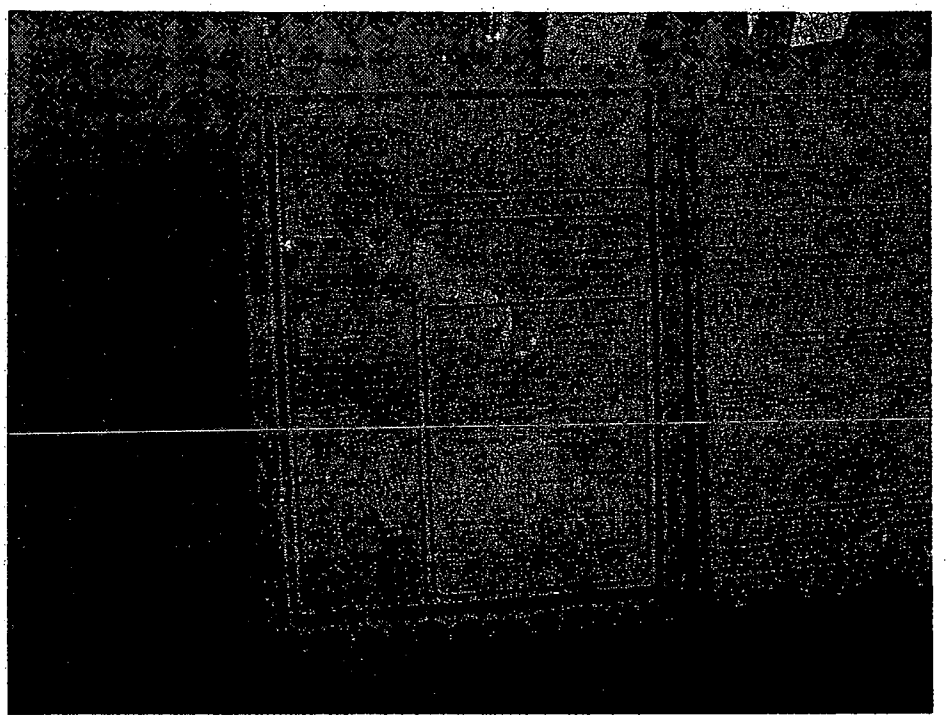
automobile dealer follows the terms of the administrative interpretation, what benefit is that to a dealer?
A. Well, that is the official interpretation under Title 37, and that's where it would go back to that statute that would give them full protection that even if we were wrong in it, that they would not be liable.
Q. So automobile dealers have a legal incentive to do exactly what the Department of Consumer Affairs opinion says?
A. It gives -- they have better protection if they will do that, yes.
Q. So if a dealer has properly filed with the Department of Consumer Affairs that they intend to charge a fee -- again, does the department have any ability to say, well, you can't charge more than X dollars?
A. We have had one time where we rejected a filing and that would have been last fall, I believe in November, but it might have been December.
That person was running a used car dealership and they put down that they were not going to charge over $60,000 on each closing fee.

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And we said that you're making a mockery of the law, and we're not going to accept this kind of filing.
Q. All right. And until the filing was accepted, could that dealer charge any fee?
A. Until they could accept it, no, they can't charge a fee legally.
Q. And in that particular circumstance, the department did not accept the filing?
A. I think they originally recorded it, but it was sent back and said that it's revoked. Herb Walker did that. I did not.
Q. Do you understand -- again, looking at 37-2-307, does the statute give the department any authority to limit the amount of the fee?
A. This particular statute?
Q. Yes.
A. No.
Q. What other statute do you look at for purposes of --
A. Well, in Chapter 6, Part 1 of Title 37, that's the administrative authority that gives the administrator the power to bring actions, to require the refund of excess charges, things of that nature. 37-5-108 gives us the authority to look at what might be an unconscionable act.

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Q. Right.
A. And Ms. Pinkston, when she saw the 60,000 was somewhat outraged, and if she got outraged, I believe that reached unconscionability in her mind.
Q. Beyond the question of unconscionability, does the department have any authority to say 399 is acceptable but 425 is not acceptable?
MR. SPEARS: Object to the form.
THE WITNESS: We've never done anything like that. I mean, after that guy did the $60,000, we said if it's $1,000 or more, we want to look at it and look at the circumstances, but if it's -- I mean, it makes a difference what kind of car they're selling or if it's a new car dealership or a used car dealership.
That one guy was running not even a high-end used cars that wanted to do the 60,000. So that makes a difference on different circumstances.
Q. Does the statute -- has the department interpreted the statute to require multiple displays of the form at a dealership?
A. As far as I know, it's only one location and one place that they have to do it, but





Honda Certified Used Car Window Sticker with pricing showing disclosure

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.

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Haynsworth Sinkler Boyd, P.A., attorneys for Defendant J.L.H. Investments LP d/b/a Hendrick Honda of Easley do hereby certify that I have served counsel specified below in this action with a copy of the Pleading specified below by sending a copy of the same by e-mail (as indicated below) to the following e-mail addresses:

PLEADINGS:

Memorandum of Defendant J.L.H. Investments LP d/b/a Hendrick Honda of Easley in Opposition to Plaintiff Julie Freeman's Motion for Declaratory Judgment

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rah@harpootlianlaw.com

These pleadings were served on all co-Defendants counsel by e-mail only.

Charlotte D. Ariail

November 16, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

COURT OF COMMON PLEAS
06-CP-02-1230

HEATHER HERRON, ET AL.
PLAINTIFFS
VS.

CARMAX AUTO SUPERSTORES, INC., ET AL.
DEFENDANTS

TRANSCRIPT OF RECORD

NOVEMBER 23, 2009
BAMBERG, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DOYET A. EARLY, III, JUDGE.

A P P E A R A N C E S:

MICHAEL E. SPEARS, ESQ.
A. CAMDEN LEWIS, ESQ.
RICHARD A. HARPOOTLIAN, ESQ.
GEDNEY M. HOWE, III, ESQ.
ATTORNEYS FOR THE PLAINTIFF

STEVEN W. HAMM, ESQ.
JAMES Y. BECKER, ESQ.
HARRY CLAYTON WALKER, JR., ESQ.
BRADFORD N. MARTIN, ESQ.
JOSEPH GREGORY STUDEMEYER, ESQ.
ATTORNEYS FOR THE DEFENDANT

LISA H. DAVENPORT
OFFICIAL COURT REPORTER

I N D E X O F W I T N E S S E S

THERE'S BEEN FILED THE DEPOSITION OF RICHARD TAYLOR, THE 30(B)(6) DESIGNEE OF TAYLOR TOYOTA.

THE COURT: HOLD ON ONE SECOND. YOU'VE GIVEN ME AN EXHIBIT BOOK?

MR. LEWIS: IT WON'T BE IN THAT ONE BECAUSE THIS CHANGE OF DIRECTION. WE WILL BE GLAD TO FURNISH THAT TO YOU, BUT I WANT TO MAKE SURE THAT THE RECORD HAS ALREADY FILED THE 30(B)(6) OF RICHARD TAYLOR, MIKE RITZ -- MR. WALKER'S PEOPLE TELL US THAT THE ORIGINAL OF THAT'S BEEN FILED WITH THE COURT -- AND THE EXHIBIT TO THAT -- IS THAT CORRECT?

MR. WALKER: THAT'S CORRECT, YOUR HONOR.

MR. LEWIS: AND WE HAVE THE -- SOME OTHER PIECES OF EVIDENCE THAT WE WOULD OFFER AND THESE ARE THE -- I THINK THEY'RE ALREADY ATTACHED TO MR. RITZ'S DEPOSITION, BUT WE WOULD OFFER THESE AS EXHIBITS A, B, AND C.

MR. WALKER: THERE ARE FOUR EXHIBITS HERE, YOUR HONOR -- A THROUGH D.

MR. LEWIS: YES.

MR. WALKER: OKAY.

THE COURT: NO OBJECTION.

(WHEREUPON, PLAINTIFFS' EXHIBITS A - D WERE MARKED FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

MR. LEWIS: AS TO THAT THE MEANING OF THE STATUTE I THINK IT'S VERY IMPORTANT AND WE WANT TO EMPHASIZE TO THIS COURT THAT THE MEANING OF THIS STATUTE CONTROLS THE ENTIRE CASE AND THE FIRST THING IS TO PUT ON TO THE SCREEN WHAT WE'RE ASKING FOR AND RIGHT THERE IT IS. CLOSING FEE. IN THE STATUTE IT SAYS A CLOSING FEE IS ONE OF THE MOST OPERATIVE AND ONE OF THE MOST IMPORTANT OF ALL THE WORDS

IN THE STATUTE AND WE SAY IS A PREDETERMINED SET FEE FOR THE REIMBURSEMENT OF CLOSING COSTS SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION.

THE COURT: ALL RIGHT.

MR. LEWIS: AND WHY DO WE SAY THAT? BECAUSE --

THE COURT: HOLD ON ONE SECOND. I'M LOOKING AT YOUR REPLY MEMORANDUM.

MR. LEWIS: YES, SIR.

THE COURT: SPECIFICALLY, PAGE ONE, PLAINTIFFS REQUEST THAT THE COURT DECLARE THE FOLLOWING: ONE, IT IS A VIOLATION OF THE STATUTE 37-2-307 IF A DEALER CHARGES CLOSING FEES THAT ARE NOT FOR REIMBURSEMENT OF CERTAIN OVERHEAD COSTS. IS THAT WHAT YOU'RE GOING THROUGH NOW?

MR. LEWIS: THAT'S CORRECT.

THE COURT: ALL RIGHT.

MR. LEWIS: THE CLOSING -- AND WE TOOK IT A DIFFERENT WAY AND WE SAID, WELL, THAT DOESN'T TELL THE COURT WHAT WE WANT TO DECLARE WHAT THE STATUTE MEANS AND WE'RE SAYING THE STATUTE MEANS A CLOSING FEE IS A PREDETERMINED SET FEE FOR THE REIMBURSEMENT OF CLOSING COSTS SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION. THE REASON FOR THAT IS IN THIS CASE, FOR EXAMPLE, THEY TESTIFY -- 30(B)(6) TESTIFIES AND THIS SETS UP WHY THERE IS A JUDICIAL CONTROVERSY -- THAT IT'S FOR A PROFIT; THAT IT'S ROUGH AND USED TO MAKE A PROFIT. IT WAS NOT TIED TO ANYTHING, AND, SO, WE SAY YOU JUST CAN'T PULL THE CLOSING FEE OUT OF THE AIR, AND, SO, IT HAS TO BE A PREDETERMINED SET FEE FOR THE REIMBURSEMENT OF CLOSING COSTS SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION.

NOW WHY -- AND THEN YOU'LL READ THE STATUTE THAT THE ADVERTISED PRICE -- THE ADVERTISED PRICE IS A VERY IMPORTANT UNDEFINED TERM AND WE SAY AS USED IN THIS STATUTE INCLUDES ALL ORAL, WRITTEN, OR GRAPHIC STATEMENTS OF PRICE GIVEN THROUGHOUT THE NEGOTIATING PROCESS. WHY DO WE SAY THAT? BECAUSE IN OUR MEMORANDUM YOU'LL SEE IT IS A VIOLATION IF THE DEALER FAILS TO INCLUDE THE CHARGING OF CLOSING FEES IN THE THE ADVERTISED PRICE.

SO WE WANTED TO TELL YOU WHAT IS AN ADVERTISED PRICE. IT'S A PRICE ON A WINDOW STICKER. IT IS ALL THOSE THINGS

A THROUGH G AND THEN WE SAID, WELL, THE BEST WAY TO DO IT IS TO COMBINE ALL OF THOSE INTO ONE STATEMENT AND THAT STATEMENT IS AS USED IN THE STATUTE INCLUDES ALL ORAL, WRITTEN, OR GRAPHIC STATEMENTS OF PRICE GIVEN THROUGHOUT THE NEGOTIATING PROCESS, AND, NUMBER THREE, WE'RE SAYING IF YOU CHARGE AN ILLEGAL CLOSING FEE, IT'S AN UNFAIR ACT IN VIOLATION OF THE DEALER'S ACT. THE DEALER'S ACT SAYS IF YOU DO AN UNFAIR ACT, IT'S A VIOLATION OF THE DEALER'S ACT AND WE ARE SAYING THE CHARGING OF AN ILLEGAL CLOSING FEE IS AN UNFAIR ACT. THOSE ARE THE THREE KIND OF BASIC PROPOSITIONS THAT WE'RE ASKING THIS COURT TO DETERMINE.

NOW, THE PRIMARY STATUTE AT ISSUE IS 37-2-307 AND YOU CAN SEE THE VEHICLE DEALER CHARGING CLOSING FEES ON A MOTOR VEHICLE SALES CONTRACT SHALL PAY TEN DOLLARS, SUCH AND SUCH. THE CLOSING FEE MUST BE INCLUDED IN THE ADVERTISED PRICE OF -- THERE IS OUR ADVERTISED PRICE -- DISCLOSED ON THE SALES CONTRACT, AND DISPLAYED IN A CONSPICUOUS LOCATION IN THE MOTOR VEHICLE DEALERSHIP. SO, WE'RE LOOKING AT HOW MUCH IS THE CLOSING FEE? HOW DO YOU DETERMINE THE CLOSING FEE AND WHAT'S THE ADVERTISED PRICE?

WELL, A LITTLE HISTORY, YOUR HONOR. THE FEES USED TO BE ILLEGAL AND ONE OF THE PRINCIPAL PEOPLE BACK BEFORE THERE WAS A STATUTE WHO WROTE AND FILED AND TALKED ABOUT THE ILLEGALITY OF THE FEE WAS STEVE HAMM. HERE IS WHAT HE SAID. "SUCH FEES WITHIN THEMSELVES WERE A VIOLATION OF

THE LAW. THE DEPARTMENT HAS TAKEN THE POSITION" -- THAT IS THE DEPARTMENT OF CONSUMER AFFAIRS -- "THAT ADDITIONAL CLOSING FEES ARE A VIOLATION OF THE LAW." THOSE ARE FROM THE AFFIDAVIT OF STEVE HAMM FILED IN THE SUPREME COURT.

AND AN OPINION CAME OUT OF THE SUPREME COURT AND IN FOOTNOTE EIGHT THERE WAS A VERY TELLING STATEMENT. IT'S IN FANNING VERSUS FRITZ PONTIAC CADILLAC BUICK. "WE DO NOT IMPLY THAT SUCH CLOSING FEES MAY NOT BE ATTACKED ON OTHER GROUNDS SUCH AS CLAIM FOR FRAUD, MISREPRESENTATION, OR UNFAIR TRADE PRACTICES." AND THAT'S EXACTLY WHAT WE SAY CLOSING FEES ARE WHEN THEY'RE IN VIOLATION OF THE STATUTE; THAT IS, WHEN THEY HAVEN'T DONE AS THE STATUTE REQUIRES OR IN SOME CASES WHERE THEY HAVE NOT PAID THEIR TEN DOLLARS AND THEY ADOPTED THE STATUTE IN RESPONSE TO AN INQUIRY OR A CONCERN OF CERTAIN CAR DEALERS.

IT IS INTERESTING THAT THE SOUTH CAROLINA AUTOMOBILE DEALERS ASSOCIATION UNANIMOUSLY WAS AGAINST ADOPTING A STATUTE. THEY WERE AFRAID THAT SINCE WE ONLY PAID $300 FOR TAXING THAT IT WOULD BRING ATTENTION TO IT AND YOU CAN READ THAT IN THE DEPOSITION OF PAT WATSON WHICH WE WILL FILE IN THIS CASE AND WE MAKE IT A PART OF THE RECORD HERE.

NOW, ONE OF THE DOCUMENTS THAT KIND OF GIVES GOOD BACKGROUND IS THE BRYAN SMITH LETTER, DICK SMITH TO -- ON

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS Case No. 2012-CP-39-01554

2013 FEB -5 P 12: 34

Julie Freeman,

Plaintiffs,

v.

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

Defendants.

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

Defendant J.L.H. Investments, Inc. d/b/a Hendrick Honda of Easley ("Hendrick Honda of Easley") hereby moves pursuant to Rule 7(b)(1), SCRCP, for an order (1) establishing the procedural requirements for maintaining this action under S.C. Code Ann. § 56-15-110(2);[1] (2) declaring the scope or membership of the Plaintiff group; and (3) requiring Plaintiff Julie Freeman ("Plaintiff") to give notice to the Plaintiff group prior to any decision on the merits.

[1] This motion renews and amends Hendrick Honda of Easley's Motion to Declare the Scope of the Plaintiff Group and to Establish Procedural Requirements filed on December 8, 2010. By amending or renewing this motion, Hendrick Honda of Easley specifically does not waive any arguments relating to the inapplicability of S.C. Code Ann. § 56-15-110(2) to the claims alleged by the Plaintiff. Hendrick Honda of Easley reserves its previously asserted arguments that closing fees are governed exclusively by the Closing Fee Statute, S.C. Code Ann. § 37-2-307, and that the Consumer Protection Code, S.C. Code Ann. § 37-5-202, provides the exclusive remedies for any violation of the Closing Fee Statute, which arguments are more fully described in Hendrick Honda of Easley's Motion for Judgment on the Pleadings, filed on December 8, 2010.

INTRODUCTION

The Court has previously ruled that S.C. Code § 56-15-110(2) creates a substantive right for Plaintiff to proceed in a representative capacity on behalf of certain other persons who have purchased motor vehicles from Hendrick Honda of Easley. (Order Denying Motions to Dismiss, dated July 31, 2007, at 2.) However, the Court has never entered an order expressly defining the scope or membership of the group of persons Plaintiff represents.

In particular, Plaintiff asserts that the Plaintiff group includes not only all individuals who paid "illegal" closing fees to Hendrick Honda of Easley in the four years prior to the commencement of this action, but also all persons who paid "illegal" closing fees to Hendrick Honda of Easley at any time after the commencement of this action. (*See* Plaintiff's Motion for Order Releasing Hendrick Honda's Purchaser Information dated December 17, 2010, p. 6, 7) (arguing that the Plaintiff represents all persons who paid closing fees after this action was commenced based on Plaintiff's claim for injunctive relief and that "the Plaintiff Group continues to expand.")

In an attempt to resolve some of these issues, Hendrick Honda of Easley's Amended Motion seeks an order requiring Plaintiffs to plead and prove the procedural requirements of Rule 23, SCRCP, for prosecuting Plaintiff's claims under the Dealers Act. Hendrick Honda of Easley's Motion also seeks an order declaring that the group represented by Plaintiff is limited to persons who paid "illegal" closing fees to Hendrick Honda of Easley within four years prior to the commencement of this action. Finally, to protect the due process rights of Hendrick Honda of Easley and the absent group members Plaintiff represents, Hendrick Honda of Easley seeks an order requiring

Plaintiff to give notice of the pendency of this action and an opportunity to opt out to all members of the Plaintiff group prior to any trial or other decision on the merits of this case.

ARGUMENT

I. THE COURT MUST INTERPRET S.C. CODE ANN. § 56-15-110(2) IN HARMONY WITH RULE 23, AND SHOULD APPLY RULE 23 IN THIS CASE TO REQUIRE PLAINTIFF TO PLEAD AND PROVE APPROPRIATE PROCEDURAL REQUIREMENTS FOR PROSECUTING PLAINTIFF'S CLAIMS UNDER THE DEALERS' ACT.

After this Court issued its ruling that Rule 23, SCRCP, does not apply to the Plaintiff's group action, the South Carolina Supreme Court issued two opinions which bear directly on this issue. In *Grazia v. South Carolina State Plastering, LLC,* 390 S.C. 562, 703 S.E.2d 197 (2010), the court held that courts must harmonize seemingly conflicting court rules and statutes wherever possible. In reversing the trial court's ruling that the Notice and Opportunity to Cure Construction Dwelling Defect Act ("Right to Cure Act") was incompatible with Rule 23, SCRCP, the Supreme Court held that the trial court had a duty to reconcile seemingly inconsistent statutes using "basic precepts of statutory construction, namely harmonization." *Id.* at 571, 703 S.E.2d at 201. The Court ultimately held that Rule 23 did not conflict with the Right to Cure Act because Rule 23 was merely the procedural device through which claims under the Right to Cure Act could be brought in a representative capacity on behalf of all others similarly situated to the named Plaintiff. *Id.* at 576, 703 S.E.2d at 204.

In *Herron v. Century BMW*, 387 S.C. 525, 536, 693 S.E.2d 394, 399 (2010), the court, in ruling on whether to require arbitration of claims brought under § 56-15-110(1), characterized the purpose of § 56-15-110(2) as follows: "[t]he Legislature has made clear that the public policy of this State is to provide consumers with a non-waivable right to bring ***class action suits*** for violations of the Dealers Act and that any contract prohibiting ***a class action suit*** violates our State's public policy and is void and unenforceable." (Emphasis added.)

In order to comply with the Supreme Court's holdings in *Grazia* and *Herron*, this Court should reconcile Rule 23 and section 56-15-110(2). The Court has already held that section 56-15-110(2) creates a substantive right. (Order Denying Motions to Dismiss, dated July 31, 2007, at 2.)[2] Section 56-15-100(1) clearly contains a substantive right to bring a claim:

> In addition to temporary or permanent injunctive relief as provided in Section 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

[2] Hendrick Honda of Easley has previously argued that section 56-15-110(2) does not create a substantive right and that the Plaintiff should be required to plead and prove the requirements of Rule 23. Hendrick Honda of Easley's argument, although previously rejected by this Court, is supported by the Supreme Court's decision in *Grazia*. In *Grazia*, the Supreme Court found that the Right to Cure Act did not endow substantive rights on contractors by requiring a homeowner to give a contractor notice and the opportunity to cure a defect before the homeowner filed a lawsuit. *Grazia*, 390 S.C. at 573, 703 S.E.2d at 202. The Supreme Court emphasized that the right to advance notice of a claim and information concerning the defect was the same "right" already available to any defendant under existing discovery and document production requirements of Rule 34(a)(2), SCRCP. *Id.* Similarly, the rights afforded customers under section 56-15-110(2) to bring suit in a representative capacity is the same right afforded any plaintiff under Rule 23, SCRCP (unless prohibited by statute). The holding in *Grazia* thus supports Hendrick Honda of Easley's original position that section 56-15-110(2) does not create a substantive right. If the Court determines, based on the holding in *Grazia*, that section 56-15-110(2) does not create a substantive right, then the Court should also hold that Rule 23 applies to Plaintiff's claims in this action.

> by him sustained, and the cost of suit, including a reasonable attorney's fee.

S.C. Code § 56-15-110(1).

However, by the plain language of the statute, subsection two does nothing more than allow a plaintiff to bring that action in a representative capacity: "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 § 56-15-100(2). This is simply the converse of other statutes which expressly prohibit the class action mechanism for certain claims. See, e.g., S.C. Code § 39-5-140(a) (persons injured by unfair trade practices "may bring an action individually, but not in a representative capacity, to recover actual damages"); S.C. Code Ann. § 37-5-202 (expressly prohibiting class actions for violations of the Consumer Protection Code); S.C. Code Ann. § 9-21-40 (Supp. 2009) (prohibiting claims prosecuted on behalf of a class).

Whereas § 56-15-110(2) expressly allows group actions to be brought in a representative capacity by a particular named plaintiff, Rule 23 provides the procedural requirements for prosecuting such actions on behalf of the represented persons. Rule 23 is procedural only and merely provides the mechanism through which the procedural right in section 56-15-110(2) is pursued by a named Plaintiff in a representative capacity. *See Grazia*, 390 S.C. at 573, 703 S.E.2d at 202; *Abron v. Black & Decker (U.S.), Inc.*, 654 F.2d 951, 967 (4th Cir. 1981) describing Rule 23 as a "device to effectuate Title VII's broad remedial purposes") (internal citations omitted); *see also Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 332 (1980) "[T]he right of a litigant to employ Rule 23 is a procedural right only, ancillary to the litigation of substantive claims."); *Rule 1, SCRCP*

("These rules govern the procedure in all South Carolina courts in all suits of a civil nature . . . and shall be construed to secure the just, speedy, and inexpensive determination of every action."). Because Rule 23's procedural requirements only implement the right found in section 56-15-110(2), there is no irreconcilable conflict between the two provisions and the court should determine that both are applicable in this case. *See Grazia,* 390 S.C. at 571, 703 S.E.2d at 201; *see also Cullum Mechanical Constr., Inc. v. Charleston,* 272 S.C. 553, 556, 253 S.E.2d 106, 107 (1979) (statutes concerning the same subject matter should be construed so as "to render both operative"). Plaintiff has asserted her substantive right under section 56-15-110(2), and must now be required to plead and prove the procedural requirements of Rule 23.[3]

II. THE COURT SHOULD DECLARE THAT THE PLAINTIFF GROUP IS LIMITED TO PERSONS WHO PAID AN "ILLEGAL" CLOSING FEE TO HENDRICK HONDA OF EASLEY WITHIN FOUR YEARS PRIOR TO THE COMMENCEMENT OF THE ACTION.

A. Plaintiff's Third Amended Complaint expressly limits the group to customers who paid closing fees in the four years prior to August 29, 2006.

This action was filed on August 29, 2006, and the four-year period of limitations under the Dealers Act is thus computed from that date. Plaintiff's First Amended Complaint filed on October 28, 2006, alleges that "Plaintiffs are suing for the benefit of all South Carolina buyers whom [sic] paid administrative fees to Defendants" and that "Plaintiffs and all South Carolina car buyers whom [sic] paid administrative fees to Defendants *in the past four years* have been injured by Defendants['] deceptive acts . . .

[3] Public policy dictates this conclusion as well. As the Supreme Court noted in *Grazia,* the class action device under Rule 23 is favored in South Carolina. *Grazia*, at 7.

." (First Am. Complt. pp. 63-64, ¶¶ 398-99, emphasis added.) In her Third Amended Complaint,[4] filed on January 16, 2013, Plaintiff alleges that she is suing "for the benefit of all others whom paid 'closing fees' . . . to Defendant" from 2002 to 2006, which Plaintiff claims were illegal because "Defendant has not calculated its closing costs for [2002 to 2006.]" (Third Am. Complt. ¶¶ 27-31, 71.) Thus, since the beginning of the case, Plaintiff has alleged only that she represents car buyers who paid closing fees within the four years immediately prior to the commencement of the action. Plaintiff does not allege that she represents anyone else.

As one court has stated, a trial court is not required

> to rewrite a class definition and redraw a class boundary submitted by plaintiffs' counsel to expand the class to encompass individuals excluded by the plain terms of the proffered class definition. . . . Having selected and litigated the class definition of their choice, plaintiffs must live with that choice.

Fisher v. Ciba Specialty Chems. Corp., 238 F.R.D. 273, 300 (S.D. Ala. 2006). Based on the foregoing, the Plaintiff group should be limited as Plaintiff expressly pleaded in her First and Third Amended Complaints.

B. Plaintiff cannot represent any person who had not paid a closing fee to Hendrick Honda of Easley when this action was commenced.

Plaintiffs in a class action cannot represent anyone who would not be able to assert a claim individually. *Clay v. Am. Tobacco Co.*, 188 F.R.D. 483, 490 (S.D. Ill. 1999) ("The definition of a class should not be so broad as to include individuals who are without standing to maintain the action on their own behalf."); *Leach v. Standard Register Co.*, 94 F.R.D. 621, 625 (E.D. Ark. 1982) (holding in an employment discrimination suit that "a plaintiff may bring a class action on behalf of those similarly

[4] Plaintiff never filed a second amended complaint.

situated who have not yet filed charges with the EEOC, . . . [b]ut a plaintiff cannot represent those who could not have filed a charge with the EEOC at the time the plaintiff filed her charges.").

All events giving rise to a claim must have occurred before an action can be commenced on the claim.

> Generally, an action cannot properly be commenced until all of the essential elements of the cause of action are in existence—that is, until the cause of action is complete, the subsequent occurrence of a material fact will not avail in maintaining it. The rights and liabilities of the parties, that is, their rights to an action for judgment or relief, depend upon the facts as they existed at the time of the commencement of the action, and not at the time of trial.

Am. Agric. Chem. Co. v. Thomas, 206 S.C. 355, 360, 34 S.E.2d 592, 594 (1945). "To permit the bringing of a suit, the elements of a cause of action must exist at or prior to the time suit is brought. The nonexistence of a cause of action when suit was begun cannot be cured by amendment of the pleadings to cover subsequently accruing rights." 1 Am. Jur. 2d *Actions* § 45 (2010) (footnotes omitted).

In this case, the Court has ruled that "a named Plaintiff does not have standing to sue, on behalf of [her]self or others, any Defendant with which [s]he did not transact any business." (Order on Plaintiff's Rule 41(a) Motion, etc., dated January 31, 2008, p. 5.) By the same logic, purchasers who had not paid a closing fee to Hendrick Honda of Easley when this action was commenced also had no standing to sue Hendrick Honda of Easley for affirmative, monetary damages. Future purchasers had not suffered an injury in fact and were thus not able to assert individual claims against Hendrick Honda of Easley. Because Plaintiff cannot represent anyone who could not have asserted an individual claim, Plaintiff cannot represent persons who had not paid closing fees to Hendrick Honda of Easley as of the date this action was commenced.

C. Plaintiff's requests for declaratory judgment and injunctive relief do not warrant including additional class members.

Plaintiff concedes that she failed to include future customers of Hendrick Honda of Easley in her group definition, but she argues that she represents persons who purchased vehicles after the commencement of this action because the First Amended Complaint seeks, in addition to damages, declaratory judgment and injunctive relief. Plaintiff thus asserts that the Plaintiff group continues to expand every day. (*See* Plaintiff's Motion for Order Releasing Hendrick Honda's Purchaser Information dated December 17, 2010, pp. 6-8.)

Plaintiff's argument is specious. Plaintiff can obtain declaratory judgment and injunctive relief, to the extent appropriate, without joining as class members persons who purchased vehicles after the commencement of this action. Seeking declaratory judgment and injunctive relief thus does not justify or require expanding the classes of persons represented to include persons who purchased vehicles after the commencement of this action. Moreover, the primary relief sought by Plaintiff is for damages and statutory penalty, not injunctive relief. (*See* First Am. Complt. ¶¶ 399-401 and Third Amended Complaint at 14-15 (requesting double actual damages, punitive damages, and attorneys' fees and costs).)

To support her argument, Plaintiff has referred to *Newberg on Class Actions* as stating that in "actions seeking declaratory or injunctive relief against conduct that is likely to cause future injuries similar to those suffered at the time of the suit . . . , persons who might be injured in the future may be included in the class." 1 Newberg on Class Actions § 3.7, p. 260 (4th ed. 2002) Plaintiffs fail to note, however, that *Newberg* also

says, "Future members should not automatically be included in a class whenever prospective relief is sought." *Id.* at 264. As *Newberg* explains,

> Courts have excluded future class members from a proposed class for a variety of reasons: there is no need to include them in the class; future members do not exist and have no standing to litigate; future members will have the benefit of and obtain prospective relief from any injunctive relief rewarded; [and] inclusion of future members will make the litigation unduly complex or too amorphous to manage or will prejudice the rights of such members . . . .

Id. at 262-64 (footnotes omitted).

A number of reported cases have excluded future members from a class for various reasons. *E.g., Clay v. Am. Tobacco Co.*, 188 F.R.D. 483, 490 (S.D. Ill. 1999) (refusing to certify a class where "a new set of plaintiffs would be added to the class each day"); *Tibble v. Edison Int'l*, 2009 U.S Dist. LEXIS 120939, at *28 (C.D. Ca. June 30, 2009) ("the Court has the discretion to exclude future class members if there is no need to include them in the class because the future members will have the benefit of any injunctive relief awarded") (citing *Selzer v. Board of Educ.*, 112 F.R.D. 176, 182 (S.D.N.Y. 1986) (excluding future class members in a sex discrimination case as it was "unnecessary and inadvisable . . . to certify so broad a class")); *Minority Police Officers Ass'n v. City of South Bend*, 555 F. Supp. 921 (N.D. Ind. 1983) (holding that a proposed class could not include all future minority police officers and applicants because their only claim would be for a threatened violation of constitutional right, and the case or controversy requirement was thus not satisfied); *Strong v. Arkansas Blue Cross and Blue Shield, Inc.*, 87 F.R.D. 496 (E.D. Ark. 1980) (finding in an employment discrimination case that a class could not include future members because they did not exist yet, could not be injured, and in fact, have no standing to litigate and their claims were not ripe for judicial resolution).

D. Ordinary rules of civil procedure preclude expansion of the group to include those who paid closing fees after filing of the Complaint.

Rule 15, SCRCP, prohibits expansion of the group to include claims which did not exist when the complaint was filed. "[A] plaintiff can recover only upon the facts which existed at the time of the commencement of the action." *Richardson v. Register*, 227 S.C. 81, 91, 87 S.E.2d 40, 45 (1955). As one commentator explained:

> [t]he pleadings ordinarily relate to the state of facts existing at the time of the commencement of the action. In the absence of supplemental pleadings, all issues are to be determined as of that date. If new matter subsequently arises, ordinarily it can neither be introduced under the original pleadings nor can be it be brought in by amendment.

71 C.J.S., *Pleading* § 468 (Database Updated May 2011). "*New matter arising after the commencement of an action must be raised by supplemental pleading.*" *Id.* (emphasis added); *see also Helm v. Helm*, 289 S.C. 169, 172-73, 345 S.E.2d 720, 722 (1986) (under prior statute, husband's amended answer asserting separation for one year as a ground for divorce was improper; husband had to obtain leave to file a supplemental pleading because this relief was not available when husband filed original answer). Freeman cannot therefore seek recovery for persons who purchased vehicles *after* she filed this action. The facts upon which those customers' claims, if any, would be based did not exist when she commenced this suit. She has not obtained leave of court to file a supplemental pleading.

In any event, a supplemental pleading is not available. Freeman does not seek to add new claims or details of her transaction with Hendrick Honda of Easley. Rather, she seeks to add new plaintiffs to assert claims against the existing Defendant. Rule 15 cannot be used in this manner. "Rules 15, 20, and 21 are applicable only to *existing* parties." *Valentine v. Davis*, 319 S.C. 169, 171, 460 S.E.2d 218, 219 (Ct.App. 1995)

(emphasis added). As this court has previously noted, "Rule 15, SCRCP, does not allow the existing plaintiffs to add new plaintiffs to the case in order to assert a claim against the defendant." (August 2007 Order of the Honorable Doyet Early denying Plaintiff's Motion to Amend); *see also Valentine*, 319 S.C. at 172, 460 S.E.2d at 219.

E. A group definition with no temporal limitations is unmanageable and unfair.

Compelling practical concerns require that the scope of the group be defined by appropriate temporal limitations. Basic questions of how this complex litigation can be managed arise if the group is ever-expanding: *E.g.*, How can the membership of the group be ascertained? How can proper notice be given to all group members? At what point, if ever, will membership in the group cease to expand? These issues and others have caused courts to reject attempts to include future members in a class. *E.g., Moore v. W. Pennsylvania Water Co.*, 73 F.R.D. 450, 453 (W.D. Pa. 1977) (future employees were not included because they would render the class "an amorphous, phantom group"); *Edwards v. Schlesinger*, 377 F. Supp. 1091 (D.D.C. 1974) (finding impossibility of giving notice to future members of sex discrimination class); *Lamb v. Hamblin*, 57 F.R.D. 58 (D. Minn. 1972) (future members of a class were unidentifiable and lacked standing to sue).

For all the foregoing reasons, the Court should limit the class represented by Plaintiff to those customers who paid "illegal" closing fees to Hendrick Honda of Easley between August 29, 2002, and August 29, 2006.

III. THE COURT SHOULD REQUIRE PLAINTIFF TO GIVE NOTICE TO THE GROUP IN ORDER TO MAINTAIN MINIMAL DUE PROCESS.

Even if the Court does not require Plaintiff to plead and establish all of the procedural requirements of Rule 23, the Court should require the Plaintiff to give notice to the group she represents in order to protect the constitutional rights of both the absent group members and Hendrick Honda of Easley.

A. The due process rights of the absent group members require this Court to order Plaintiff to give notice to the group.

[I]n order to provide minimal due process, absent class plaintiffs:

> must receive notice plus an opportunity to be heard and participate in the litigation, whether in person or through counsel. The notice must be the best practicable, "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." The notice should describe the action and the plaintiffs' rights in it. Additionally, due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an "opt out" or "request for exclusion" form to the court.

Hospitality Mgmt. Assocs. v. Shell Oil Co., 356 S.C. 644, 654, 591 S.E.2d 611, 616 (2004) (quoting *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985)); *see also id.* at 662, 591 S.E.2d at 620 ("Without question, due process requires that absent class plaintiffs be given notice."); *accord, Salmonsen v. CGD, Inc.*, 377 S.C. 442, 661 S.E.2d 81 (2008) (quoting the foregoing language with approval and holding that an "opt-out" procedure rather than an "opt-in" procedure is required in South Carolina courts).

B. Without notice to the group, this Court has no personal jurisdiction over the absent group members.

Courts have long held that a court has no personal jurisdiction over absent class members until notice is given. *See Smith v. Shawnee Library Sys.*, 60 F.3d 317, 321 (7th Cir. 1995) ("members of a . . . class must receive reasonable notice and an opportunity to

opt out; that is an absolute requirement for a court to exercise jurisdiction over those class members") (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974); *Gert v. Elgin Nat'l Indus., Inc.*, 773 F.2d 154, 159-60 (7th Cir. 1985)); *Mendez v. Radec Corp.*, 260 F.R.D. 38, 49 (W.D.N.Y. 2009) (citing *Gert*, 773 F.2d at 159) ("[n]otice to . . . class members is an unambiguous requirement for jurisdiction" and "[a] personal judgment entered without jurisdiction over the person violates due process and is void")). And, under South Carolina law, a judgment is void if the court acts without personal jurisdiction. *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006); *Thomas & Howard Co. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995).

C. To protect Hendrick Honda of Easley's due process rights, notice to the class is required before any decision on the merits.

In addition to protecting the due process rights of absent class members, notice to the class before any decision on the merits is required to protect Hendrick Honda of Easley's due process rights. As the U.S. Supreme Court has explained, a class-action defendant is entitled to no less due process protection than are absent class members.

> The burdens placed by a State upon an absent class-action plaintiff are not of the same order or magnitude as those it places upon . . . a defendant. A . . . defendant summoned by a plaintiff is faced with the full powers of the forum State to render a judgment *against* it. The defendant must generally hire counsel . . . to defend itself from the plaintiff's claim, or suffer a default judgment. The defendant may be forced to participate in extended and often costly discovery, and will be forced to respond in damages or comply with some other form of remedy imposed by the court should it lose the suit. The defendant may also face liability for court costs and attorney's fees. These burdens are substantial, and the . . . Due Process clause prevents the forum State from unfairly imposing them upon the defendant.

Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 808 (1985).

One of the due process rights to which a defendant in a class action is entitled is the right to be free from "one-way intervention," which arises when class members await

judgment on the merits and then opt-out in the face of an unfavorable ruling on the merits, thereby exposing the defendant to duplicative and burdensome litigation. The Supreme Court of California has explained this issue as follows:

> [A] defendant in a class action has a due process right to secure a determination of the issues relating to the suitability of the action as a class matter as well as the composition of the class and the form of notice to the members, prior to determination of the merits of the action. The rationale of this rule is: unless a decision on the merits is postponed until after the class issues are decided, a defendant is subject to "one-way intervention," which would allow potential class members to elect whether to join in the action depending upon the outcome of the decision on the merits. Thus, if the merits were decided favorably to the class, and notice followed such determination, most class members would join in the action, whereas they would decline if the determination was against the class.

People v. Pacific Land Research Co., 569 P.2d 125, 128-29 (Cal. 1977).

The California Supreme Court has further stated as follows:

> A largely settled feature of state and federal procedure is that ***trial courts in class action proceedings should . . . order class notice before ruling on the substantive merits of the action***. The virtue of this sequence is that it promotes judicial efficiency, by postponing merits rulings until such time as all parties may be bound, and fairness, by ensuring that parties bear equally the benefits and burdens of favorable and unfavorable merits rulings.

Fireside Bank v. Superior Court of Santa Clara County, 155 P.3d 268, 271 (Cal. 2007) (emphasis added) (citations omitted).

In *Peritz v. Liberty Loan Corp.*, 523 F.2d 349 (7th Cir. 1975), the district court entered judgment on the merits in favor of the plaintiffs before deciding class certification, and therefore before any notice was provided to absent class members. The Seventh Circuit Court of Appeals reversed, explaining that Rule 23 is clear that class members "are to be notified early enough to allow voluntary exclusion ***prior to 'judgment'*** and also early enough to allow for effective appearance of counsel." *Id.* at 354 (emphasis added). The procedure adopted by the district court failed to accomplish

this result and encouraged one-way intervention, and because absent class members did not receive notice as required by Rule 23, they were not bound by the district court's judgment.

In keeping with the reasoning set forth in the above cases, numerous other federal and state courts have also held that notice to class members must be given before any determination on the merits. *See, e.g., Amati v. City of Woodstock*, 176 F.3d 952, 957 (7th Cir. 1999) (explaining that the rule against one-way intervention "bars potential class members from waiting on the sidelines to see how the lawsuit turns out and, if a judgment for the class is entered, intervening to take advantage of the judgment"); *Katz v. Carte Blanche Corp.*, 496 F.2d 747 (3d Cir. 1974) (noting that the federal class action rule provides protection against one-way intervention after an interlocutory merits determination); *Spicer v. Chicago Bd. Options Exch., Inc.*, 1990 U.S. Dist. LEXIS 1478 at *4 (N.D. Ill. Jan. 30, 1990) (deferring a decision on the merits until notice had been given "so that persons who f[ell] within the definition of the class [were] not given a chance to opt out after [the court] ha[d] already issued a decision on the merits"); *Turner v. Murphy Oil USA, Inc.*, 2006 U.S. Dist. LEXIS 4472 at *14-15 (E.D. La. Feb. 6, 2006) (explaining that class notice "is meant to ensure that class members receive notice prior to settlement or adjudication on the merits"); *Byerson v. Equifax Info Servs., LLC*, 2009 U.S. Dist. LEXIS 1620, at *7 (D.S.C. Jan. 9, 2009) (referencing the prohibition on one-way intervention and holding that "[plaintiffs] are not allowed to sit idly by [and] watch what happens"); *Speights v. Stewart Title Guar. Co., Inc.*, 186 S.W.3d 715 (Ark. 2004) (holding that a merits determination should not transpire before the prospective class members were notified and the class composition determined); *Green v. Obledo*, 624

P.2d 256 (Cal. 1981) (recognizing the well-settled principle that procedural class action issues, including the exact composition of the class, must be resolved before a decision on the merits is reached); *Patterson v. BP Am. Prod. Co.*, 2010 Colo. App. LEXIS 211, at *14 (Colo. Feb. 18, 2010) (recognizing that procedural class issues must be determined before a decision on the merits); *Artie's Auto Body, Inc. v. Hartford Fire Ins. Co.*, 2008 Conn. Super. LEXIS 2907, at *10 (Conn. Nov. 12, 2008) (same); *O'Boskey v. First Fed. Sav. & Loan Ass'n*, 739 P.2d 301, 304-05 (Idaho 1987) (recognizing that class questions must be decided before a decision on the merits); *Rosolowski v. Clark Ref. & Mktg.*, 890 N.E.2d 1011, 1014 (Ill. App. 2008) (same); *McCastle v. Rollins Environ. Servs., Inc.*, 456 So.2d 612, 621 (La. 1984) (same); *Citizens Ins. Co. of Am. v. Daccach*, 217 S.W.3d 430 (Tex. 2004) ("notice must be given to the class, and class members given an opportunity to opt out, before the trial court addresses the merits of the class claims").

All of the above considerations are equally applicable here. In order to protect Hendrick Honda of Easley's due process rights, members of the group should not be allowed to await the outcome on the merits of this case before deciding whether to be bound by the judgment. Rather, Plaintiff should be required to provide notice of the pendency of this action—and absent group members should be required to decide whether to opt out or not—***before*** any decision on the merits.

D. Plaintiff should bear the cost of notice to the absent group members.

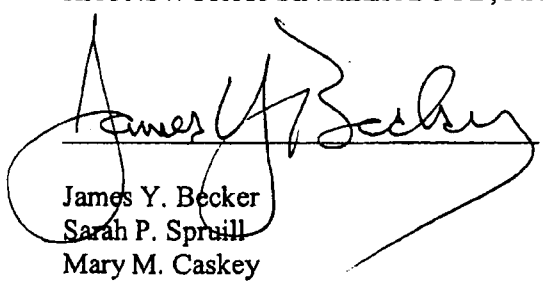
Rule 23(d)(2), SCRCP "provides that the notice is given by the party seeking to maintain the action as a representative suit. . . . The language of our rule imposes the costs of notice on the party seeking class status. This is consistent with federal practice." James F. Flanagan, South Carolina Civil Procedure, 197 (3d ed.); s*ee Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178-79 (1974) ("The usual rule is that a plaintiff must initially

bear the cost of notice to the class."). Because the action that Plaintiff seeks to maintain is, at a minimum, analogous to a class action under Rule 23, and in the absence of any other authority on this issue, the Court should be guided by the specific language of the Rule, which is as follows: "[The court] may order that notice be given in such manner as it may direct of the pendency of the action *by the party seeking to maintain the action on behalf of the class*." Rule 23(d)(2), SCRCP (emphasis supplied). Plaintiffs, therefore, should bear the costs of providing notice to the Class.

CONCLUSION

For the foregoing reasons, Hendrick Honda of Easley respectfully requests that the Court issue an order requiring Plaintiff to plead and prove the requirements under Rule 23, SCRCP, declaring that the Plaintiff group is limited to persons who paid an "illegal" closing fee to Hendrick Honda of Easley within four years prior to the commencement of the action, and requiring Plaintiff to give notice to absent group members of the pendency of this action and an opportunity to opt out before any decision on the merits occurs.

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Hendrick Honda of Easley

February 4, 2013

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-39-01554

Julie Freeman,

Plaintiffs,

v.

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

Defendants.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2013 FEB -5 D 12: 34

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Haynsworth Sinkler Boyd, P.A., attorneys for Defendant J.L.H. Investments, LP, a/k/a Hendrick Honda, do hereby certify that I have served counsel specified below in this action with a copy of the document/s specified below by e-mail only to the following e-mail address:

DOCUMENT: **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**

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February 4, 2013

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2013 MAR 13 P 5:15

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-39-01554

Julie Freeman,

Plaintiffs,

v.

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

Defendants.

DEFENDANT'S *SECOND REVISED*
MOTION FOR JUDGMENT ON THE PLEADINGS[1]

Pursuant to Rule 12(c), SCRCP J.L.H. Investments, Inc. d/b/a Hendrick Honda of Easley ("Hendrick Honda of Easley") ("Defendant") moves for judgment on the pleadings that, as a matter of law, (1) closing fees are governed exclusively by S.C. Code § 37-2-307 (the "Closing Fee Statute") rather than S.C. Code § 56-15-10 et seq. (the "Dealers Act") and (2) the exclusive remedy for a violation of the Closing Fee Statute is provided by the Consumer Protection Code rather than the Dealers Act.

INTRODUCTION

In their Second Cause of Action, Plaintiffs seek declaratory judgment with respect to, inter alia, "her rights and legal relations with the Defendant" under the Dealers Act and the Closing Fee Statute. (Third Amended Complaint ¶ 108.) By this motion, Defendant seeks judgment on the pleadings construing the Closing Fee Statute and the Dealers Act, respectively.

[1] This revised motion was previously named "Certain Defendants' Motion for Judgment on the Pleadings" and was filed December 8, 2010, in the action styled *Heather Herron, et al. v. Dick Dyer & Associates, Inc.*, et al., Case No. 2006-CP-02-1230. The revised motion is essentially identical to the original motion and the only significant additions are additional case citations. The Second Revised Motion adds additional analysis to Argument I.

and declaring how the two statutes relate to each other. This motion thus does not require the Court to consider or resolve any factual issues.

ARGUMENT

I. CLOSING FEES ARE GOVERNED EXCLUSIVELY BY THE CLOSING FEE STATUTE AND NOT BY THE DEALERS ACT.

In the First Cause of Action, Plaintiffs allege that by charging closing fees, Defendant violated the Manufacturers, Distributors, and Dealers Act (the "Dealers Act"), specifically S.C. Code § 56-15-30(a) and § 56-15-40(1). Section 56-15-30(a) states, "Unfair methods of competition and unfair or deceptive acts or practices as defined in Section 56-15-40 are hereby declared to be unlawful." Section 56-15-40(1) states, "[i]t shall be deemed a violation of paragraph (a) of Section 56-15-30 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." The Dealers Act does not mention closing fees.

The only South Carolina statute that expressly refers to closing fees is the Closing Fee Statute, and it 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.

S.C. Code § 37-2-307.

Plaintiffs allege that even if Defendants complied with the Closing Fee Statute, Defendants violated the Dealers Act. (First Amended Complaint p. 58, ¶ 350.) Defendant submits, however, that closing fees are governed exclusively by the Closing Fee Statute and not by the Dealers Act. Basic principles of statutory construction support this conclusion.

First, the Consumer Protection Code states that its provisions may be supplemented by the Uniform Commercial Code and the common law, but the Consumer Protection Code makes no similar reference to the Dealers Act. S.C. Code § 37-1-103. The Consumer Protection Code also states that it is "intended as a unified coverage of its subject matter." S.C. Code § 37-1-104. This statement indicates that the Legislature intended the Consumer Protection Code to be the exclusive statute governing the subjects addressed in the Code.

Second, the Closing Fee Statute is clearly specific to closing fees and deals with no other subject. "Generally, specific laws prevail over general laws, and later legislation takes precedence over earlier legislation." *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 412-13, 526 S.E.2d 716, 719 (2000); see also *Skinner v. Westinghouse Corp.*, 394 S.C. 428, 433, 716 S.E.2d 443, 445 (2011) (citing *Langley v. Pierce*, 313 S.C. 401, 403, 438 S.E.2d 242, 243 (1993)). The Dealers Act, by contrast, is a more general statute aimed primarily at the relationship between motor vehicle dealers and manufacturers and distributors. The Dealers Act, in fact, never mentions closing fees. The Closing Fee Statute, being the specific statute that addresses only closing fees, thus prevails over the Dealers Act, which is more general in scope.

Third, the order in which the Closing Fee Statute and the Dealers Act were enacted into law by the Legislature also supports the conclusion that the Closing Fee Statute rather than the Dealers Act governs closing fees. "As a general principal, . . . later legislation takes precedence over earlier legislation." *Lloyd v. Lloyd*, 295 S.C. 55, 57-58, 367 S.E.2d 153, 155 (1988) (citing *Duke Power Company v. South Carolina Public Service Commission*, 284 S.C. 81, 826 S.E.2d 395 (1985)); see also *I'On, LLC*, 338 S.C. at 412-13, 526 S.E.2d at 719. The Dealers Act became law on May 22, 1972, and S.C. Code §§ 56-15-30(a) and 56-15-40(1), on which Plaintiffs rely, have existed in their current form since that date. Act No. 1237, 1972 S.C. Acts

2419, §§ 4(a) and 5(1). The Closing Fee Statute was not enacted until 2000, which was 28 years later. Act No. 387, 2000 S.C. Acts 387, Part II, § 82. The Closing Fee statute, being the later legislation, takes precedence over the Dealers Act, which was enacted many years earlier. *I'On, LLC*, 338 S.C. at 412-13, 526 S.E.2d at 719.

Fourth, "[t]here is a presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects." *Lexington Law Firm v. S.C. Dep't of Consumer Affairs*, 382 S.C. 580, 587, 677 S.E.2d 591, 594 (2009) (quoting *State v. McKnight*, 352 S.C. 635, 648, 576 S.E.2d 168, 175 (2003)); see also *Kerr v. Richland Mem. Hosp.*, 383 S.C. 146, 148, 678 S.E.2d 809, 811 (2009) (quoting *Berkebile v. Outen*, 311 S.C. 50, 53, 426 S.E.2d 760, 762 (1993)). This presumption is applicable here because in 1996, four years before the Legislature enacted the Closing Fee Statute, the South Carolina Supreme Court held that a closing fee charged by a motor vehicle dealer did not violate the South Carolina Consumer Protection Code. *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399, 472 S.E.2d 242 (1996) (holding that the closing fee was neither an illegal "additional charge" under S.C. Code § 37-2-202 nor unconscionable under S.C. Code § 37-5-108)).

In 2000, the Legislature moved to regulate closing fees by enacting the Closing Fee Statute as a new section of the Consumer Protection Code. The new statute was clearly enacted in response to *Fanning* and had the effect of affirming the holding of Fanning, but with minor modifications. The Legislature thus clearly expressed an intent to regulate, but not to prohibit, closing fees within the context of the Consumer Protection Code rather than through some other statute—e.g., the Dealers Act.

This distinction between the Closing Fee Statute and the Dealers Act is further illustrated by comparing the scope of the Closing Fee Statute ("Every motor vehicle dealer charging closing fees on a motor vehicle sales contract . . .") with the provision of the Dealers Act describing agreements subject to that Act. S.C. Code § 56-15-80 provides as follows:

> The provisions of this chapter shall apply to all written or oral agreements *between a manufacturer, wholesaler or distributor with a motor vehicle dealer* including, but not limited to, the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or mortgages of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such agreements in which the manufacturer, wholesaler or distributor has any direct or indirect interest.

(emphasis added). The agreement and included fee at issue here are not subject to the Dealers Act. This is not an agreement between a manufacturer, wholesaler, or distributor and a motor vehicle dealer, but rather an agreement between a motor vehicle dealer and a consumer. On the other hand, the Closing Fee Statute applies to "motor vehicle sales contracts."

Given the plain language of these statutory provisions, there is no overlap between the Closing Fee Statute and the Dealers Act with respect to closing fees. Accordingly, any violation and therefore any remedy available to the Plaintiffs here falls under the Consumer Protection Code rather than the Dealers Act.

"The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd." *Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000); see also *Grazia v. South Carolina State Plastering, LLC*, 390 S.C. 562, 703 S.E.2d 197, 201 (2010). This rule is applicable here because the interpretation that Plaintiffs apparently advocate—that closing fees violate the Dealers Act—would lead to a result that is plainly absurd. The Closing Fee Statute clearly permits the charging of closing fees on the conditions set forth in the statute, and Plaintiffs' interpretation of

the Dealers Act would completely negate the Closing Fee Statute. Such a result would be absurd because the Dealers Act would then prohibit a fee that the Closing Fee Statute permits. As shown above, there is no conflict between the statutes; however, even to the extent the Court disagrees, the principles of statutory construction require that the Closing Fee Statute be applied to the exclusion of the Dealer's Act.

II. THE CONSUMER PROTECTION CODE PROVIDES THE REMEDIES FOR A VIOLATION OF THE CLOSING FEE STATUTE.

As previously mentioned, the Closing Fee Statute is part of Chapter 2 of the South Carolina Consumer Protection Code, S.C. Code § 37-2-101 et seq. Remedies for violations of the Closing Fee Statute are provided by Chapter 5 of the Consumer Protection Code, which states in relevant part as follows:

> (2) A consumer is not obligated to pay a charge in excess of that allowed by this title and has a right of refund of any excess charge paid. . . .
>
> (3) If a creditor has contracted for or received a charge in excess of that allowed by this title, or if a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable time after demand, the consumer may recover from the creditor or the person liable in an action other than a class action a penalty in an amount determined by the court not less than $100 nor more than $1,000. . . . For purposes of this subsection, a reasonable time is presumed to be 30 days.

S.C. Code § 37-5-202.

In addition, the rules of statutory construction previously discussed compel the conclusion that the Consumer Protection Code rather than the Dealers Act provides the remedies for a violation of the Closing Fee Statute. First, the remedies provided by the Consumer Protection Code are specific to the Consumer Protection Code and should thus take precedence over more general law. See *Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div.*, 319 S.C. 556, 462 S.E.2d 858 (1995) (holding that actions arising under the Uniform Commercial Code

(the "UCC") were governed by the then six-year statute of limitations incorporated in the UCC rather than the general three-year statute of limitations). Second, as previously discussed, the Dealers Act became law on May 22, 1972, and the Consumer Protection Code, including the original versions of the remedy provisions quoted above, did not become law until more than two years later. Act No. 1241, 1974 S.C. Acts 2879, § 5.202(3) and (4). The Consumer Protection Code, being the more recent and specific act, thus supersedes the prior, more general Dealers Act.

III. THE REMEDIES PROVIDED BY THE CONSUMER PROTECTION CODE ARE THE EXCLUSIVE REMEDIES FOR AN UNLAWFUL CLOSING FEE.

The remedies provided by the Consumer Protection Code for a violation of the Closing Fee Statute are not cumulative of other remedies. They are instead the exclusive remedies for a violation of the Closing Fee Statute.

"[W]hen a statute creates a substantive right . . . and provides a remedy for infringement of that right, the plaintiff is limited to that statutory remedy." *Lawson v. South Carolina Dep't of Corrections*, 340 S.C. 346, 350, 532 S.E.2d 259, 261 (2000) (citing *Campbell v. Bi-Lo, Inc.*, 301 S.C. 448, 454, 392 S.E.2d 477, 481 (Ct. App. 1990)). "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." *Petition of State ex rel. Hutchinson*, 182 S.C. 369, 374, 189 S.E. 475, 477 (1937). Similarly, if a statute, in creating a new right or cause of action where none existed before, also provides an adequate remedy for the enforcement of the right created, and the statutory remedy is not by its terms cumulative, the remedy prescribed by the statute must be pursued to the exclusion of any common-law remedy. 1 Am. Jur. 2d Actions § 53 (2010).

Prior to the enactment of the Closing Fee Statute, the Consumer Protection Code neither prohibited nor regulated closing fees. *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399, 472 S.E.2d 242 (1996). The enactment of the Closing Fee Statute thus created a new right or liability arising from closing fees charged in circumstances not complying with the requirements of the Closing Fee Statute, and as previously discussed, the Consumer Protection Code of which the Closing Fee Statute is a part expressly provides remedies for violations of the Closing Fee Statute.

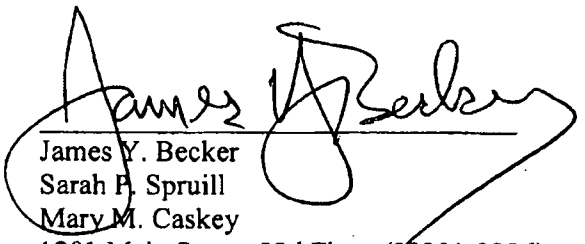
Additionally, the remedies provided by the Consumer Protection Code for violations of the Closing Fee Statute are not by their terms cumulative. S.C. Code § 37-5-202. By contrast, other remedies provided by the Consumer Protection Code are by their express terms in addition to other available remedies. S.C. Code § 37-5-108(7) (stating that the statutory remedies for unconscionable credit transactions are cumulative); S.C. Code § 37-20-200(E) (stating that the statutory remedies for violation of provisions designed to prevent consumer identity theft are cumulative); S.C. Code § 37-23-50(D) (stating that the statutory remedies for high-cost home loans are cumulative); S.C. Code § 37-23-70(I) (stating that the statutory remedies for consumer home loans are cumulative).

The remedies provided by the Consumer Protection Code for unlawful closing fees thus clearly meet the criteria for exclusivity. As a consequence, no other remedies, including remedies under the Dealers Act, are applicable to unlawful closing fees.

CONCLUSION

For the foregoing reasons, Defendant is entitled to judgment on the pleadings with respect to the issues discussed herein.

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August 5, 2013

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

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 of Easley,

Defendant.

DEFENDANT'S MOTION IN LIMINE AND FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR PARTIAL SUMMARY JUDGMENT

Defendant J.L.H. Investments, LP a/k/a Hendrick Honda of Easley ("Hendrick Honda of Easley") hereby moves to exclude certain evidence and arguments in the trial of this matter. In addition, Hendrick Honda of Easley seeks summary judgment as to all of Plaintiffs' claims or, in the alternative partial summary judgment, pursuant to Rule 56, SCRCP, for the reasons discussed below.

The named Plaintiff in this action is Julie Freeman Hair ("Hair"). The Third Amended Complaint in this action alleges two claims. The first seeks recovery pursuant to S.C. Code Ann. § 56-15-10 *et seq.* (the "Dealers Act") for violations of S.C. Code Ann. § 37-2-307 ("Closing Fee Statute"), and the second seeks Declaratory Judgment. The Court has already ruled on the Declaratory Judgment claim by order dated December

18, 2012, and has defined the terms "closing fee" and "advertised price" for purposes of this action in the same manner as those terms were defined in the *Ritz v. Taylor Toyota* case by order dated January 11, 2010 ("*Ritz* Order", attached as Ex. 1.)

At this time and in order to streamline the issues to be determined at trial, Hendrick Honda of Easley raises the following arguments regarding the remaining claim and what recovery may be available to the Plaintiffs.

I. Hendrick Honda of Easley's Motion for Summary Judgment or, in the alternative, Motion for Partial Summary Judgment

A. Hair's claim is barred because she voluntarily paid the closing fee in question.

Hair freely and voluntarily paid the fee in question after full disclosure by Hendrick Honda of Easley. The facts relating to Hair's transaction are largely undisputed by the parties. After test driving the 2005 Honda Accord that Hair ultimately purchased form Hendrick Honda of Easley, Hair began negotiating price with her sales consultant, Randall Clemment ("Clemment"). He showed her a Sales Worksheet at the start of the negotiation process, which had the "Administration Fee" of $299.00 preprinted in the lower right hand corner of the document. (Freeman Dep. p. 47, ll. 1-7; 17-22; *see also* Clemment Aff. ¶¶ 7-8.)[1] Though she could not remember any details about how the final price for the vehicle was negotiated, Hair testified that she was primarily concerned with the total monthly payment she was willing to pay and keeping the total price below $18,000. (Freeman Dep. p. 35, ll. 21-24, p. 51, ll. 11-19.) Clemment testified that the Sales Worksheet indicates that there was a substantial amount of negotiation between himself, Hair, and John Miller, the Sales Manager. Ultimately, Hendrick Honda of

[1] Cited deposition excerpts attached as Ex. 2, and cited affidavits attached as Ex. 3.

Easley offered to sell the vehicle for $17,975, exclusive of taxes and fees. (Clemment Aff. ¶¶ 8, 10.) Hair did not wish to purchase the vehicle that day because she did not have her trade in. (Freeman Dep. p. 54, ll. 16-19.)

Hair returned the following day. (Freeman Dep. p. 58, ll. 18-20, p. 59, ll. 22-24; Clemment Aff. ¶ 11.) Joseph Phillips ("Phillips"), then a Finance and Insurance Manager, reviewed the Sales Worksheet and Buyer's Order with her. (Phillips Aff. ¶ 8.) He testified that he believed that by the time he met with Hair, she had already been made aware that Hendrick Honda of Easley charges closing fees because she had signed the Sales Worksheet and been in the dealership to see the notices posted on the wall regarding closing fees. (*Id.* ¶¶ 4-6.) Nevertheless, after Phillips offered Hair certain service contracts and insurance, all of which she declined, he reviewed the Sales Worksheet and Buyer's Order side by side with her again. (*Id.* ¶¶ 7-8.) Neither Hair nor Phillips recalls her asking any questions about the fee, but both testified that Phillips was available to answer any questions. (*Id.* ¶ 9; Freeman Dep. p. 72, ll. 4-7.) Additionally, Hair testified that she would not have completed the transaction if she was not satisfied with the terms and the price, and that she understood she could leave the dealership at any time without buying the vehicle. (Freeman Dep. p. 69, ll. 4-16.)

Hair ultimately signed the Buyer's Order and agreed to purchase the vehicle and pay the fee. (*Id.* at p. 67, ll. 23-25.) Brandon Hair, Hair's then fiancé, and William Freeman, her father, were both with Hair when she purchased the car, and each testified that Hendrick Honda of Easley did not try to mislead or deceive her. (Hair Dep. p. 37, ll. 2-5; William Freeman Dep. p. 19, ll. 19-22.) Hair testified that she was treated well by

Hendrick Honda of Easley employees and pleased with the vehicle she purchased. (Freeman Dep. pp. 82-83.)

If a fully informed party pays money, he or she cannot afterwards recover those funds, even if it later turns out that the party was not legally obligated to make the payment. *Robinson v. City Council of Charleston*, 31 S.C.L. (2 Rich.) 317 (1845) (finding voluntary payment defense applies where "[t]here does not appear to have been any pretence but that the plaintiff was well acquainted with the facts connected with the demand and payment of his money to the City Council. At least, they were as well known to him as to the whole community."). The reason for the rule is that by making a payment, the person making the payment "*gives* it to whom he pays it, and makes it his, and closes the transaction between them." *Id.* (quoting *Brisbane v. Dacres*, 128 Eng. Rep. 641 (1813)). The result here should be the same. Hair was pleased with her bottom line deal and completed the transaction. Accordingly, she should be barred from pursuing this action now.

B. There is no issue of "advertised price" in this case.

The Court has defined the term "advertised price" as:

> (1) a notice given by a 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 letter or announcements paid by or on behalf of the seller in newspapers, radio, television, or electronic media.

(Ex. 1 at 12.) The Court has further found that the definition of "advertised price" does not include "Monroney" labels or prices negotiated with customers. (Ex. 1 at 12-13.) With respect to individual price negotiations, the Court found "[s]tatements 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 the public."

There are no allegations in the Third Amended Complaint that fit the Court's definition of "advertised price." The portion of the Third Amended Complaint relating to "advertised price" relates only to the negotiations and sales documentation between Hendrick Honda of Easley and Hair. (Third Amended Complaint at ¶¶ 37-66.) Therefore, there is no question of material fact relating to "advertised price" in this case, and partial summary judgment is appropriate.

C. Pre-judgment interest is not warranted here because this is not a case where a sum of money was ascertainable and due at the time of filing as required by S.C. Code Ann. § 34-31-20(A).

Under South Carolina law, prejudgment interest is recoverable only where the amount is both demandable and liquidated. *See* S.C. Code Ann. § 34-31-20(A) ("In all 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"); *Future Group v. Nationsbank*, 324 S.C. 89, 101, 478 S.E.2d 45, 51 (1996) ("Prejudgment interest is allowed on obligations to pay money from the time when payment is demandable, either by agreement of the parties or by operation of law, if the sum is certain or capable of being reduced to certainty.") Plaintiffs' claim for statutory penalties under the Dealers Act equal to a multiple of their "actual damages" does not meet either requirement. Thus, the Court should grant partial summary judgment with respect to the demand for pre-judgment interest.

D. Punitive Damages are not warranted in this case as there is no evidence Hendrick Honda of Easley acted maliciously.

To recover punitive damages under the Dealers Act, Hair must establish that Hendrick Honda of Easley engaged in some conduct that was arbitrary, in bad faith, or unconscionable, and which caused damage to the Plaintiffs business or property. S.C. Code Ann. § 56-15-40. If Hair clears that hurdle, she will be required to prove by clear and convincing evidence that Hendrick Honda of Easley acted with malice in order to be entitled to punitive damages. S.C. Code Ann. § 56-15-110(3). "Malice has been defined as the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong." *State v. Johnson*, 291 S.C. 127, 128, 352 S.E.2d 480, 481 (1987).

In this case, the only evidence shows that Hendrick Honda of Easley intended to comply with the Closing Fee statute and related guidance from the Department of Consumer Affairs during the time period in question. Therefore, there is no evidence of malice as required for a punitive damages award and summary judgment is appropriate as to that measure of relief.

II. Hendrick Honda of Easley's Motion in Limine

A. Benjamin W. Satcher should be excluded as a witness for lack of personal knowledge regarding Hendrick Honda of Easley.

Hendrick Honda of Easley moves pursuant to Rules 401, 403, 602 and 701, SCRE, to exclude the proposed deposition testimony of Benjamin W. Satcher ("Satcher"). Pursuant to Rule 32(b), SCRCP, a party may object to deposition testimony "for any reason which would require the exclusion of the evidence if the witness were then present and testifying."

Satcher has not been presented as an expert witness and has no personal knowledge of the practices of Hendrick Honda of Easley. Hendrick Honda of Easley anticipates that Satcher's testimony will be irrelevant, more prejudicial than probative, is

not based on personal knowledge, and constitutes improper opinion testimony and should therefore be excluded.

Satcher is the former owner of Ben Satcher Motors, Incorporated, a motor vehicle dealership formerly in Lexington, South Carolina. He was the owner and manager of the dealership for forty-seven years until he sold it in 2011. At his deposition in March 2013, Plaintiff's counsel questioned Satcher about his understanding of the term "automobile closing," and what activities he believed occurred during an automobile closing. (Satcher Dep. 6:20-8:16.) Plaintiff's counsel also questioned Satcher about his understanding of the term "closing fee," and his dealership's practices with respect to charging the closing fee. (*Id.* at 8:17-11:22.) Plaintiff's counsel also questioned Satcher at length about his knowledge of other dealership's practices for charging closing fees and whether such fees were reasonable. (*Id.* at 11:24-16:4.) Satcher testified that he had no way of knowing what costs other dealerships incurred, and instead stated simply that fees that included certain costs of doing business were unfair. (*Id.* at 15:21-17:7.)

Rule 701, of the South Carolina Rules of Evidence provides:

> **Opinion Testimony by Lay Witnesses.** If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience, or training.

The primary basis for the rule is reliability, as opinions by unqualified witnesses are not reliable and not helpful to a jury. *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930). Here, Satcher has no knowledge of Hendrick Honda of Easley and is thus, not qualified to give relevant opinion testimony in this case.

The issues for trial in this case involve facts concerning the costs Hendrick Honda of Easley incurred in conducting automobile closings, facts about which Satcher, by his own admission, has no personal knowledge. (Satcher Dep. at pp. 58-59, 66-67.) Thus, any testimony Mr. Satcher might offer about Hendrick Honda of Easley's costs related to automobile closings is forbidden by Rule 602, SCRE, because he does not have personal knowledge of the facts and circumstances concerning Hendrick Honda of Easley's practice of charging closing fees. It is also irrelevant and inadmissible pursuant to Rule 401, SCRE, because it does not have any bearing on the practices of Hendrick Honda of Easley. Further, to the extent the testimony has any probative value, that value is outweighed by the prejudice such testimony might cause in the form of improper bolstering of the testimony of Plaintiff's proposed expert, Thomas Pendarvis. As such, the testimony must be excluded pursuant to Rule 403, SCRE.

B. Closing fees are not illegal.

The closing fee statute and the case of *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399, 472 S.E.2d 242 (1996) leave no room for question as to legality of closing fees as a concept pursuant to statute and the common law. Although Plaintiffs may argue that Hendrick Honda of Easley has failed to comply with the statute, they should not be permitted to argue that closing fees are generally illegal or make reference to this as an "illegal fee."

C. For purposes of trial, the claim in this case is limited to the four years prior to the filing of the complaint.

Given the Court's ruling with respect to notice to members of the Plaintiff group dated May 14, 2013, the trial in this matter is property limited to the time period from

August 29, 2002 through August 29, 2006. Hendrick Honda of Easley moves that the Court limit Plaintiff's evidence and arguments accordingly.

CONCLUSION

In addition to the pleadings and record herein, this motion is based upon the deposition excerpts and affidavits attached as Exhibits 2 and 3. Hendrick Honda of Easley reserves the right to file additional materials and a memorandum of law in support of this motion.

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August 22, 2013

DM: 547960 V.1

THE JUROR: Well, I've got -- I'm in the process of having custody of her right now. I have legal custody of her right now.

THE COURT: Still doesn't apply. Thank you. You may be seated. I don't make the law. I just have to read it.

The next exemption deals with those of you who may be attending school at this time or working in some capacity with the school. I cannot exempt -- I cannot excuse you, but I can transfer you to a different term of court which would not interfere with your school studies. But this is a great week to serve. One case, two days, two and a half. Do I have anybody who's a full time student, school teacher, school crossing guard, or who works in some other capacity with the school and you're unable to serve this week as a result of that school involvement? If so, please stand.

(No response.)

THE COURT: Do I have anyone who works and is employed with the Department of Corrections at a penitentiary and wishes to be exempt, please stand.

(No response.)

THE COURT: Do I have any member of the jury panel who performs services for a business and your

Satcher may or may not have done, I just think it's not relevant to the trial of the issues in this case, which is a very narrow issue of whether or not the fee charged by the Defendant was for more than what the actual closing costs were, as we've defined in our order.

MR. THOMAS: And I understand the Court's ruling. But just for the record, that passage, I don't believe, is one of the passages that we designated. And just on the expertise, he testified if he's an expert in anything, he's an expert in the automobile dealership industry. He worked in the industry for fifty years, but ---

THE COURT: I've made my ruling. Thank you.

MS. SPRUILL: Thank you, Your Honor.

THE COURT: All right. The next motion is Plaintiff's motion -- there's two motions. One's dealing with the timing of this Court's ruling defining what a closing fee or closing cost was. And it's set out in the memorandum, but ...

Mr. Moore.

MR. MOORE: Thank you, Your Honor. The first part of what I'll just call omnibus motion in limine, I guess, is there was some argument in the last -- in the *Ritz* trial at opening to the extent

that at the time these people were coming up with the fee for the necessary time frame that they did not have knowledge of this Court's order of January 2010. Mr. Lewis made an objection at the time, that we think it appropriate, that seems to me to try to raise the spectrum of the ignorance of the law for the fact that it hasn't been interpreted by this Court somehow a defense. Clearly our state law under *Gregory versus Gregory* is that ignorance of the law is no defense in any respect, really. Under 401 I think it's irrelevant. The existence of that order doesn't change the fact that this defendant is going to be charged with knowledge of both the Closing Fee Statute and the Dealers Act and how they work in conjunction with each other. I think it can really be misleading to the jury to say that, oh, we didn't know what this closing fee was. It's not really accurate. They've got a notice in their window well prior to any of these events that says, closing fee, pretty clearly on the top of it. It also says that it's for certain costs such as document retrieval, document preparation. So to say that we didn't have any idea what it is until this Court's order is also misleading in that regard. We think there's also a 403 danger of prejudice, or at least misleading to the jury. They

may get the impression that somehow this law didn't apply to Hendrick Honda of Easley. And we just don't think that that's fair. The time of the Court's order is completely irrelevant for purposes of this matter and they are charged with knowledge of these statutes throughout the relevant time period.

MS. SPRUILL: Your Honor, do you want him to address his entire motion?

THE COURT: Yes, Ma'am. Go ahead. You also have an argument about ministerial requirements of the Closing Fee Statute that complied with that therefore, hence, they are doing what they were supposed to under the Consumer Affairs relations.

MR. MOORE: That's correct, Your Honor. And Plaintiffs have stipulated, you know, that that's not going to be an issue in this case, I believe, during the course of the summary judgment arguments. We think that for that reason it's irrelevant. There's no argument from us that they didn't comply with the technical requirements of that statute. But that doesn't give it any reasonableness or make it fair or not arbitrary under the Dealers Act. It could be prejudicial under 403, I believe, because that's going to give the jury the impression that somehow the state of South Carolina through the Department has either

expressly or impliedly approved this fee even to the extent that it's reasonable. And we know that they just don't do that. Basically they stamp the paperwork when they receive it and say, hey, this is okay. It's not a preemption issue or else obviously we wouldn't still be here.

And for that reason we also think it's cumulative since we are not going to be raising that for some reason they didn't meet almost typical requirements.

THE COURT: Cumulative and misleading; right?

MR. MOORE: And irrelevant, Your Honor.

THE COURT: And even if relevant, 403 analysis is more prejudicial than probative.

MR. MOORE: That's correct. The third part of this omnibus motion is that Ms. Hair knew about the fee and paid it. The issue in this case is whether or not Hendrick Honda had a reasonable basis for this fee that they charged, or whether or not they just pulled it out of the air and it was arbitrary in violation of the Dealers Act.

THE COURT: And I've already read ruled that the voluntary payment concept is not applicable here because it's a statutory ---

MS. SPRUILL: And Your Honor, I would

interject, all you did was tonight our summary judgment motion.

THE COURT: I understand that. I'm going to give you a chance to argue that.

MR. MOORE: And that's my next point, Your Honor, we raise that our motion, since we all know that the voluntary payment doctrine is not applicable to this case based on the court's rulings. We also think that the testimony as to her conduct is also, is also irrelevant for purposes of what the jury needs to hear to determine this action. We've also made a 403 argument because it's misleading to the extent that it suggests Hendrick Honda is justified just because the plaintiff saw the fee on the paperwork and paid it. There's nothing on that paperwork that says how that fee was gotten to. There's nothing on that paperwork that says, hey, this fee has got to be based on what fees actually go into a closing and whether or not that fee is reasonable. We also think that that is inadmissible under 401 and 403.

Then last under this omnibus motion, we've also made a motion in limine to preclude them from talking about the fact that the plaintiff was content with the purchase until she spoke to attorneys. That she continued to have the vehicle serviced there before

she spoke to her attorneys. And that pretty much encompasses it all.

Again, the issue in this case is whether or not the underlying fee was reasonable, they had an appropriate basis for it. And we would argue that how Ms. Hair came to file this lawsuit and how Ms. Hair -- her conduct prior to the time of the initiation of this lawsuit discovering these issues is totally irrelevant, and under the 403 analysis, it's certainly prejudicial. They're trying to make this about something other than their fee and whether or not it was come to on a reasonable basis and appropriately to reimburse them for fees actually associated with the closing and not just general overhead.

In addition, she is one plaintiff of over five thousand, so her individual actions, you know, we think it's just not -- it's not a fact that is going to -- that the determination of this action is going to turn on and so we think it's an appropriate on those grounds.

THE COURT: Ma'am?

MS. SPRUILL: Yes, your Honor, I'm a little -- in answering these questions we believe all of these categories of information are probative on the elements of this case.

THE COURT: Well, what are the elements of the case?

MS. SPRUILL: Sure. So, what they are claiming, the sold cause of action we are here talking about is a claim under the Dealer Act and under Section 56-15-40 and it's going to be -- and they're claiming they get to the violation of the Dealer Act through violation of Closing Fee Statute. So the violation of the Dealer Act, they've got to prove some action on our part which is arbitrary, in bad faith, or unconscionable and which causes damages to the plaintiff. So that -- and it's mandatory. They've got to prove damages to the plaintiff. You know, both parties here get to try their case and tell their story. And the plaintiff can't exclude all our evidence simply because it's more favorable to the defendant.

With respect to your declaratory judgment order, and the definition of closing fee applied there. We are not planning to make an issue of that in opening. We are not planning a repeat of the opening given in the *Ritz* trial. But we would argue, first, we want to preserve our argument that the declaratory judgment order should only apply prospectively, so it wouldn't apply to the time period we're talking about here.

THE COURT: Well, what do you base that on, that it applies prospectively? I mean, the Closing Fee Statute says, you know, they can charge closing fees and then it goes -- we all have argued all along in this case. And then I decided the DJ actions defining it. I mean, aren't the dealers on notice what -- I mean, don't they take a chance that they're charging allegedly just a figure out of the air, and aren't they taking a chance knowing that they may be violating this statute?

MS. SPRUILL: Well, our position is and has been all along, that the statute in the Department of Consumer Affairs administrative interpretation stood on their own and people had been applying them according to the way they understood them along and along. And to the extent your order defines the terms in a way that's different from how folks might have understood it, it adds a new substantive element to that claim, and therefore, it should apply prospectively only.

THE COURT: Well, I disagree that it applies prospectively only. You may be able to get into the fact that they were complying with Consumer Affairs to show evidence that what they were doing was not arbitrarily done or ---

MS. SPRUILL: Yes, Your Honor. That was my next point. You know, we take the position that in every way what the defendant knew at the time it was setting and charging these fees is relevant.

THE COURT: It may go to the relevancy of whether or not, under the Dealers Act, that the fee was set arbitrarily or unlimited or whatever the language that we use. But I don't know that that would make it prospective. My definition of prospective. I think it may be evidence that it's -- you could argue that they didn't do it arbitrarily; they were following what the state said.

MS. SPRUILL: That's right. Those are separate arguments. The first stands on its own, it's a legal argument. The second is on the threshold question of relevance. The plaintiffs have to prove arbitrary bad faith or unconscionable. We get to show the opposite of those things. We get to prove no liability. And one of the ways we can do that is show we were complying with everything we knew about at the time.

My third argument under that, we have a couple of defenses under the Consumer Protection Code that if we made a mistake it was a good faith error, that we had processes and procedures in place designed to protect

against violating the statute and that there's a safe harbor if you comply with the Department of Consumer Affairs advice.

You are charged at the end with giving the law. We are entitled to prove and to admit relevant evidence on each element.

THE COURT: Well, I think, number one, as I said, prospective application of what closing fee is, is not the law in this state or in this case. They had a statute that said they could charge closing fees and they took a chance when they allegedly just pulled a figure out of the air. That's probably not a good choice of words. Used an amount that was in excess of the actual costs incurred. But, you've got -- Plaintiff also has the burden under the Dealers Act to show that it was arbitrary and done in bad faith. And I think you would be entitled to show, even if your client was charging more than was allowed, or under the definition allowed, that we didn't do it in bad faith because we were complying with x, y and z. So I would allow it for that purpose, but for that purpose only.

MS. SPRUILL: Thank you, Your Honor.

Their third argument -- second argument about compliance with the statute and the Department of

Consumer Affairs' opinion, it's the same argument. They can cross Danny Collins all day.

THE COURT: And Collins can testify about what they put out, but he can't interpret the law. He can simply say what they required and that your people allegedly met the requirements by doing what they -- the act of doing what they asked for them to do. But I'm not going to let him get up there and interpret what the law is.

MS. SPRUILL: To that point, I don't think we're asking him to interpret the law. I think we're asking him to testify about what he does in his day to day job to enforce the law, which is what he is charged with doing by statute. I think it's absolutely relevant to the good faith, the arbitrariness, the unconscionability, what the Department of Consumer Affairs does when they're trying to enforcing it.

THE COURT: I agree. But he's wide open to cross examination that part of his day-to-day enforcement is simply to enforce the procedural aspect and he didn't go to the dealers and make them prove that the four hundred dollars or whatever it may be is limited strictly to what was out-of-pocket and reimburse them. He doesn't do that then he's wide

open to cross examination on all of those issues.

MS. SPRUILL: And we fully expect it.

THE COURT: Sure.

MS. SPRUILL: The third issue, the voluntary payment. To our knowledge it's still a defense sitting in our answer. To our knowledge, the state of South Carolina has law on the books that says if you knowingly pay a fee with knowledge that it's there, there's no ability for having paid the fee.

THE COURT: Well, didn't I deny your motion for summary judgment on that issue?

MS. SPRUILL: Yes, Your Honor. And that's all you did, to my knowledge.

THE COURT: Well, I signed an order this morning or signed it last week and we brought it with us today.

MS. SPRUILL: That's right. That just means we don't get judgment as a matter of law. It means we still get to prove it is an affirmative defense.

THE COURT: Well, before you go into that issue, we'll have to do a proffer and I'm not sure that it will be relevant in the trial of this case, since this is a statutory scheme and an alleged statutory violation ---

MS. SPRUILL: I have some additional ---

THE COURT: --- take it out of that.

MS. SPRUILL: I have one additional point on that, that it goes also to -- the fact that she paid the fee after this negotiation, goes to the merits of whether she has damages and whether the conduct was bad faith or unconscionable. Just the general testimony about her voluntary payment of the fee, separate from the term of art, voluntary payment defense, just the fact that she voluntarily paid the fee are relevant, absolutely admissible, should be considered by the jury.

THE COURT: I'm not sure I agree with you on that. If she's paying whatever the fee may be and she has absolutely no knowledge that it's a closing fee and she has no knowledge that it may include fees that are in excess of what the definition allows or the statute allows under the DJ action, I'm not sure that's relevant; she just voluntarily paid it. I'll have to make that call when we get to it.

MS. SPRUILL: And Your Honor, to further clarify, we're not going to be prevented in anyway from putting in evidence that it was disclosed to her -- the fee was disclosed to her in the negotiation process; are we?

THE COURT: No. But you're subject to cross

examination, what did you disclose.

MS. SPRUILL: Certainly.

THE COURT: I mean, yeah, if the fee is two hundred and fifty dollars, did you tell her what that two hundred and fifty dollars encompassed. I mean, whoever testifies to that will obviously be subject to cross examination. And I would think they would be asking them questions as to what did you tell? You say it's full disclosure, it's full disclosure if the closing fees are two hundred dollars, is that full disclosure or does that two hundred dollars include x, y, z, a, b, c?

MS. SPRUILL: Yes, Your Honor.

THE COURT: No, I won't preclude it, but you're subject to cross examination certainly on what it included. If you know.

MS. SPRUILL: And their point was they wanted to exclude evidence that Ms. Freeman was happy with her deal and exclude evidence that she continued to have her car serviced at Hendrick Honda of Easley. We think this goes to damages. We think it goes to bad faith. We think it goes to unconscionability. We further think it's admissible since it is a party opponent as it goes to her credibility, her bias and it's an admission by a party opponent under Rule 607,

608(c) and 801.

THE COURT: I'm not sure I agree with you on that. This case is all about closing fees and closing costs. We've all been involved in this thing for a long time. And whether or not she was happy, unhappy with her car, the performance of her car, whether or not she got great service or compromised service, I don't see how that's relevant at all as to what the closing fee encompasses.

MS. SPRUILL: Your Honor, I go back to the language of Section 40, which requires them to prove arbitrary bad faith or unconscionable and which causes damage. We think it's pertinent to all of those points. And while it may be a group action, as with any other group action, as goes the Plaintiff so goes the group. We are entitled to talk to Ms. Freeman about her deal and all aspects of it.

THE COURT: I disagree. I don't think what happened after the car -- after the closing -- we're dealing with what, as I defined closing, what goes on with the consummation of a sale. What happens down the road as to whether or not her oil was changed properly or her tires were serviced properly or she had a problem with her alternator and they graciously replaced it, I don't see how that's got anything to do

with the closing fee violation cause of action. And I'll grant them that motion on that.

MS. SPRUILL: Your Honor, will you give us a little further clarification? How far can we go? I think we're entitled to ask her when she first heard about anything about closing fees, how she happened to bring this action. That's bias, that's straight up Rule 608(c).

THE COURT: Well, that's a whole different ball game than asking her was her oil changed right two years later, was she happy. You can ask her how she found out about it. I'll let you do that.

MS. SPRUILL: And can we ask her at the time of the closing if she was generally happy with the deal she struck, the bottom-line price she paid?

THE COURT: Yeah, I'll let you ask that. But she may not be so happy now that she's found out that that two hundred dollars allegedly included a lot more than she was ---

MS. SPRUILL: And we fully expect the Plaintiffs to bring that out.

THE COURT: I understand. I mean, you might be opening up some stuff that may not be good for you, but that's up to you.

MS. SPRUILL: Yes, Your Honor.

THE COURT: You're seasoned lawyers. You know how to try your case.

MS. SPRUILL: We thank you.

THE COURT: I'm just going to attempt to try this case based solely on whether or not the dollar amount that's charged by your client complied with the closing fee; i.e., was that money that she had to pay, the Plaintiff had to pay, was that for reimbursement of costs incurred during the consummation of the sale. And if it's not, did your client set that fee arbitrarily, unfairly, as the statute says. That's the way I'm trying to try this case. And if we get too far afield from that, I'll stop you.

MS. SPRUILL: We think it does require proof of damage to the Plaintiff as the statute on its plain language says. So you've got to show the action that was arbitrary and in bad faith or unconscionable to cause damage to the Plaintiff.

THE COURT: Well, ma'am, doesn't it logically follow, if you're charging this lady -- I don't know what the fee is in their case -- example, four hundred dollars, three hundred dollars, and you've incurred a hundred dollars in actual reimbursement that you can get back, isn't it logically that that two hundred dollars is damage to

her?

MS. SPRUILL: No. As the evidence ---

THE COURT: Why?

MS. SPRUILL: --- is going to play out, it's not a straight-up calculation. If this two ninety-nine closing fee wasn't there, the price would be two ninety-nine less. And the evidence will show that to you. It's not as straight-forward as all that.

THE COURT: I will give you leeway, but I'm not going to get real far afield from trying to determine whether or not the two ninety-nine was a figure that included reimbursement for costs not associated with closing.

MS. SPRUILL: Thank you, Your Honor.

THE COURT: Anything else?

MR. MOORE: We've also got the motion, Your Honor, on Mr. Collins' testimony, just to limit it in certain respects. There are three areas that we've raised. The first is there was a lot of testimony by him in the *Ritz* trial where he is essentially interpreting what the statute is.

THE COURT: Well, I think I just said, I'm not going to allow him to interpret the law. Just like in any case -- I had a case not long ago when Justice Littlejohn was alive, they brought him in to

Now, that conduct is also arbitrary, which is another way they can violate the dealers act, if they do something arbitrary. This dealer who posted a sign saying they are reimbursing themselves for certain overhead, if the testimony shows that they didn't do the math, that they just came up with this number that wasn't tied to their closing costs or actual documents, then they've acted arbitrarily.

And I'll leave you with this. And this is a big test in this case. If Hendrick Honda of Easley's lawyers and their witnesses can show you that they did the math before they charged the fee, if they can show you that they did the math, they calculated how much their closing costs were and then they sought reimbursement for it, then I don't want you to give my client or the five thousand people I represent any money. We don't deserve it. If they can show you the math, make them show you the math, if they can show you the math on how they did it, then we are not entitled to a penny. However, if they can't, when you're weighing the testimony, we're going to ask you to give those illegally collected fees back.

Thank you.

THE COURT: Mr. Becker.

MR. BECKER: Thank you, Your Honor.

theft and that kind of thing, you've got to have people in most cases that you're paying a lot of money to make those decisions. Hey, because I've got somebody here trying to, you know, steal my car, you know, with a false ID or something. You know, we've become the DMV, that kind of thing. We've took everybody -- seems like everything's falling on us and everybody plays a part into it from our sales people in the secure document areas, and so when I look at it all, I look at the bottom-line cost, how it's been rising and rising. And fifty bucks would help me offset that.

Q. So as we sit here today with you as the official representative of Hendrick Honda of Easley and we assume that it's true, listen carefully, you've accounted for or collected a document fee on every single transaction since 2002?

A. We have, yes, accounted for every single transaction.

Q. For the doc fee?

A. Including employees.

Q. No car has gone out, new or used, from your dealership which you did not collect a document fee?

A. Correct.

Q. When you account for the monies you receive

far as expense.

Q. You also know what your projected costs are for the upcoming year based on what your past expenses have been; right? Everything from the shop to the cleanup to jet-sealing the parking lot to the light bill? You already knew all those as best you can, as best you ---

A. As best you can.

Q. You've told me that the procurement fee doesn't go in a column called procurement fees; they go in a column called other income?

A. That's correct.

Q. In regard to other income, you can think of no other sources of income other than procurement fees; right?

A. That's the only one I can name.

Q. But you know that there are other sources of deductions that might subtract from that number?

A. I believe that there's both income and deductions that rarely and occasionally happen, you know, and I just don't know what they might be without research. Yeah.

Q. So it's a policy or a rule that you tell your employees you cannot sell the car without charging the procurement fee?

A. Yes. Yes. We've done that.
Q. And then at that point in time, the procurement fee was two forty-nine; right?
A. That's correct.
Q. Well, Julie Freeman's is two ninety-nine?
A. Yes.
Q. Who made it go up?
A. I did.
Q. Why?
A. For all the reasons that we went into earlier.
Q. Before we went into 9-11, which you told me decreased sales, et cetera, we didn't have a 9-11 between these two times?
A. Okay. Well, all of the reasons ---
Q. So why did you choose to go up here?
A. The reasons being -- and that was in '02, and this is Julie Freeman's, what, in '06? So three or four years later, same kind of decisions. Everything intertwines. Looking at the bottom line we decided to move the doc fee or the closing fee up.
Q. When you do your accounting ...
A. Okay.
Q. ... neither your lights nor your car acquisition or any other accounting number that's an expense for you is offset against the sum total of all your

procurement fees; is that correct?
A. Well, yeah. With due respect, it's another one of those questions that just ain't how it is.
Q. Well, if the answer is, no, you're wrong, Mike, tell me where I'm wrong?
A. When I -- well, I don't -- I look at the bottom line because I look at expense of a department or dealership as everything intertwines. And when expenses are getting out of control, you look for ways to cover them and you think about a lot of things. You think about people. You think about processes. You think about time. Just everything. And you're just -- you're trying to think some way that basically you could offset it. It's not hiring somebody to come in and measure every minute that this guy does this or this guy that. And that costs more than you know.
Q. I'm confident that as you look over what the expenses of your business are and what your income is, you would like to minimize your expenses and maximize your income; right?
A. I look at this as compensating my income -- excuse me. Compensating the expense area as far as offsetting expenses. Not as -- you don't look at it as income a hundred percent.
Q. When you chose to go from one procurement fee

number to another procurement fee number, it should, all other things being equal, increase your profit; right?

A. If it offsets the expenses then your profit would go up.

Q. Well, let's suppose you had expenses that were pretty well steady and income from stand-alone car sales that was pretty well steady and income from parts and services that was pretty well steady. Then if you increase by fifty dollars per unit your new and used car sales, then it's all going to go to profit; right, assuming everything is the same?

A. Well, I don't do -- I didn't do it like that. That is what I'm trying to tell you. I didn't sit there and do the math, here's fifty dollars, add it all up; do this kind of stuff.

Q. Why did you call that a procurement fee? What are you procuring?

A. You know, I don't know. I'm looking at this document and then I was noticing the one on Julie Freeman's there. Let's see, I think it's different. I'm just trying to refresh my memory. I don't know. To my knowledge I wasn't involved in deciding what to call the closing fee, the administrative fee, the procurement fee, the doc fee, in that period of time.

Q. Did you tell me that you charge a doc fee on every single car you sell?
A. Yes. We charge a doc fee.
Q. Now, this is your answer as submitted by your counsel: Quote, although the closing fee does not cover any particular overhead or other costs, Hendrick Honda of Easley charges a closing fee as a means of reimbursing costs associated with document preparation, storage and retrieval, other costs associated with transferring title sold by Hendrick; is that right?
A. Yes.
Q. Now, tell me what your document preparation fee is per car, your doc prep cost, not your fee? What does it cost you to do document preparation on a car?
A. I don't know.
Q. What is your storage fee for those documents on any given car?
A. I wouldn't be sure about that either.
Q. Well, what is the cost of retrieving any documents and what sort of documents would you be retrieving?
A. As far as costs, I don't know.
Q. You have no idea about the cost of retrieving the documents; right?

A. Right.
Q. And what are the other costs associated with transferring title to vehicles that are not covered by the license and transfer fee? What costs do you have on transferring title to vehicles that's not already paid for by the customer on the transfer fee?
A. Well, the intertwined expense of the whole process.
Q. Do you have any books where you set out the cost of document preparation per car?
A. No.
Q. Storage per car?
A. No.
Q. Retrieval per car?
A. No.
Q. Or other costs associated for transferring title to vehicles per car?
A. No.
Q. Well, you do it by ballpark and profit and loss in deciding whether to go up or down -- I mean, go up or not on your ---
A. I do it by looking at intertwined expenses.
Q. Versus income, so that you stay profitable like anybody would?
A. Well, I still look at it as a offsetting expense.

Q. Does it cost you two hundred and forty-nine dollars to prepare a document on a car? You've never calculated it; we already know that?

A. Right. We know that.

Q. Would it be fair to say that if you never calculated it, you have no idea whether it cost you two hundred and forty-nine dollars just to prepare a document on a car?

A. I don't -- we don't know the exact charge. I feel like the two forty-nine would be fair.

Q. You don't know the exact charge?

A. Or the exact expenses, because, like I said, again, to me I'm looking at everything intertwined.

THE COURT: Mr. Becker, anything you want to put in on that deposition? Ms. Spruill?

MR. THOMAS: Your Honor, if you could give us a minute. I actually published their sections while we were reading. I'll just ask to make sure I got it.

Your Honor, there were two more designations from the defendant.

THE COURT: Sure.

MR. THOMAS: That I want to publish now?

THE COURT: Yes, sir.

MR. THOMAS: May I approach the stand so I

can show Chris where I'm reading?

Q. Aren't the closing fees separately stated and separately set out in their own column when you refer to the sale of a car?

A. They're put into other income. There's no column that says closing fees.

Q. It says other income?

A. Other income, that's correct.

Q. We know other income means closing fees; right?

A. Well, it could be actually other income or deductions and it could have been -- or it could have more than closing fees in it.

Q. I may get to the point where I ask you how did you come up -- how you did it. I'm just saying the net effect of going up fifty dollars per unit is to take the number of units that you sell that year and make fifty dollars more on each one of them; is that right?

A. Well, no.

Q. No?

A. No.

Q. Why not?

A. Because like we said, we negotiate, and some people negotiate more because of the fee. They say, I'm not paying it. It creates more negotiations. So

whether it's helping our profit is debatable.

Q. Are you telling me that sometimes the charging of the fee causes you to reduce the cost of the car more than the fee itself?

A. Sometimes the fee -- somebody may say, you know, knock this off, knock that off, knock that off. And they just, they bunch it all up. It's more normal than what you were saying.

THE COURT: Everybody good? You may call your next witness.

MR. BUTLER: Your Honor, we call Thomas Pendarvis.

THE COURT: Come around, Mr. Pendarvis.

THE CLERK: Please place your left hand on the bible and raise your right hand, please.

Do you solemnly swear or affirm the testimony you're about to give in this case will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: State your full name for the record.

THE WITNESS: Thomas Pendarvis.

THOMAS PENDARVIS,

BEING DULY SWORN, TESTIFIED AS FOLLOWS:

your experience in the car dealership industry, what opinion, if any, do you have as to what costs or cost items are associated with the closing of a car or a motor vehicle sale?

A. The costs associated with closing are what's -- what costs the dealer incurs to create the documents, pull the documents out of their -- where they are, fill them out, get them signed and recorded. You could imagine a little meter and there's all kinds of costs that happen in a dealership every day, overhead, insurance. You've got to buy the building. Pay for your building. Employee costs, salaries. Light bills. All those things happen every day. Storage facilities for your used vehicles, for your documents, all those things happen every day to run your service department, your parts department and every other part of your dealership. The part we're talking about is what costs are associated with the closing? You can just imagine a little meter, when someone pulls out a document to become a bill of sale and the documents for the closing that are the title transfer documents, the loan closing documents, and they go through -- someone types up the information and they print those documents. The cost for the printer, if the dealer had to buy the paper. If you could measure it, the

actual time the sales person is actually doing the document closing, that portion of that person's salary, if you really were that careful, all those costs, if you want to go in and determine exactly what that costs, the little meter is moving every time one of those things happen because a car was sold. Imagine that all those same people are in the dealership and we're back to that hypothetical where a month goes by and no one buys a car. The dealership is still paying the salary, the computer is still plugged in. The lights are running. The insurance has to be paid. The overhead costs are happening every day. The meter hasn't moved because there hasn't been a sale. And then that next month, the first day, they sell some vehicles, the meter moves, because costs were incurred. They're preparing the documents related to the title, the transaction, and the costs to the degree they can be determined, predetermined by the dealer, are available under the statute for closing to be charged as a closing fee.

Q. You've reviewed -- in the process of your work in this case, have you reviewed the deposition testimony of Hendrick Honda of Easley's general manager, Don Pendleton?

A. Yes, I have.

A. Yes, sir.
Q. We went through that?
A. Yes, sir.
Q. And you testified about what costs are necessary and exclusively associated with an automobile closing; right?
A. Yes, sir, I have.
Q. And then I believe there's one fourth category of your opinions, and that is what would be a reasonable closing fee?
A. Yes, sir.
Q. Now, you mentioned twenty-five dollars. Is that a reasonable closing fee?
A. It was reasonable for the dealer that did the analysis of what that dealer incurred ---
Q. Okay.
A. --- to transfer title to a vehicle, what costs were necessary ---
Q. Okay.
A. --- for that transfer and that dealer determined that was the fee for that dealership.
Q. And you're here today opining that that was a reasonable closing fee for that dealership?
A. Yes. Because the methodologies that were employed by the dealer were to assess the actual costs

new vehicle will have a manufacturer's warranty that comes with it, which is not a separate transaction. It's part of what's being purchased for the new vehicle. But other than a warranty, it's identical.

Q. All right. Well, we've established, have we not, that the closing process can vary from deal to deal; correct?

A. Yes, sir.

Q. And there are a range of different documents that might be applicable from one closing to another; correct?

A. Yes, sir.

Q. Well, if that's the case, how do you predetermine what your closing costs are in any particular transaction?

A. Easy. Easy as can be. You go back and you look at last year's sales. You determine -- you look at how many transactional documents were done per vehicle. You maybe have someone time the process to actually create the document process, value that person's time, look at the actual costs incurred by ribbon print costs, paper costs, transactional, you know, postage to and from a lender, a borrower -- excuse me, a lender for the trade-in. Total those values. Divide by the number of vehicles sold the

previous year and you'll have a number.

Q. Well, now wait a minute, Mr. Pendarvis. I'd have an average number; wouldn't I?

A. Yes, sir, you would.

Q. And what if, what if somebody came into my dealership and had a real simple deal with only a few pieces of paper. I'd be charging them a closing cost at the average that exceeds my actual costs of closing in a real simple deal; wouldn't I?

A. You're right. But the difference is, you would have published a twenty-five dollar number and in a day and age when vehicles are forty and fifty thousand dollars, I doubt you're going to get a lot of problems that the dealer somehow got a fifty cents or sixty cents greater than the actual closing cost.

Q. So you're here saying today that if Hendrick Honda of Easley sells a forty-five thousand dollar vehicle, that a twenty-five dollar closing fee might be okay, but a two hundred and ninety-nine dollar fee is not?

A. No, sir, I'm not, at all. What I'm saying is that Hendrick Honda was required to go quantify their costs. When that needed moved to put that value. There's no way that a dealer can, with any certainty, say ahead of time, next year's cost for my paper, next

year's cost for my ink, is going to be 'x'. It might go up. And so what a dealer does, by the statute, is quantify last year's costs, post it with the department for what they're going to charge next year. And if, in that process, in that upcoming year, the costs change, either up or down, the dealer needs to go back and change that number next year. That's why they have to send your statements in annually and quantify your costs annually, because a dealer can't be -- a dealer would be complying with the statute if they did just what I've described, they quantify the cost for the previous year, reported it to the Department of Consumer Affairs, posted it, advertised it, and charged that cost. If the costs go up or down in the next year on average, the dealer needs to change that report with consumer affairs, change their posting and go forward.

Q. Well, what about a situation where I've charged a twenty-five dollar fee and somebody comes in and brings in three trade-in vehicles and there are a whole lot more documents involved. Haven't I charged them less than my actual closing costs?

A. You probably have. And the next year your average might go up. If you had a bunch of those transactions, the next year the dealer's cost --

because remember, Mr. Becker, this isn't a profit center. This is a cost recovery for title transfer. So if a dealer in that next year had a bunch of customers like that one I described that had three trade-ins and that dealer's costs went up a dollar, a dollar fifty, or whatever, that report -- that next year's report to Consumer Affairs would reflect that. And the next year's costs that are charged to customers would reflect that increase in actual costs the dealer incurred in transferring title to vehicles.

Q. Now, Mr. Pendarvis, let's talk about your second opinion and your second category of opinion, what happens at an automobile closing. Wouldn't you agree that the issue of what happens at an automobile closing is a determination of what human activities occur to produce or effect the closing of a sale?

A. Can you help me with human activities? I'm not sure what you mean by human.

Q. Well, it involves people doing things; right?

A. Sure. Yes, sir.

Q. A closing won't occur unless there are people involved doing things; is that correct?

A. That's correct.

Q. They're filling out forms?

A. I just want to make sure you and I are clear so

title to motor -- to consumers and stay in business; can they?

A. No, sir. If they don't pay their income taxes, they can't stay in business either. If they don't pay their business license tax and they don't comply with a number of other laws, they can't stay in business.

Q. So, it's a part -- it's a cost of closing to give that disclosure and store the documents related to the customer; right?

A. No, sir.

Q. Well, let me tell you -- you wouldn't have those documents related to the customer that contain all that private information unless you had a sale; would you?

A. No. But that's ---

Q. And so isn't that what moves the needle?

THE COURT: Whoa, whoa, whoa. Finish your answer. Give him time to answer.

A. The part, Mr. Becker, that is -- the costs that are available under the Closing Fee Statute are the costs a dealer incurs transferring title that are necessary to transfer title. It's pretty simple. All the other costs the dealer incurs are business costs the dealers are entitled to consider as part of their sales price in trying to earn a profit.

industry standard that says, here's what dealers are supposed to charge for closing costs.

Q. You didn't study any of the financial information about Hendrick Honda of Easley; did you?

A. Oh, yes, I did.

Q. Well, have you done the math?

A. You couldn't. Because the financial records -- it's nice that you said that. The financial records that Hendrick Honda of Easley produced that I looked at don't have any entries at all that are limited to the costs incurred in transferring title. There are costs by department, there are costs -- overall costs for postage. There are overall -- there's no specificity -- the specificity necessary to really determine what Hendrick Honda of Easley incurred in closing costs is nowhere in their financial records. In fact, Mr. Pendleton testified to that, that he has -- the dealership has no books that show the costs for closing. So I didn't answer your question. I did analyze it. But you simply cannot determine the closing costs incurred from the financial records of Hendrick Honda of Easley in the relevant time period.

Q. That's why you have to do the study; isn't it, Mr. Pendarvis, where you figure out how much of each employee's time is devoted to the closing process and

THE COURT: Mr. Thomas?

MR. THOMAS: Thank you, Your Honor.

JULIE FREEMAN-HAIR,

BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Ms. Hair, I guess you've already stated your name. How old are you?

A. I'm thirty years old.

Q. And are you married?

A. Yes.

Q. And what's your husband's name?

A. Brandon Hair.

Q. And y'all have any children?

A. We do. We have a son that's almost ten months old.

Q. And what do you do for a living?

A. I'm a teacher. I teach first grade.

Q. And where do you teach at?

A. I teach in Greenville County at Duncan Chapel Elementary.

Q. And what does Brandon do?

A. Brandon is an administrator at a retirement community.

Q. And how do you know me?

A. Well, I first met you because you're a friend of Brandon's from Augusta or through college friends. And then I guess I just became friends with you because you're a friend of my husband's.

Q. And we're here to talk about the car that you bought from Hendrick Honda of Easley in July of '06. Tell me, how did you end up going to Hendrick Honda of Easley?

A. Well, at that time Brandon had just started working in Easley at Countryside Village and we were in the process of moving or I was in the process of moving up here because it was right before we got married. And so I was here just for a few days moving things. And since Brandon worked in Easley we had seen the Honda dealership there just from driving back and forth. We didn't know the whole area completely yet, but, you know, we saw that. And so I -- that's why we chose to go there.

Q. And so you didn't know the area fully. Where were you living at that time?

A. Well, I was still living in Chapin with my parents and then just kind of in transition moving some stuff up here since we were getting married about three weeks after I bought the car. So I hadn't totally moved up here, but still in Chapin.

Q. Okay. And why were you looking for a new car?
A. Well, the car that I had just was getting old, it needed some work done, and we needed to just get rid of it. I was looking for something new.
Q. Okay. And what kind of car were you looking for?
A. Could you repeat it?
Q. I'm sorry. What kind of car were you looking for?
A. I was looking specifically for a Honda Accord.
Q. So after you found Hendrick Honda of Easley -- I guess, take me through the first day you went there. What happened?
A. Okay. So the first time we went, Brandon was with me and we just were walking through the car lot, looking for cars. I was specifically looking for an Accord, so that's what we looked for. And we were approached by a salesperson. And talked, you know, a little about the car, and then I test drove it. After that we came back to the dealership and we went inside and talked a little about pricing, negotiations. I already had a figure in mind or a payment that I knew that I was comfortable with so, you know, I wanted to make sure that we could get the car for that price.
Q. And how many cars had you bought before that?
A. None. That was the first one that I was buying

for myself.

Q. Had you ever bought a home before?

A. No.

Q. And your first car, who bought it?

A. My parents. My dad.

Q. And I'll show you a document.

MR. THOMAS: Your Honor, may I approach the witness?

THE COURT: You may.

Q. I'll hand you what we've previously marked as exhibit -- Plaintiff's Exhibit 3B. And if you can, just for the record, tell me -- do you recognize that document?

A. Yes.

Q. What is it?

A. So, this is the worksheet that we -- the representative at the car dealership that I was working with was figuring up some pricing on here, and this was kind of what we talked about after looking at the car.

Q. All right.

MR. THOMAS: And, Your Honor, at this time I'd like to move Plaintiff's Exhibit 3B into evidence.

THE COURT: Any objection?

MR. BECKER: No, Your Honor.

THE COURT: Thank you. Without objection.

(WHEREUPON, Plaintiff Exhibit Number 36 was admitted into evidence.)

Q. Ms. Hair, I noticed on, like, the far left side of 3B there's a eighteen nine nine five up there. What do you remember about that number?

A. That was the original price that was on the sticker on the car.

Q. And then I see there's a category in the second column, it says selling price?

A. Uh-huh (affirmative).

Q. What was going on there?

A. Well, that was where we -- we were kind of negotiating prices. I was -- I told the representative our -- my price that I was hoping to pay for the car and we were kind of working through monthly payments, what that would be. And he came down to the seventeen nine seventy five price as the, as the total.

Q. And then I see right underneath that, the circled seventeen nine seven five, it says 7/11/06, good for two weeks.

A. Uh-huh (affirmative).

Q. Did -- what do you remember about that?

A. Well, this was the first day that I had gone to

see the car and to talk about the price. And so, we told him that we wanted to go home and think about it and make sure this is the right, the right car for me. So the salesperson said that, that his price would be good for two weeks.

Q. Okay. And then the next column says trade, twelve hundred, not seen.

A. Uh-huh (affirmative).

Q. What do you recall about that?

A. So, the day that we first went to the dealership, I did not have my car with me, the one that we were planning on trading in. So the twelve hundred dollars was just sort of their estimate of what they were going to give me for the car if I were to trade it in, but they hadn't seen it. So they didn't know exactly the condition it was. That was just from based on what I told them about the car.

Q. And I'll show you ---

MR. THOMAS: Your Honor, may I approach?

THE COURT: You may.

Q. Ms. Hair, I'm going to hand you a document that we've marked as Plaintiff's Exhibit 39 and ultimately ask you the same questions. Have you seen that document before?

A. Yes.

Q. What is this document?
A. So this is the worksheet where -- when we went back to buy the car it was filled in by the salesperson, you know, listing all the details of the prices and what I was trading in, and the payoff of that other car.
MR. THOMAS: Your Honor, at this time the plaintiff would like to move Plaintiff's Exhibit 3A into evidence?
THE COURT: Any objections?
MR. BECKER: No objection.
(WHEREUPON, Plaintiff Exhibit Number 39 was admitted into evidence.)
Q. Okay. So, 3A is the one on the left-hand side. On the left-hand column of 3A there's some information on there about your trade-in vehicle?
A. Uh-huh (affirmative).
Q. And how did you get your trade-in car to Easley?
A. So, the next day when we were, we were ready to buy the car my dad drive my old car up from Chapin and met us there at the dealership since that was the car that we would be trading in.
Q. Okay. I'm going to zoom in down here on 3A again. It's got a seventeen nine seven five. Is that the same car as they told you from the day before?

A. Yes.
Q. Okay. And it's got a trade-in allowance of nine hundred.
A. Right.
Q. What do you remember about that, if anything?
A. Well, once we brought my old car to the dealership, they checked it out and looked at it and noticed that it need some work. And so then they agreed that they were just going to give us nine hundred for the car since it wasn't in quite the shape that they thought it was the day before based on what I had told them.
Q. Okay. And then underneath that there's a line that says state taxes, three hundred.
A. Uh-huh (affirmative).
Q. And license transfer, title, regulation fees. What do you recall about those, if anything?
A. I just assumed that was the tax and title. Have to pay that to get the car.
Q. And then there's the line that says administration fee that we've been talking a lot about so far in this case. What do you recall about that, if anything?
A. Well, I mean, I saw it preprinted on the document. I just thought that that's what I had to

pay to get the car. It was just part of the transaction.

Q. Okay.

MR. THOMAS: Your Honor, if I may approach.

Q. Ms. Hair, I'm going to hand you what we've pre-marked as Plaintiff's Exhibit 5. And similarly I'm going to ask you, what is this document?

A. This, I guess, is called the bill of sale. It lists what I'm trading in, what I'm buying, and then the prices.

MR. THOMAS: Your Honor, at this time I'd like to move Plaintiff's Exhibit 5 into evidence.

THE COURT: Any objections?

MR. BECKER: No objection.

(WHEREUPON, Plaintiff Exhibit Number 5 was admitted into evidence.)

Q. And similarly on the bottom right-hand corner of this document it's got some information on here as well. There's a line on this one called procurement fee. What, if anything, do you remember about that item on this document?

A. There again, I just -- I thought it was just part of transaction, what I needed to pay to get the car. To be honest, I didn't pay a whole lot of attention to it.

Q. Okay. When did you first realize there may be something wrong with the way they charged you this procurement fee?
A. Well, I guess a little after buying the car, you first brought it to our attention. And so we looked back through the paperwork and realized that we had been charged this fee. And so then I guess we got back with you and asked for your legal advice.
Q. How were you harmed by Hendrick Honda charging you this fee?
A. Well, they obviously charged me the fee. It's on my paperwork. At the time I didn't know that it was an illegal fee and -- I mean, they charged it to me.
Q. Would you have paid fee had you known it was illegal?
A. No.
Q. Did you have ---

MR. BECKER: Object to form, Your Honor. It's asking for a legal conclusion. It presumes a legal conclusion.

THE COURT: Well, ladies and gentlemen, obviously this is what this lawsuit is all about; whether or not the fee is illegal. As I'll charge you as we go through, dealers have a right to charge a closing fee. It's up to you to determine whether or not the closing fee in this case complied with the

law, as I'll give you that law as to what a closing is and what a closing fee is. At the conclusion of the case, it will be your determination -- for your determination as to whether or not the fee charged in this case is legal; i.e, complies with the statute, or it is illegal, it goes beyond what the statute allows.

Any objection to that explanation by the defendant?

MR. BECKER: No, sir.

THE COURT: By the plaintiff?

MR. THOMAS: No, Your Honor.

THE COURT: So when she says illegal, that's for y'all to determine. Okay.

Q. Ms. Hair, what if anything, did you know about the Closing Fee Statute when you bought the car?

A. I did not know anything about it.

Q. What, if anything, did you know about how they calculated that dollar amount when you bought the car?

A. I didn't know anything about it.

Q. Ms. Hair, what, what are you seeking in -- what are we seeking in this lawsuit?

A. Well, I am just seeking to get my money back, and I also am here representing all the other thousands of people that were charged this same fee. So, as a representative I would like for all of them to get their money back as well.

MR. THOMAS: Ms. Hair, I don't have any further questions. Please answer any questions that Mr. Becker may have.

THE COURT: Thank you, Ms. Hair. Mr. Becker.

MR. BECKER: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. BECKER:

Q. Good morning, Ms. Free -- Ms. Hair.

A. Good morning.

Q. Forgive me for ---

A. That's okay.

Q. --- not remembering that. I'll do my best.

A. That's okay.

Q. Now, Ms. Hair, you're a graduate of both Chapin High School in Chapin, South Carolina, and the College of Charleston; is that correct?

A. Yes, I am.

Q. When you and I last met at your deposition in this case in 2009, you were pursing a Master's degree in literacy from Furman University.

A. Right.

Q. Is that right?

A. Yes.

Q. And that Master's degree in literacy involved teaching reading; is that correct?

A. Exactly.

Q. Have you completed that Master's degree?

A. Yes. I finished in August of 2011.

Q. And I believe you said your husband, Mr. Brandon Hair, is an administrator of a retirement community?

A. Right.

Q. That's the -- and he's a graduate of Midland Valley High School in Aiken; is that right?

A. Yes.

Q. And he has a four-year college degree in Business Administration from the College of Charleston?

A. He does.

Q. And he also has a Master's degree in health administration from the Medical University of South Carolina in Charleston; is that right?

A. Yes, that's right.

Q. And that's an advanced business degree for the healthcare industry; isn't it?

A. Correct.

Q. Now, I believe you said you'd bought your first car when you went to college, or father bought it for you for you; ---

A. My ---

Q. --- correct?

A. Yes. My parents bought that for me.

Q. And that was 1999 Mazda 626 that was titled in

your father's name?

A. Yes.

Q. By July 2006, I think you'd decided that car was too old, it needed some work and you wanted a new car?

A. Yes.

Q. And the Honda Accord is what you decided you wanted to buy; right?

A. Right.

Q. And in fact, I think you settled on white as the color you liked; right?

A. That was one of the choices that I was looking for. Yes.

Q. Okay. It didn't have to brand new, but you didn't want it to be over a year or two old; right?

A. Right.

Q. All right. Then you came to Hendrick Honda of Easley. And I believe you, you first went there on Tuesday, July 11th; is that right?

A. Yes.

Q. And this was the first time you'd ever been to that dealership?

A. Yes.

Q. And on that day you first went, you ultimately test drove a car that -- the car you ultimately bought. And then you talked about the price

negotiations as you described; is that right?

A. Right.

Q. Now, before you went to Hendrick Honda of Easley you had not looked at any advertising of any kind; is that right?

A. Do you mean advertising from Hendrick Honda ---

Q. Yes.

A. --- or in general? Correct. I had not seen anything from Hendrick Honda.

Q. You hadn't seen any newspaper ads?

A. No.

Q. No TV ads for Hendrick Honda?

A. No.

Q. No radio ads?

A. No.

Q. You hadn't gotten anything in the mail from them?

A. No. I wasn't living here yet.

Q. Okay. And you haven't looked at any Internet ads from Hendrick Honda of Easley?

A. (No audible response.)

Q. So the whole transaction from start to finish took two days; is that right? From the day you first set foot on the dealership at Hendrick Honda to the day you drove away with the car, the new car?

A. Right. I guess the first day was just driving

the car, you know, seeing if it was what I was looking for, talked about price a little bit. And then the next day I guess is when the transactions happened.

Q. All right. Now, Mr. Hair was with you every time you went to Hendrick Honda of Easley to see about purchasing that car; right?

A. He was.

Q. He was there for all of the discussions that you had with any employee of Hendrick Honda relating to the purchase of the car?

A. He was there. Yes.

Q. And I believe when you first went to the dealership and you walked around you had already found the car you wanted when you were approached by the salesperson; is that right?

A. Yes.

Q. And do you recall that his name was Mr. Randall Clemment?

A. Yes.

Q. And once you found that car, you didn't consider any others; did you?

A. No.

Q. Okay. And it was a white, four-door, 2005 Honda Accord with a tan interior, with twenty-six thousand miles; right?

A. Right.
Q. It met your criteria perfectly; right?
A. Uh-huh (affirmative).
Q. And it's the only car you test drove?
A. At Hendrick Honda?
Q. Yes.
A. Yes.
Q. Now I believe when you first saw this car on the lot, it had just one tag or sticker on the car and it was on just one window of the car; is that right?
A. From what I remember, yes.
Q. Okay. Now, you didn't want to pay more than eighteen thousand dollars for the car; did you?
A. Well, I had a monthly payment in mind that I was comfortable with paying, and so that's kind of what we worked towards, getting the price of the car down.
Q. Well, I believe you fully expected that you would negotiate over the price of the vehicle; is that right?
A. Yes.
Q. So you and Mr. Clemment agreed that you would test drive the car. And he got a copy of your driver's license and you drove around for about fifteen minutes or so while your husband rode in the back and Mr. Clemment was in the front; right?

A. Right.
Q. And after you -- the test drive, you came back to the dealership and went in the building with Mr. Clemment; right?
A. Yes.
Q. And you sat down at a desk near the front door with Mr. Clemment to discuss the price?
A. Yes.
Q. And you'd not had any negotiations about price or anything like that before you sat down at the desk?
A. Correct.
Q. Now, as you walked into the dealership and sat down at the desk with Mr. Clemment, you didn't observe any signs or notices posted anywhere in the dealership; did you?
A. No.
Q. Because you simply weren't looking for that kind of thing when you went into the dealership; right?
A. I wasn't.
Q. So signs could have been up and posted in the dealership, but you simply weren't aware of anything that was; is that right?
A. Right. It's possible they could have been there. Yes.
Q. And when you sat down with Mr. Clemment there at

the desk in the dealership to negotiate the price, I believe, as you said, you told him the monthly payment range you wanted to be in. Your primary concern was not just the price, but also that monthly payment?

A. Right.

Q. I believe as you sat down with him to negotiate over that car you had not completely decided yet that you wanted to buy that car; is that right?

A. Do you mean on the first day when we were first talking about ---

Q. On the first day. Yes, ma'am.

A. Right. Yes.

Q. Okay. And whether you bought the car would depend on whether you got the right deal or not; right?

A. Yes.

Q. And unless you got the right deal on that car from Hendrick Honda of Easley, you were prepared not to buy the car; is that right?

A. Pretty much. Yeah.

Q. In fact, you were prepared to walk away if Hendrick Honda of Easley did not give you the deal you wanted; correct?

A. Correct.

Q. Now when you first began those negotiations with

Mr. Clemment over price and financing, I believe he did some calculations and he got the -- brought the price down a little bit to put it in your price range; is that right?

A. Right.

Q. And as you negotiated with him, he was doing calculations on the piece of paper; right?

A. Yes.

MR. BECKER: Let's put up Exhibit 11, pages twenty-three and twenty-four.

Your Honor, I will be showing Ms. Freeman a number of the documents from Hendrick Honda's deal jacket for the transaction with Ms. Freeman. We'll refer to them by page numbers as we go through. Mr. Thomas has agreed that I will -- at the conclusion of the evidence with Ms. Freeman, I will move to admit those pages she's identified from our Exhibit 11 into evidence.

MR. THOMAS: That's correct, Your Honor.

THE COURT: Very well.

Q. Ms. Freeman, I'm showing you what's been marked as Exhibit 11 for the defendant. This is page twenty-three of Exhibit 11, which is the -- what's called the deal jacket from your transaction. It has all the paperwork from your transaction that was maintained by

Hendrick Honda of Easley. And in it is the document you've already discussed with Mr. Thomas. It's called the sales worksheet. Now, this is actually a two-page document.

MR. BECKER: Can you show the second page, please.

Q. In actual practice that is the back page of the document you just saw before.

MR. THOMAS: Objection to the question, Your Honor. That's a statement ---

THE COURT: How about asking the question instead of ---

Q. Do you recall that?

THE COURT: Recall what?

Q. Do you recall that it was on one piece of paper?

A. No, I do not.

Q. Okay. The way I understand this when you got started with the discussion with Mr. Clemment about the terms of the transaction, he asked ---

MR. BECKER: Let's go back to the first page.

Q. He asked you some questions about yourself and filled in that information up at the top; is that right?

A. I believe this was the second day that I went

back.

Q. Okay.

A. And we filled in all those.

Q. All right. Whichever day it happened.

A. Okay.

Q. And I realize that you're not certain about what happened when. But he asked you questions about yourself and filled in the form; correct?

A. Right. He filled this in. Yes.

Q. All right. And then he asked you questions about the -- did you talk about the payoff verification and the insurance, all those things that are listed on the right-hand side?

A. Right. We talked about that I guess the next day when my dad came back to bring the car, since that was all in his name. My dad would have had to have given that payoff information.

Q. Okay. So Mr. Clemment collected it and put it on the form; is that right?

A. Mr. Clemment put it on form. Yes.

Q. And on that -- your dad gave him a lot of that information?

A. Right.

Q. All right. Now, this document is dated 7/11/06 up in the upper right-hand corner; is it not?

A. It is.
Q. And it's signed by you in the lower -- excuse me, the upper left-hand corner, it's dated 7/11/06; correct?
A. Yes.
Q. Is that your signature in the lower right-hand corner?
A. Yes, it is.
Q. Now, let's go back to look at the box entitled MSRP.
MR. BECKER: Up in the top. There you go.
Q. Now, they were originally asking eighteen thousand nine hundred and ninety-five dollars for the car; correct?
A. Correct.
Q. And then the price dropped to eighteen thousand six hundred and ninety-five dollars; is that correct?
A. Yes.
Q. And then it dropped again to eighteen thousand two hundred and ninety-five; is that right?
A. Yes.
MR. BECKER: And then show the lower page.
Q. And then down there in the box at the bottom, you've ultimately got the price down to seventeen thousand nine hundred and seventy-five dollars; is

that right?

A. That's right.

Q. Now, let's look on the second page. Mr. Clemment wrote a note in there in the box called selling price. By the way, is any of this, other than the signature, is any of it your handwriting?

A. No, it is not.

Q. Okay. It's all Mr. Clemment's?

A. Yes.

Q. Mr. Clemment wrote a note there that says, 7/11/06, good for two weeks, if this car available. Do you see that?

A. Yes.

Q. So he did that because you knew you weren't going to buy the car that day mainly because you didn't have your Mazda -- your trade-in with you; is that right?

A. Correct.

Q. So you must have left the dealership before you finally agreed to buy the vehicle on that day; right?

A. Yes.

Q. All right. Let me show you page twenty-five of the deal jacket. Do you see that, Ms. Freeman?

A. Yes.

Q. Whose handwriting is that?

A. That's mine.

Q. All right. I'm showing you the page from the deal jacket with your handwriting. Do you see that?
A. Yes.
Q. And it's on the back side of what is the second page of the deal jacket. Do you see that?
A. Yes.
Q. So, in your handwriting there's a note there about a white 2004 Accord LX with twenty-six thousand miles. Do you see that?
A. Yes.
Q. Now, at Hendrick Honda of Easley you were negotiating to purchase a 2005 white Honda Accord LX with right about twenty-six thousand miles on it; weren't you?
A. Yes.
Q. And they were offering it to you at eighteen nine ninety-five, then eighteen six ninety-five, then eighteen two ninety-five; right?
A. Right.
Q. And you left the dealership; right?
A. Yes.
Q. And did you go drive some cars at another dealership and come back with that quote from another dealership?
A. No. I think I just must have mistakenly wrote

2004 instead of five. That's what I'm guessing.

Q. So you don't think that refers to the car you were negotiating with Mr. Clemment to buy?

A. Yes. I think this is what I was negotiating with Mr. Clemment to buy. I don't, I don't know what else it could have been.

Q. All right. You don't believe that you went out after you left on the 11th and test drove some other cars and found a price on a 2004 Accord and came back to the dealership and got Mr. Clemment to match that price on a 2005 Accord?

A. No. I didn't go drive any other cars or look at any other dealerships after I went to Hendrick Honda.

Q. All right. Well, at some point later in the day on the 11th, I believe you talked it over with your -- Mr. Hair, and at some point you decided you'd go back and buy the car at Hendrick Honda of Easley; is that right?

A. Right.

Q. Okay. Then you called your dad and asked him to drive the Mazda up to Greenville; right?

A. Right.

Q. Okay. So I believe you came back and you test drove the 2005 Honda at Hendrick Honda one more time; is that right?

A. Yes. I'm pretty sure I did on that second day again. Yes.

Q. All right. You went back to the dealership and you asked for Mr. Clemment again?

A. Yes.

Q. Okay. And then you and your father and Mr. Hair went in the building to discuss your negotiations from the day before; is that right?

A. Yes.

Q. Okay. And your father was there and Mr. Hair was there with you; right?

A. Uh-huh (affirmative).

Q. So that was on the 12th?

A. Yes.

Q. Okay. Well, at some point then you agreed upon the terms and you signed the sales worksheet; is that right? The handwritten document ---

A. Which one?

Q. --- with Mr. Clemment?

MR. BECKER: Let's put -- yeah.

A. Right. Yes, I signed that.

Q. That's what you signed?

A. Uh-huh (affirmative).

Q. That's when you agreed to buy the car at the price that's listed there; ---

A. Yes.
Q. -- correct?
A. Correct.
Q. Okay. That's the point at which all the price and the terms had been negotiated with you and Mr. Clemment and you had said I'll buy the car on this price and terms; correct?
A. Correct.
Q. All right. Ms. Clemment, I want to go -- I'm sorry, Ms. Hair, I want to go through with you the documents from the deal jacket in order. Let's start with page twenty-one. Now, this is your driver's license; right?
A. Right.
Q. And you gave it to Mr. Clemment for him to make a copy of before you test drove the car; right?
A. Right.
Q. He needed to make sure that you were licensed to drive a car before he let you drive a car belonging to Hendrick Honda; right?
A. Right.
Q. And it would be reasonable, wouldn't it, for them to keep a copy of that driver's license in the deal jacket; wouldn't you agree?
A. Sure.

Q. The next document is the sales worksheet, page twenty-three and twenty-four. We've already been over this. You signed that document; right?

A. Right.

Q. Let's look at the second page of that -- excuse me. We've been over that document as well. You used that in the negotiation with Mr. Clemment; correct?

A. Correct.

Q. Now, let's go back one page. In the box at the lower right-hand corner. And, Ms. Freeman, that administration fee it's right there; isn't it?

A. It is.

Q. And it's in bold print; isn't it?

A. It is.

Q. It's the only number on that document that's not handwritten; isn't it?

A. Right.

Q. And it's in -- it's the only number that's in bold print. Right?

A. It is.

Q. And you teach reading; right?

A. I do.

Q. And you can see it there and you signed that document; did you not?

A. Yes, I did.

Q. So it was fully -- that fee was fully disclosed to you; was it not?
A. Yes, it was.
Q. All right. Let's go to page twenty-five. We've been through this; correct?
A. Correct.
Q. That's also in your deal jacket. That came from you; right? That's your handwriting?
A. Right. That's my writing. Uh-huh (affirmative).
Q. So it was on a document that you must have given to Mr. Clemment; right?
A. Must have. Yes.
Q. Okay.
A. I don't remember that, but yes.
Q. All right. The next page is twenty-seven. All right. You see this document, Ms. Freeman?
A. Yes.
Q. Is that your signature in the lower left-hand corner?
A. Yes, it is.
Q. Okay. Is that your personal information listed up at the top?
A. Yes.
Q. That was filled in by Mr. Clemment?
A. Right.

Q. And did he give you this document and explain it to you?
A. Yes. I think they said that I could come back for a free carwash.
Q. Okay. And he asked you to sign it; is that right?
A. Yes.
Q. Okay. And this happened after you had agreed on the price and terms of the deal; is that right?
A. I think so.
Q. Okay. It's dated 7/12/06. Do you see that?
A. I do.
Q. Okay. Let's go to page twenty-nine. Now, this document's called a buyer's guide, Ms. Hair. Do you recall that document?
A. Yes. I've seen it before.
Q. Okay. Do you recall that it was the window sticker posted on your car?
A. Maybe. I don't remember.
Q. Do you see that it mentions a warranty?
A. Yes.
Q. And do you see that it also mentions Honda certified?
A. Yes.
Q. Did you know you were purchasing a Honda

certified used car?

A. Yes.

Q. Was that important to you?

A. Well, yes.

Q. It provided an extended warranty; right?

A. Right.

Q. And that was something you wanted; correct?

A. Yes.

Q. Is that a yes?

A. Yes.

Q. Okay. Now, look at the second page. Do you see that your signature is there at the bottom of the second page of that document?

A. Yes.

Q. Did Mr. Clemment present this to you and explain it to you and ask for your signature?

A. I guess so. I don't remember. I don't know what this one is about.

Q. Okay. You don't deny that that's your signature on the document?

A. No, that's my signature.

Q. Okay. You don't deny that having your signature on that document is required by federal law; do you?

A. It was just part of the stack of papers I was signing when I bought the car. So I just signed it, I

guess.

Q. So you don't know; right?

A. I don't.

Q. Okay. All right. Let's move to the next document, page thirty-one. This is page thirty-one of Exhibit 11. There are two things here and your signature is in two places. The top one is called a privacy notice. Do you see that, Ms. Freeman?

A. Yes.

Q. Do you see it's dated 7/12/06?

A. Yes.

Q. And it's signed by you; is that correct?

A. That's correct.

Q. And your name is printed there. Did you print that?

A. I did.

Q. All right. Do you see the disclosure that it makes about the personal information ---

MR. BECKER: Go back to the whole -- the top half.

Q. Do you see the disclosure that it makes there about how it protects the customer's personal information?

A. Yes.

Q. You see there in number three where it says, we

restrict access to the non-public personal information about you to those employees who need to know that information -- know that information to provide products or services to you. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guards your non-public personal information. Do you see that?

A. I do.

Q. And you signed off that you received this notice; is that right?

A. Right.

Q. Let's look at the bottom half of this document. This is called a trade payoff, Ms. Freeman. Do you see that your signature is there and it's also dated?

A. Yes.

Q. Is that date in your handwriting?

A. It is.

Q. Okay. And did Mr. Clemment describe what this disclosure was and ask you to sign that document?

A. Yes, I guess.

Q. Just like you did with the privacy notice, did he describe the privacy notice and asked you to sign that?

A. Probably. I don't remember exactly all of the wording. But, yes, probably.

Q. Let's look at page thirty-two. All right. Now, Ms. Freeman, this is a longer document. It's called an addendum regarding additional terms and conditions. Do you see that?

A. Yes.

Q. All right. Now, at the bottom it's dated 7/12/06. Is that your signature?

A. Yes.

Q. Did Mr. Clemment explain that document and then ask you to sign it?

A. I don't remember the explanation, but there again, it was probably in that stack that I signed.

Q. All right. The next document is page thirty-six of Exhibit 11. Now, this is what at Hendrick Honda they call a buyer's order, Ms. Freeman. Again, we don't need to blow this up, but is that your signature there in the lower right-hand corner?

A. Yes.

Q. And it's dated July 12, 2006 at the top?

A. Yes.

Q. Let's look at the numbers on the bottom corner there. Now, again, Ms. Freeman, that two hundred and ninety-nine dollar fee is listed there on this document; is it not?

A. It is.

Q. Now I know it's called a procurement fee on this one. But it's the same amount as the administrative fee on the sales worksheet that you signed; correct?
A. Correct.
Q. And it's, it's in bold print; right?
A. It is.
Q. And it's the only number on that page that is in bold print?
A. Right.
Q. So it was fully disclosed to you; ---
A. It was.
Q. --- was it not?
A. Yes, it was.
Q. And you signed that document on July 12th?
A. I did.
Q. And you understood, you understood when you did that that you were paying a fee to Hendrick Honda of Easley to buy the car; right?
A. Well sure I knew I was paying a fee, but at the time I didn't know that -- what all it entailed.
Q. Okay. You also at the time you understood that if you didn't want to buy this car from Hendrick Honda, you could get up and leave the dealership; right?
A. Sure.

Q. You knew you didn't have to go through with this purchase if you didn't want to; right?
A. Uh-huh (affirmative).
Q. And you know that if you had any questions about what that fee was, you could ask for an explanation; didn't you?
A. Yes.
Q. And you would not have gone through with this purchase if you were not satisfied with the price and all the terms of the purchase; is that right?
A. Correct. Yes. I was satisfied.
Q. All right. Let's look at page thirty-seven from the deal jacket. Now, this is a copy of your father's driver's license; right?
A. Right.
Q. It was someone at the dealership who asked Mr. Freeman for a copy of that; right?
A. I guess. Yeah.
Q. Well, because he owned the trade-in vehicle that you were trading in; correct?
A. Right.
Q. It was in his name?
A. It was.
Q. So they had to verify his identity; didn't they?
A. Yes.

Q. And they needed a copy of his driver's license to do that; right?
A. Right.
Q. All right. Let's look at page thirty-eight. Now, this is entitled ---
MR. BECKER: And we don't need to blow it up yet.
Q. But this is entitled an affidavit and notification of sale of motor vehicle. Do you see that?
A. I do.
MR. BECKER: Do the top half.
Q. Do you see this is, this is what they sometimes call a bill of sale. And it indicates that William Thomas Freeman is selling a Mazda 626 from 1999 with that serial number to Hendrick Honda; is that right?
A. That's right.
Q. So that's the bill of sale in which your father was transferring title of the trade-in vehicle to Hendrick Honda; is that right?
A. Right.
Q. Now, look in the middle of the page.
MR. BECKER: Blow up the middle.
Q. You see there's an odometer disclosure there; right?

A. Right.

Q. So the trade-in vehicle had a hundred and thirty-four thousand three hundred and two miles on it; correct?

A. Right.

MR. BECKER: Bottom third of the page.

Q. And is that your father's signature there on that document?

A. Yes, it is.

Q. So that's one of the documents that had to be completed in order to transfer title of the -- of your trade-in vehicle; correct?

A. Yes.

Q. All right. Let's look at page thirty-nine. Now, this is another affidavit and notification of sale of motor vehicle; is that right, Ms. Freeman?

A. Yes. That's what it says.

Q. This one is providing that Hendrick Honda is selling a Honda Accord, 2005, with a serial number ending in two three oh to Julie Valiska Freeman; is that right?

A. Right.

Q. So this is a document whereby they would transfer title of the Honda Accord to you; is that right?

A. Right.

Q. Let's look in the middle. It indicates that you had a lien on the vehicle that would go to South Carolina Telco Federal Credit Union; is that right?

A. That's right.

Q. And it has an odometer disclosure; is that right?

A. Uh-huh (affirmative).

Q. Somebody has to fill that information in and get it done correctly; right?

A. Yes.

Q. And at the bottom of the document, is that your signature?

A. Yes.

Q. And it's also signed by Mr. Joseph B. Phillips; is that right?

A. It is.

Q. Representing Hendrick Honda? Is that what you see?

A. Oh, yes. Uh-huh (affirmative).

Q. All right. Let's look at page forty. Now, this is a check from SC Telco Federal Credit Union; right?

A. Right.

Q. That's where you got the money to buy the car; ---

A. Yes.

Q. --- correct?

A. Correct.
Q. And you delivered that to Hendrick Honda of Easley?
A. Yes.
Q. And they would naturally keep a copy of it in their file; would they not?
A. Sure.
Q. That would be a good business practice; wouldn't it?
A. Right.
Q. There's also a second page, page forty-one. That's where Hendrick Honda endorsed the check; right?
A. That's what it looks like. Uh-huh (affirmative).
Q. All right. Let's look next at page fifty-one. Up at the top you can see that this is an application for certificate of title and registration for motor vehicle from the SC DMV which is the South Carolina Department of Motor Vehicles. You see that?
A. Yes.
Q. It's called a Form 400. Okay. Do you see under there at section one with the vehicle information, the VIN number ending in two three oh and the odometer reading. You see all that?
A. Yes.
Q. You see the empty weight that's been filled in by

hand?

A. Uh-huh (affirmative).

Q. Would you agree that the DMV requires all of this information before they will register title to the vehicle in your name?

A. Yes. I'm assuming they need that information.

Q. Okay. Under section three, the owner information. They need your driver's license number there. They need your date of birth. They need your address. They need your daytime telephone number. You see all that?

A. Yes.

Q. Somebody has to put that in on that form; don't they?

A. Sure.

Q. So that it can be registered correctly in your name?

A. Uh-huh (affirmative).

Q. You would agree with that?

A. I agree.

Q. Let's look down at section five, the lien information. You had a loan and your lender needs to -- the certificate of title to indicate that they have a lien on that car; would you agree with that?

A. Yes.

Q. So someone has to fill that information in and get it correct; would you agree?
A. Yes.
Q. Let's look at the second page, page forty -- fifty-two. Under the additional information, section eight. That information about the car would need to be included on this Form 400 to get it registered properly in your name; is that right?
A. Yes.
Q. You would agree with that?
A. I would.
Q. Somebody would have to fill that in and get it done correctly?
A. Right.
Q. Now, under the -- section eight for insurance information. The DMV requires knowing who your insurer is; is that right?
A. Right.
Q. A lot of that information is what Mr. Clemment collected from you on that first sales worksheet; is that right?
A. Right.
Q. You remember that?
A. Yes.
Q. Okay. And then finally there's your signature in

section twelve; is that right?

A. Right.

Q. Okay. Now, it's dated 7/15/06. Do you see that?

A. I do.

Q. Is that your handwriting?

A. No.

Q. Okay. You don't deny though that that's your signature?

A. That's my signature.

Q. Okay. All right. And finally, page fifty-three. All right. This is a registration card and a license plate decal from the South Carolina Department of Motor Vehicles.

A. Right.

Q. Are you familiar with this?

A. Yes.

Q. You get that once title has been -- to a vehicle has been registered in your name. You know that?

A. Yes.

Q. And do you know that -- how did you get this; do you recall?

A. I don't, but I think it was just mailed to me.

Q. It was mailed to you by Hendrick Honda of Easley?

A. I don't know who -- I don't know.

Q. Okay. You didn't take care of registering the

title to your vehicle with the SC DMV; did you?

A. No. The dealer did.

Q. Hendrick Honda of Easley did all that; didn't they?

A. Yes.

Q. They handled all the paperwork for you; didn't they?

A. Uh-huh (affirmative). Yes.

Q. And you ended up with the title to the vehicle registered in your name and that registration card and decal; correct?

A. Yes.

Q. You didn't have to wait in line at DMV; did you?

A. No.

Q. Now, you signed a lot of documents there with Mr. Freeman and the other employees at Hendrick Honda, would you agree, Ms. Hair?

A. Yes.

Q. And after you were finished signing all those document, they gave you the keys and brought you the car; ---

A. Yes.

Q. --- correct?

A. Uh-huh (affirmative).

Q. Now, they weren't, they weren't going to give you

the keys and bring you the car until you'd signed all the necessary paperwork; were they?

A. Right.

Q. And it was exactly the car you wanted; right, Ms. Freeman?

A. Yes.

Q. And you drove off in it?

A. I did.

Q. I believe, Ms. Hair, when you bought the car from Hendrick Honda you were satisfied with the price that you ultimately got for the car; is that right?

A. Yes.

Q. Because if you didn't get the deal you wanted, you were prepared to walk away; ---

A. Right.

Q. --- correct?

A. Uh-huh (affirmative).

Q. And you very satisfied with the way you were treated by the people at Hendrick Honda; weren't you?

A. Yes, I was.

Q. And during the entire transaction you were able to ask any questions that you had and they would answer it for you?

A. Uh-huh (affirmative). I could have.

Q. And there were no questions that you had that the

Hendrick Honda of Easley employees would not answer; is that right.

A. Probably.

Q. And the Hendrick Honda employees were polite and courteous to you?

A. Yes.

Q. And after you bought that car at Hendrick Honda of Easley you had it serviced there on a number of occasions?

MR. THOMAS: aObjection, Your Honor. He's trying to distract the jury. This is irrelevant. The Court's already addressed this issue.

THE COURT: Well, what happened after the fact is not relevant in whether or not the closing fees were legal or illegal. Sustained.

MR. BECKER: Your Honor, could we proffer that at the end of her testimony?

Q. So, in general terms, Ms. Hair, you were happy with the car you bought, happy with the price you paid, happy with the people at Hendrick Honda of Easley who you say treated you very politely and courteously and answered any questions you might have had. Correct?

A. Yes. I was very happy at the time I bought the car.

Q. Ms. Freeman, in the car business you were -- you are what they would call a satisfied customer. Would you agree with that?

A. I agree.

Q. Now, despite all this admitted satisfaction with your experience at Hendrick Honda, on August 29, 2006, you sued Hendrick Honda for charging those closing fees; is that right?

A. Well, I believe it was the way that the fee was, was came up with. Not because they charged the fee, but how it was -- they arrived at that number.

Q. How they arrived at that number. Didn't you in your direct examination say that you didn't -- you don't know anything about the Closing Fee Statute?

A. Well, at the time I bought the car I did not know about it.

Q. Okay. And you don't know anything about how that number was calculated; is that right?

A. Right. When I bought the car I did not -- I did not know what the fee was about.

Q. Do you know how it was calculated now?

A. No.

Q. You still don't know how it was calculated?

A. No.

Q. How do you know it's illegal?

A. Well, I guess from legal advice from my lawyer.

MR. THOMAS: Objection, Your Honor.

THE COURT: Yes. That's sustained. That's what we're here to determine.

Q. When you signed up to be the plaintiff it was not sixty days after you bought the car from Hendrick Honda; right?

A. Right. It was less than that.

Q. All right. Now, I believe you've said that Mr. Thomas is a good friend of yours; is that right?

A. Sure. Uh-huh (affirmative).

Q. He and your husband are good friends?

A. Uh-huh (affirmative).

Q. And he was in your wedding; is that right?

A. He was.

Q. Now, you usually see Mr. Thomas at parties or in social settings; right?

A. I guess occasionally.

Q. Isn't that where the subject of this lawsuit came up, was at a party?

A. No.

Q. Now, when I took your deposition in 2009, Ms. Freeman, your understanding of why you sued Hendrick Honda of Easley was they have charged an illegal fee that was not in the original advertised sticker price

on the car. Do you recall that?

A. If I recall saying that in my testimony? I mean, my deposition?

Q. Yes, ma'am.

A. Yes.

Q. You also complained that it wasn't in the original advertised price. Do you remember that?

A. Yes.

Q. And you said you objected to it because, to the best of your knowledge, it wasn't discussed during price negotiations; right?

A. Right. I didn't talk about that fee.

Q. So at the time of your deposition in 2009 your complaints about that fee was it wasn't part of the advertised price and it didn't come up in price negotiations. And those are the only two complaints you had about it in 2009. Do you recall that?

MR. THOMAS: Objection, Your Honor. Misstating the testimony. He just said she said it was an illegal fee.

THE COURT: Well, that's not how you use a deposition. You ask her the question. If she agrees with you, fine. If she doesn't, you impeach her.

MR. BECKER: Well ---

THE COURT: Show her the deposition if she

needs to refresh her memory.

MR. BECKER: Well ---

THE COURT: Use the deposition in the manner the rules allow, please.

MR. BECKER: I will, Your Honor. One moment, please.

Q. Were those your complaints in 2009 about the car?

A. Yes.

Q. About the fee? Well, there was no advertised price for the car; was there, Ms. Freeman?

A. What do you mean?

Q. Didn't you say you didn't see any advertising at all from Hendrick Honda of Easley?

A. Oh, prior to going there ---

MR. THOMAS: Objection, Your Honor.

A. --- I did not.

THE COURT: Hold on.

MR. THOMAS: We stipulated that we're not challenging the advertised price aspect of the case.

THE COURT: Well, I know you're challenging the advertising price. But he's got her on cross-examination and he can use that testimony for whatever purposes he deems necessary.

Q. Didn't you testify that you never saw any advertising?

A. Prior to going to Hendrick Honda, no, I did not. But I guess I meant advertised price as in what's on the car.

Q. And it didn't come up in price negotiations. That was your other complaint.

A. Right. I did not talk about that fee.

Q. But it was clearly disclosed on two documents you signed?

A. It was.

MR. BECKER: I have nothing further, Ms. Freeman -- Ms. Hair.

THE COURT: Re-direct.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. Ms. Hair, one question real quickly. Were you happy later on when you found that you'd been charged an illegal fee?

MR. BECKER: Objection.

THE COURT: Hold on, hold on. It's for the jury to determine whether or not it's legal or illegal. Don't use the word illegal. That's for the jury to determine. We talked about that in pre-trial.

Q. Ms. Happy, were you -- Ms. Happy. Ms. Hair, were you happy later one when you learned about the Closing Fee Statute and how they charged that fee?

A. No. Later after talking to you, once you explained, no. I was not. I feel it's wrong that they charged the fee illegally and that's why we're here.

MR. THOMAS: No further questions, Your Honor.

THE COURT: Thank you. You may step down.

THE WITNESS: Thank you.

THE COURT: The next witness is a deposition transcript?

MR. THOMAS: Yes, Your Honor.

THE COURT: All right. And how long is that?

MR. THOMAS: Fifteen minutes.

THE COURT: We okay, everybody? Fifteen more minutes.

THE JUROR: I've got to move my car. I got two-hour parking.

THE COURT: I'll get you out of the ticket. I assume that I have that authority. Do I, Madam Clerk?

All right. We're going to do this next deposition, about ten or fifteen minutes, and then we'll take our morning break. Everybody all right for that length of time?

A. Many other things. Right.
Q. --- that Hendrick Honda is trying to get back through their closing fee?
A. Yeah. That's one thing. Yeah.
MR. THOMAS: If I may confer real quick to make sure I got all those.
THE COURT: You did.
MR. THOMAS: Okay. There's no more for that.
THE COURT: Next witness, please.
MR. THOMAS: Your Honor, at this time I'd like to move to publish Exhibit Number 2, the closing fee sign, into evidence. We can put it on the post side and put it on the screen.
Notice. Closing fee. This dealership charges a two hundred and ninety-nine dollar closing 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 full cash price charged at any dealership depends on many factors, including all products and services bought with the vehicle.
(WHEREUPON, Plaintiff Exhibit Number 2 was admitted into evidence.)
THE COURT: Next witness.

A. It's my understanding that there is a complaint that we were illegally charging closing fees, or Honda of Easley.

Q. What responsibility, if any, would the Hendrick Automotive Group have in management as it relates to closing fees?

A. Development of the transaction compliance policy.

Q. That transaction compliance policy, is that like a manual that you expect Hendrick Honda of Easley to follow?

A. Yes, sir.

Q. Could you give me, I guess, a brief synopses on your ascent to vice president?

A. Approximately in 1998, 1999 I switched from being a service manager to be a financial services manager. In April of 2001, I was transferred to Hendrick Automotive Group home office in Charlotte as a financial services support officer. To the best of my recollection, in early 2005, I believe, is when I became a director of financial services and transaction compliance support. And then last year, approximately August, September, I was promoted to vice president of financial services and transaction compliance support. I'm guessing at that date. I don't recall the exact date.

Q. Okay. That's fair. And when you were the director of financial services and transaction compliance support, what was the scope of your duties? Can you describe what your job was?

A. Are you referring to just the compliance portion of my responsibilities?

Q. Maybe let's start a little broader. Well, how about -- start with compliance and we'll go from there.

A. As compliance, it is my responsibility to manage the retail operations of our dealerships in the compliance area.

Q. How many dealerships would you be managing in that regard?

A. Depending upon how you count today's number, I would say low eighties.

Q. And would part of that compliance be monitoring regulations and statutes that have impacted the dealerships to make sure they comply with them?

A. To a degree.

Q. What else did you do in your compliance role?

A. That's pretty much on the compliance side of my responsibilities.

Q. In that time period, '01 to '02, were all the Hendrick dealerships charging closing fees?

A. Yes.
Q. What is a closing fee for the South Carolina dealerships? What does that mean?
A. It's my understanding that the closing fee allows the dealership to get reimbursed for document preparation and document retrieval.
Q. Was that always Hendrick's understanding in that '01 to '05 time period?
A. To the best of my knowledge, yes.
Q. In other words, the Hendrick Automotive Group knew that the closing fees in South Carolina couldn't be charged for things that weren't related to reimbursement for retrieval and document preparation during that time period?
A. Yes.
Q. When you were in that '01 to '05 time period as the financial services support officer in dealing with compliance, was one of the things that you were doing looking at the South Carolina dealerships to make sure that they were charging closing fees for reimbursement of the document retrieval and document preparation costs?
A. That could have been one of many responsibilities. I didn't go into a dealership just to see if they were charging a closing fee for the retrieval of documents

and preparation. No.
Q. Well, we will get into more detail in a minute. But I noticed at some point Hendrick Honda established a cap for the maximum amount the dealer could charge for a closing fee. Was that cap already in place when you went to work for Hendrick Automotive Group in '01?
A. Yes.
Q. How was that number arrived at?
A. I don't know.
Q. During your time period working for Hendrick Automotive Group have you ever participated in any discussions about maybe modifying the cap?
A. What state are you referring to?
Q. South Carolina.
A. I don't remember.
Q. Was that cap still in place from '01 to November '08 in South Carolina?
A. Yes.
Q. Why were you using three hundred and ninety-nine as the cap amount during that time period?
A. I don't know.
Q. Has Hendrick ever done any sort of audit to determine how much it cost a dealership to prepare documents and document preparation costs?
A. To what state are you referring to?

Q. South Carolina.
A. No, to the best of my knowledge.
Q. Why wouldn't they engage in that process?
A. Because the cap was set. We hired a general manager and he has the autonomy to determine what his document preparation retrieval costs are. And he can determine that price, not exceeding the cap. That's specified in the transaction compliance policy.
Q. Would you agree that the South Carolina dealer should only charge closing fees for reimbursement of their closing costs?
A. That's my understanding of what I read in the consumer affairs paragraph.
Q. Was that always Hendrick Automotive's understanding when you got the promotion in '01, going forward?
A. I didn't have a promotion in -- oh. When I went to Hendrick Automotive Group, yes.
Q. Would you also agree with me that if a dealership is going to charge a fee and call it by a name, that the fee has to be for reimbursement of cost related to that name?
A. Yes.
Q. Would you agree with me that a dealership that puts a sign in their dealership saying they are charging closing fees for the reimbursement of certain overhead

costs, that that dealership should know what those costs are before they charge the fee?
A. I would say, yes.
Q. Why is that?
A. Because the statute says we are allowed to charge a fee for document preparation and document retrieval for the costs associated with that.
Q. And why is it important to comply with the statute?
A. It's the law.
Q. What role did Hendrick Automotive have in monitoring the two hundred and ninety-nine dollar amount that was charged for the administration fee by Hendrick Honda of Easley?
A. We would not have had a role.
Q. Would Hendrick Automotive Group's role be limited to ensuring that the closing fee does not exceed the three hundred and ninety-nine dollars?
A. Yes.
Q. And the sign says this dealership charge is a two hundred and ninety-nine dollar closing fee as a means of reimbursement for certain overhead costs such as document retrieval and document preparation. We were -- when it talks about certain overhead costs, it means those costs need to be predetermined; right?
A. I don't know.

Q. Why not?
A. I have no reason to know that. Remember, I previously stated that we have a general manager that's assigned to each dealership and he or she determines what their costs are and sets the cost for the fee as long as it stays within our cap.
Q. Well, what would you anticipate telling the jury about the fee collection policy as set forth in Exhibit Number 13?
A. We are allowed to collect a fee if certain things are satisfied according to the Consumer Affairs Department in the state of South Carolina. These exhibits that you provided to me ---
Q. One of those things would have been, have always been, that the fee should be for the reimbursement of document preparation and document retrieval costs?
A. Certain overhead costs associated with document retrieval and document preparation. Yes.
Q. What are those costs?
A. I have no idea.
Q. And those guidelines for reimbursement of document retrieval and document preparation costs have been known by Hendrick Automotive Group since 2001?
A. I would have to say yes.
Q. And would the compliance team's review simply be to

make sure they are under the three ninety-nine cap?
A. Yes.
Q. In other words, you're trusting the manager of the dealership to make the calculation to ensure that the closing fee is actually charged for the reimbursement of the actual closing cost?
A. As permitted by the regulations, yes.
Q. Well, we talked about it earlier. If you're going to call it a name, that the fee should be what the name is. We agreed to that; right?
A. Yes.
Q. And we agreed that if you have a fee for a processing fee, that the fee should be related to the processing of the paperwork necessary for the transaction; is that fair?
A. Yes.
Q. Similarly, if you're going to name a fee an administrative fee, that fee should be for the administrative costs associated with the closing; is that correct?
A. Of document retrieval and document preparation.
Q. Now, with that being said, in order to be for a reimbursement of a document retrieval, a document preparation, shouldn't the dealership figure out how much it cost to do those items before they seek

reimbursement for them?
A. I would say that's fair.
Q. Would it be fair for a dealership to charge a closing fee that is not tied to their actual closing costs?
A. I would say no.
THE COURT: Next witness, please.
MR. THOMAS: Your Honor, at this time we'll move into evidence Plaintiff's Exhibit 17 which is a -- we're going to publish, which is a stipulated answer to the interrogatories regarding number of sales, annual fee and aggregate closing fees collected.
THE COURT: Madam Forelady, ladies and gentlemen, stipulation -- is this a stipulation, Mr. Becker?
MR. BECKER: It is, Your Honor.
THE COURT: Stipulation -- you are the finder of the facts. As you can see, sometimes facts are not the same. However, when the lawyers are stipulating something, that means they have agreed that this is the fact. It's not a fact in dispute and you're to accept it as the truth.
Any objection to that definition of stipulation, by the defendant?

Everybody else, remain seated, please.

(WHEREUPON, the jury exited the open court at approximately 11:03 a.m.)

THE BAILIFF: Door is closed, sir.

THE COURT: Any motions by the plaintiff?

MR. THOMAS: The plaintiff has no motions, Your Honor.

THE COURT: Mr. Becker.

MR. BECKER: We need to proffer the service record history and Ms. ---

THE COURT: We'll do that at some point in time.

MS. SPRUILL: We do have some directed verdict motions, Your Honor.

THE COURT: Well, just how long will your directed verdict motions take? I wouldn't think very long.

MS. SPRUILL: Well, to speed it up, I actually wrote them down. I have a written directed verdict motion.

THE COURT: That'll be fine. I'll accept a written.

MS. SPRUILL: I don't think you'll see any surprises there, Your Honor. You've been living with these cases a long time. You know what our arguments

are.

THE COURT: And in fact, I have ruled on a good bit of this stuff in pretrial motions.

MS. SPRUILL: You have, you have. And some of these are to preserve our record and to preserve our arguments. I would note that we have -- I don't know when the Court wants to take this up. But you know, there's a difference of opinion between the Plaintiff and the Defendant about what you have to do to violate the Dealer Act. We take the position, you know, as we've argued before and we'll continue to try to argue, this is a Consumer Protection Code case; this isn't a Dealer Act case. But if they want to try it as a Dealer Act case, and Your Honor is inclined to let them try it as a Dealer Act case, they ought to be stuck with the terms in the Dealer Act.

THE COURT: Well, I have ruled consistently, not only in this case, but all the other cases that have come before me concerning the closing fee litigation. Number one, that the consumer -- it's not under the Consumer Protection Act. It is a Dealers Act case. And that's how we're trying this case. That's what all my pretrial rulings have been and orders. So you protected yourself, I think, unbelievably so. And I say that with a complimentary

mood and not -- I mean, you've been very well prepared on that, but I have ruled, and I think you're protected as much as you can be and to preserve that just in case there is an appeal.

And trying it as a Dealers Act case, obviously there's ample testimony in the record that if the jury believed it, it would support a verdict of perhaps the -- not perhaps. But if they believed that some of these costs were or all of these costs were outside the actual closing of the transaction, then they would have violated the Closing Fee Statute and then they would have to determine whether or not your client acted unfairly, arbitrarily, unconscionably, all the language as set out in the Dealers Act. And obviously, that too, in my opinion, is a factual question for the jury to determine. And then all the other issues that you've raised in your motions, I think we've dealt with them on a pretrial basis. Exclusive remedy, the voluntary payment rule. We've just dealt with all of these along and I would respectfully deny your motion for directed verdict. Now, you say that there may be some disagreement on the interpretation of the Dealers Act. Do we need to take that up now or do we do that with the charges when we go have our charge conference?

MS. SPRUILL: Well, one of my directed verdict grounds is -- it's in here at page eight. It's number twelve. And I would to take the position -- we take the position that the terms of what violates the Dealer Act section they're relying under, that's Section 30, are exclusively defined by Section 40, in which case we're only talking about arbitrary, bad faith or unconscionable and which causes damage. Now, the other side takes the position that they can throw an additional element in there of unfairly. I don't think there's a separate stand-alone unfairly prong to this. I think Section 30 says, unfair or deceptive, modifying acts or practices, as defined in Section 40. Then you flip to Section 40. You look at the title of Section 40. It says, specific acts deemed unfair methods of competition and unfair or deceptive acts of practices. All one phrase. I think the only definition for what we're looking at here is in Section 40.

And Your Honor, just ---

THE COURT: In other words, your position is that unfair should not be one of the ways to determine whether or not there was a violation of the Dealers Act. You are limited -- Plaintiff is limited to, it must show that the actions were arbitrary, in bad

faith or unconscionable and leave out the word unfair?

MS. SPRUILL: That's right. You can charge Section 30, unfair and deceptive acts or practices. But those terms are defined in Section 40 as arbitrary, in bad faith or unconscionable.

Your Honor, to further back up my point on that, I went ahead and looked at the title the last time they published this thing; it's the 62 code. And the titles there are even more clear. The statutory language hasn't changed. You're looking at, it's either .53 or 1.53 is the equivalent of Section 30. And what that does, when you look at how they originally stuck this thing in the code, Section 154 says, unfair methods of competition and unfair, etcetera, practices unlawfully. They treat it as all one thing. And then they take it to Section 154 and they say, what acts are deemed a violation of Section 153? We're going to take the position that they have to prove arbitrary, bad faith or unconscionable. There's no separate unfairly way to get at this. So we don't need to go looking to the Unfair Trade Practices Act. We don't need to have this argument about what definition of unfairly applied. Because the Dealer Act has given it to us.

THE COURT: So your position is we limit it

to arbitrary or in bad faith or unconscionable?

MS. SPRUILL: That's right.

THE COURT: No bad faith?

MS. SPRUILL: No separate unfairly. No separate going out to the Unfair Trade Practices Act like plaintiffs want you to do. They want to go outside the Dealer Act when it's convenient for them and pull in other definitions. And what my number twelve is, if Your Honor is inclined to agree with me, we think they've given you the wrong definition of unfair for purposes of both this act and for purposes of the Unfair Trade Practices Act. But we think ---

THE COURT: Well, you've given me a definition of bad faith or unfair.

MS. SPRUILL: I've given you bad faith, unfair and arbitrary. I've given you arbitrary as it's interpreted under the Dealer Act. It's a really low bar. It looks almost like the business judgment rule. Basically if you've got any rational basis for doing what you did, it's not arbitrary under the Dealer Act.

THE COURT: Mr. Thomas.

MR. THOMAS: Yes, Your Honor. This issue actually came up in the *Taylor* case. And in looking at the statute ---

THE COURT: Which statute?

MR. THOMAS: Look at 56-15-30.

THE COURT: It says, a unfair methods of competition and unfair or deceptive acts or practices as defined in 56-15-40 are hereby declared to be unlawful.

MR. THOMAS: That's correct.

THE COURT: 56-15-40 says, it shall be deemed a violation of 56-15-30 for a motor vehicle dealer to engage in any act which is arbitrary, in bad faith or unconscionable and which causes damages or damage to any of the parties or to the public.

MR. THOMAS: That's right, Your Honor. We believe that the rules of statutory reconstruction require that in 56-15-30. The actual language of the statute which controls, not the titles of the statute, but the actual language, every piece of it has to be given meaning. And that there are or's between unfair or deceptive acts or practices, as defined in 56-15-40.

To accept their suggested interpretation of the statute would render the and unfair or deceptive acts clause in that statute meaningless. Because they could simply say, and practices as defined in 56-15-40. Would render the unfair or deceptive acts

or practices, in order to give them all meaning, unfair has to be different than practices as defined in 56-15-40.

THE COURT: So what you're saying in reading 56-15-30, the Dealer Act would be unlawful if there were unfair methods of competition and unfair or -- except as defined in 56-15-40 -- actually that's not what I should be saying. It would be unlawful if there were unfair methods of competition and unfair, that's one way. Or through deceptive acts and practices as defined in 56-15-40. Two ways, unfair methods of competition and unfair or the deceptive acts which are defined as arbitrary, in bad faith or unconscionable.

MR. THOMAS: Well, actually I think there are four there. I think that an unfair method of competition is a violation. And I think an unfair act is, or deceptive act, or practice, the ones that she's pointing at, those practices in 56-15-40, I do think apply. And we are going to ask for a jury charge on it. But I think there's an or between the practices in 56-15-40 in unfair acts. And this is a remedial statute and should be interpreted broadly in favor of consumer protection, which is the purpose of ---

THE COURT: Well, I know in the *Ritz* case in

Aiken, we charged that -- we charged the full language of 15-30 and tied it into 15-40.

MR. THOMAS: Yes, Your Honor. Also, it was in the jury charge we handed up yesterday. We're going to ultimately ask for the same charge that was given in the *Ritz* trial.

MS. SPRUILL: We don't think you need a separate unfair charge. Think about how hard it was for him to articulate the construction he wants you to have. Unfair or deceptive. Adjectives, modifying acts or practices, declared unlawful.

THE COURT: Well, you might be right. It might be difficult, but that's what the legislature has it. It's how the legislature wrote it.

MS. SPRUILL: Your Honor, it's two separate things. Unfair methods of competition and unfair or deceptive acts or practices as defined in Section 40.

THE COURT: Thank you. You're protected. I'm going to charge it just like I charged in Aiken.

MS. SPRUILL: Okay. Well, then our argument is that if you're going to charge that word unfair just like you did in Aiken, you've got to charge such that unfair is defined as it's not going to include anything reasonably avoidable by the consumer. That's what the FTC says. That's what they've said for the

last thirty years. Yes, Your Honor, you may be guided by the FTC under the Dealer Act, but if you're going to use an Unfair Trade Practices Act charge, you must be guided by the terms of the FTC. And what we're going to propose there is acts or practices caused or are likely to cause substantial injury to customers which is not reasonably avoided by consumers. You just heard Ms. Freeman say, I didn't have to buy the car there. I didn't have to pay this fee. I could have gone somewhere else. I wanted this car. I wanted this deal. I paid the fee. It was a hundred percent avoidable.

MR. THOMAS: Your Honor, two-fold. One, the court may be guided by the definitions of the FTC. This is essentially the same argument that they made on the voluntary payment doctrine. And the purposes of these statutes, again, are to protect consumers. The argument that she's making would render the Closing Fee Statute meaningless. It would render all limitations on the amount of the fee they can charge. Because any customer who charges a fee under her interpretation, if a customer pays an eight thousand dollar closing fee, they would have no recourse under either the Dealers Act or the Closing Fee Statute, because, as she says, they paid the fee.

MS. SPRUILL: Then they would know ---

THE COURT: Hold on.

MR. THOMAS: It would render both statutes meaningless.

MS. SPRUILL: Excuse me.

MR. THOMAS: And thus should be rejected.

THE COURT: Yes, ma'am.

MS. SPRUILL: The Closing Fee Statute wouldn't be meaningless. You've got a remedy under the Consumer Protection Code for excess charge. It doesn't have this FTC requirement in there. All it does is that this is a -- as a matter of law can't be an unfair series of facts for purposes of the Dealer Act.

THE COURT: I will define unfair -- trade practices deemed to be unfair when it is offensive to public policy. An action that violates the statute, violates public policy and a practice is deceptive when it has a tendency to deceive. It's the same definition I used in the other cases. I'll stick by my ruling, or be consistent in this case as I was in the others.

All right. We'll take a few minutes so you can stretch your legs.

(WHEREUPON, the Court stood at recess for a short

raise your right.

MADAM CLERK: Do you solemnly swear or affirm the testimony you're about to give in this case will be the truth and the whole truth and nothing but the truth, so help you God?

MR. CLEMMENT: Yes, ma'am.

MADAM CLERK: State your full name for the record.

MR. CLEMMENT: Randall Arnold Clemment.

MADAM CLERK: Please be seated.

MR. CLEMMENT: Thank you.

THE COURT: Good morning, Mr. Clemment.

MR. CLEMMENT: Good morning, sir.

THE COURT: Mr. Becker.

RANDALL ARNOLD CLEMMENT,

BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BECKER:

Q. Good morning, Mr. Clemment.

A. Good morning.

Q. Mr. Clemment, where are you currently employed?

A. At Hendrick Honda in Easley, South Carolina.

Q. And what is your position?

A. I am a sales manager.

Q. All right. When did you first start working at

Hendrick Honda of Easley?

A. In March of 2001.

Q. All right. Before we go further about your work history, what -- a little bit about your personal background. Where do you currently live?

A. I live on 1146 Lakeview Drive, Greenville, South Carolina. It's in the Powdersville Community.

Q. All right. How long have you lived in this area?

A. I moved to Greenville in 1986. I did live in south Florida for three years, but I came back to Greenville.

Q. All right. So about twenty-seven years now?

A. Yes, sir. I believe that's correct.

Q. All right. Where are you from originally?

A. Upstate New York.

Q. Okay. Did you graduate from high school?

A. Yes, sir, I did.

Q. Where did you graduate from high school?

A. From Riverside High School.

THE COURT: Hold on one second. Who you got? Mr. Bailiff?

THE BAILIFF: Mr. Richardson.

THE COURT: Tell him I'll make an exception for him one time. Thank you, Mr. Bailiff. Mr. Becker.

Q. And when did you graduate from Riverside High School in Greenville?

A. In 1990.

Q. All right. Now, did you pursue any formal education after graduating from high school?

A. Well, I did take some courses at Greenville Technical College. Yes, sir.

Q. All right. Now, tell us -- tell the jury about your employment history before you started work at Hendrick Honda of Easley.

A. Well, in 1989 when I was still in high school I was employed part-time at a golf facility. Started on Pelham Road in Greenville. At the time it was called Pelham Tee Golf Center. When I graduated high school and started Greenville Technical College, I became full-time with that company. In 1996, the owner of that facility sold the facility to a public corporation by the name of Family Golf Centers Incorporated. They retained me, kept me on, as a manager in 1996. They then eventually asked me to be transferred to south Florida, the Fort Lauderdale, Florida area, which I accepted. And I became a district manager for them for almost three years.

I then decided I wanted to come back to the Greenville area. My family's here, things like that.

And a friend of mine owned a golf facility in the Powdersville community. And she says, well why don't you come up and work for me? So I accepted her offer and I was a manager and a golf instructor for her for about a year, maybe a little over a year.

Q. Okay. All right. So what year then did you come to -- become employed with Hendrick Honda of Easley?

A. In 2001.

Q. All right. Who hired you to work there?

A. Mr. Pendleton hired me. He's the general manager.

Q. All right. So you've been employed at Hendrick Honda for about twelve years; is that right?

A. Yes, sir. Twelve years, a little bit more.

Q. Mr. Clemment, what positions or responsibilities have you held at Hendrick Honda during the time you've been employed there?

A. I have been a sales consultant or sales person. I have been a inventory manager. I have been a dealer trade manager. I have been a finance manager. And I am currently a sales manager.

Q. All right. Well you've had a number of different jobs at the dealership. Would you give the jury just a brief explanation of how a car dealership works. And let's talk -- tell us what a dealer trade or inventory manager does.

A. Sure. Well, I'll start with the dealer trade manager, if that's okay. A dealer trade manager's main responsibilities are to secure vehicles for our customers, normally new Hondas. If we do not have the particular color a customer wants or the specific trim level or trim level and color the customer wants, I have to trade a vehicle with another Honda dealership to get the car that customer desires. So we work out the trade of vehicles. And technically, we sell that dealership our car, they sell us their car that we need.

An inventory manager, it's a little bit different. An inventory manager's responsibilities is mainly to order new vehicles, in my case Hondas, since I work at a Honda dealership, to order cars for the dealership. And I order them through American Honda Motor Corporation.

Q. All right. What does a sales manager do?

A. It's a long list of responsibilities and job descriptions. We oversee sales consultants. We help sales consultants get the information they need to relay to their customer, our customer, on the possible transaction. We over -- we oversee that sales transaction. We provide training to our sales consultants. I think that's pretty much it in a nutshell. It's a long list. But we oversee the sales

operation of both new and used cars in the dealership.

Q. All right. What responsibilities does a sales consultant have in the car sale process?

A. Sales consultant job responsibilities included, of course, meeting and greeting customers; answering customer questions; showing the vehicle to the customer; going over benefits of the car; features on the vehicle. Sales consultants also negotiate transactions with our customers and their customers. Again, it's a long list of things sales consultants do. They also do -- I guess I don't -- they can do small tasks for the dealership. Sometimes we need to move cars around the lot to make the lot look better. They help in that aspect as well. But their main responsibility is helping customers and hopefully negotiating an automobile transaction.

Q. All right. You also mentioned that you've been employed as a finance and insurance manager. What does a finance and insurance manager do?

A. A finance and insurance manager job responsibilities include securing financing if the customer would like to see what type of finance options that we can offer them. Try to get the finance approval from a bank or a finance company. A finance manager's job is to, to go over products that we offer in our finance office, such as, GAP coverage,

extended service agreements. Some people call them warranties. A lot of people call them warranties. Their job is also to prepare a lot of paperwork and disclose that paperwork to our clients and make sure the clients understand the transaction that they're entering, what the numbers are of that transaction, get the client or customer to sign those forms and make sure they do all of those things correctly and thoroughly.

Q. Okay, sir. Now, have you ever received any training from Hendrick Honda on how to perform the various jobs that you've held in your twelve years at the dealership?

A. Yes, sir. I have received a lot of training.

Q. Can you describe some of that training, please?

A. Yeah, I'll be happy to. Well, I'll start with what I consider a great thing that my organization offers. The Hendrick Automotive Group offers what's called Hendrick University and it's -- our headquarters is in Charlotte, North Carolina. And they provide training for many different departments in the dealership; sales, finance, service; how Mr. Hendrick would like us to answer questions for our customers and how he wants us to show the car and how he wants us to negotiate with our customers. So we've got Hendrick University which is a very great source for us.

I've also -- have attending training both on site, on the job training I would say, from certain managers over my years there. I've received training from America Honda. I've attended seminars from American Honda. I've done online training with American Honda. There's another organization that's called AFIP, Association of Finance and Insurance Professionals. Which is mainly -- that training is mainly about the laws of an automobile transactions, laws and ethics. And I've received training from them.

Q. All right. Have you received training on all the positions that you've held at the dealership?

A. Yes, sir, I have.

Q. And I believe you mentioned that this AFIP or Association of Finance and Insurance Professionals; is that right?

A. Yes, sir, I did.

Q. What is this organization?

A. Association of Finance and Insurance Professionals is the leading association in our industry to provide training on federal and state laws. Things like the federal Red Flags Rules. Things like the federal Safeguards Rule. Things like the Disposal Rule, OFAC reports. A lot of these things were developed after 9/11/2001. And they provide us training on those

things.

Q. All right, sir. Can you sell a car and transfer title to a consumer if you do not comply with those laws you've just described?

A. No, sir. We cannot.

Q. Now, have you been certified by the AFIP organization?

A. I am certified with them. Yes, sir.

Q. What level of certification do you currently have?

A. I currently hold the senior level of certification with AFIP.

Q. All right. In the training that you've received in your job through Hendrick University and through organizations like AFIP, you have been trained in the state and federal laws that apply to the sale of a motor vehicle by a licensed motor vehicle dealer to a consumer such as Julie Freeman?

A. Yes, sir, I have.

Q. All right. Do some of those laws impose disclosure documentation and record retention requirements on licensed motor vehicle dealers for the sale of motor vehicles to consumers such as Ms. Freeman?

MR. THOMAS: Objection, Your Honor. He's asking for a legal conclusion. The witness is not an expert witness or a lawyer.

THE COURT: No, that's not --- that's a legal conclusion. He can't answer that. Just whether or not he had to get them signed.

THE WITNESS: Forgive me, Your Honor. Can I ask to repeat the question?

Q. I'll be glad to. You've discussed some of these federal laws that you learned about in your AFIP training?

A. Yes, sir, absolutely.

Q. That apply to the sale of a motor vehicle to a consumer?

A. Yes, sir.

Q. Do some of those laws impose disclosure, documentation and record retention requirements on licensed motor vehicles that they have to comply with before they sell a car to a consumer like Ms. Freeman-Hair?

A. Absolutely. Yes, sir.

Q. Mr. Clemment, I'm going to show you some documents on this screen rather than handing you paper. So, I'd like to show you Exhibit 20, Defendant's Exhibit 20. This document is entitled, Hendrick Automotive Group Transaction Compliance Policy. It's a fairly lengthy document. Are you familiar with it, Mr. Clemment?

A. Yes, sir, I am.

Q. Have you been trained on the policies in that document?

A. Yes, sir, I have.

Q. Tell us your general understanding of the purpose of the document?

A. My understanding of the purpose of this very long document is to make sure we conduct business with our customers in a legal and an ethical way with full disclosure.

Q. Look at the first sentence on page eight.

THE COURT: Is this into evidence?

MR. BECKER: Well, it's on our list. They don't -- they, they haven't ---

THE COURT: Any objections?

MR. THOMAS: I have no objections at this time.

THE COURT: Thank you.

Q. It says the company will conduct its business in compliance with all applicable laws, rules and regulations with honesty and integrity and with a strong commitment to the highest standards of ethics.

A. Yes, sir. That's what it says.

Q. Is that your understanding of the policy?

A. Yes, sir. Absolutely.

Q. And what it's designed to do?

A. Yes, sir.

Q. Is it also designed to make sure that Hendrick Honda's employees comply with all the state and federal laws that apply to the sale of a motor vehicle to a consumer?

A. It is. Yes.

Q. Would you have followed the polices in this document generally during your employment at Hendrick Honda?

A. Yes, sir.

Q. Mr. Clemment, we've talked in this case about something called a deal folder or a deal jacket. What is that?

A. A deal folder or a deal jacket is simply a folder or a file where we store documents related to that possible automotive transaction. That -- some of them are our documents, some of them are our customer documents, photocopies, things like that. It's where we store the documents.

Q. All right. Are the documents contained in the deal jacket prepared in the ordinary course of Hendrick Honda's business of selling automobiles?

MR. THOMAS: I'll stipulate to the admissible of the deal jacket.

MR. BECKER: All right. He's stipulating,

Your Honor. With that, we move that Defendant's Exhibit 11 be admitted into evidence.

THE COURT: Without objection.

(WHEREUPON, Defendant Exhibit Number 11 was previously admitted into evidence on page 292.)

Q. Were you involved in the sale of a Honda Accord t

A. Julie Freeman in July of 2006, Mr. Clemment?

A. Yes, sir, I was.

Q. How do you know you were involved in that transaction?

A. Well, I reviewed documents that are in that deal jacket, and it's my writing on those documents.

Q. Okay.

A. My signature's on a few on them as well.

Q. To the best of your knowledge, would you have followed the transaction compliance policy in Ms. Freeman's transaction?

A. Yes, sir.

Q. Do you have a specific recollection of that transaction?

A. No, sir, I don't. Do not.

Q. Well, approximately how many cars or trucks do you sell in a typical month? Or in other words, what's your monthly average in a typical year?

A. Approximately twelve vehicles a month.

Q. Okay. Would that make about then about a hundred forty to a hundred fifty a year?

A. Yes, of vehicles I've sold. Yes, sir.

Q. And it's about seven years since this transaction on July of 2006?

A. Yes, sir.

Q. In July 2006? So that would be nine hundred to a thousand transactions; is that right, since that time?

A. Yes, sir. That's correct.

Q. And does that number include the customers that you've worked with but who for one reason or another did not purchase a car?

A. No, sir. That number does not include those customers.

Q. What is the ratio of customers you work with to those that ultimately purchase?

A. Approximately twenty-five percent of the customers that I work with purchase a car from me.

Q. Okay. So would that mean you've worked with about thirty-six hundred to four thousand customers since the sale to Ms. Freeman?

A. Yeah, I believe your math is correct there. Yes, sir.

Q. It's better today than it was yesterday. Well, is that the reason you don't specifically recall Ms.

Freeman's transaction, you do a lot of them and it's been a long time?

A. Yes, sir.

Q. All right. Well, based on your review of the deal jacket, what role did you plan in the sale to Ms. Freeman-Hair?

A. I was the sales person or sales consultant on the transaction.

Q. All right. Based on the training you've received at Hendrick Honda and the large number of automobiles you've sold over the years, have you developed a habit or routine practice for working with customers who are interested in purchasing cars at Hendrick Honda?

A. Yes. Very much so.

Q. Okay. Please take a look at Exhibit 20, which is the July '06 transaction compliance policy at page fifteen. All right. This is entitled, general.

MR. BECKER: Could you zoom in on it, please? All the writing, including B up at the top.

Q. All right, sir. Are you familiar with this general transaction paperwork policy?

A. Yes, sir, I am.

Q. All right, sir. Let's go through a few of these requirements. And I'd like to focus on the ones that would have applied in the transaction with Ms.

Freeman.

Number one, all documents must remain in the deal file. When re-contracting is required, the original documents will be voided and kept in the file. Did that apply in her transaction?

A. I don't believe we had to re-contract that transaction. No, sir.

Q. All right. Number two, other than worksheets, credit applications and forms not programmed into the DMS system, no handwriting will be allowed on any document, except the signatures of the buyer and co-buyer, unless specified by state government regarding policies. Did that apply?

A. That applied. Yes, sir.

Q. How about number three, a privacy notice must be provided to each buyer and co-buyer prior to the sales process?

A. Yes, sir.

Q. Number four, OFAC clearance must be obtained prior to the sales process?

A. Yes, sir.

Q. What is OFAC?

A. OFAC is a -- I believe it's a -- if I'm not mistaken, it's a federally regulated software system that we make sure we're -- we're not, we're not

selling cars to, for instance, terrorists. It's something from the federal government that we run on the computer system, to the best of my understanding.

Q. All right, sir. Number five, under no circumstances should blank forms of any type be signed by the buyer or co-buyer. Would that have applied to Ms. Freeman's transaction?

A. Yes, sir. That applies.

Q. Ms. Hair's? I'm sorry. Number nine there at the bottom. A copy of the buyer's and co-buyer's driver's license must be included in the file. Signatures on the driver's licenses must be compared to signatures on all documents for consistency and validity. Did that apply to Ms. Hair's transaction?

A. Yes, sir, that would apply.

Q. Number ten, the buyer and co-buyer must have the opportunity to review all forms and documents prior to signing. Did that apply?

A. That applied. Yes, sir.

Q. And finally number eleven, when applicable, a signed copy of each document must be provided to each customer. Did that apply?

A. Yes, sir.

Q. To your knowledge, are these requirements for these documents imposed by state and federal law in the

sales transaction with the customer?

A. Yes, sir. I believe that's correct.

Q. Would it have been your practice to follow these requirements in your dealings with Ms. Hair?

A. Yes, sir, absolutely.

Q. All right. Let's look at page sixteen of this document. Page sixteen of Exhibit 20, the July '06 transaction compliance policy. This page mentions a worksheet. Are you familiar with this -- with the policy here for the worksheet?

A. Yes, sir, I am.

Q. Now, we'll go over the one signed by Ms. Freeman -- Ms. Hair in more detail. But let's go through these specific requirements for the sales worksheet now. It states, number one, it must be clear and conspicuous based on terms negotiated for the transaction. Did you follow that in this transaction?

A. Yes.

Q. Number two, each worksheet must include clear and specific dollar amounts for value of trade-in and related payoff. Did you follow that policy?

A. Yes, sir.

Q. Number three, each worksheet when applicable, must include clear -- I'm sorry, I missed one. No, I didn't.

A. Nope.

Q. Number three, each worksheet must include clear and specific dollar amounts for cash down payment.

A. Yes, sir, absolutely.

Q. Four, previous superceded worksheets, when applicable, must be voided and kept in the deal file.

A. Absolutely.

Q. The final worksheet must be signed by the buyer, co-buyer, and the company's agent. Is that right?

A. That is correct.

Q. And finally, the specific amounts for purchase price, trade-in, pay-off, cash down, and any applicable product must be transferred to the financial services menu and match exactly. Did that apply here?

A. Yes, sir.

Q. And again, would it have been your practice to follow these requirements in your dealings with Ms. Freeman?

A. Yes.

Q. Look on page eighteen of the July -- Exhibit 20, the July '06 transaction compliance policy. This document -- this page, rather, is entitled, transaction forms slash documents. Do you see that?

A. Yes, sir, I do.

Q. Okay. It says, on all deals the company includes the following forms on all transaction, as applicable, to contain appropriate company language. Is that right?

A. That's correct.

Q. And then it lists under there twenty-nine different documents. Do you see that?

A. Yes, sir, I do.

Q. Above the line there at the bottom?

A. Yes.

Q. So if these -- any of those twenty-nine documents are applicable to a particular transaction, are those documents required by the transaction compliance policy?

A. They are. Yes, sir.

Q. And again, is this transaction compliance policy designed to ensure compliance in sales transactions with the disclosures of documentation and record retention requirements of state and federal law?

A. Yes, sir. That's right.

Q. What about documents thirty through thirty-six? What are those documents for?

A. Those are documents that are presented in our finance office. And those are other products that we -- our finance managers offer to our customers when

they're purchasing a vehicle.

Q. So if a customer is purchasing any of those products, are those documents also required by the transaction compliance policy?

A. Yes, sir, it is.

Q. Excuse me one second. Do you need any water, Mr. Clemment?

A. That would be great. Thank you.

Q. Now, I'm going to ask you about Exhibit Number 11, Mr. Clemment. That is the Julie Freeman deal jacket. Can you identify -- we won't go through these particular documents. We'll -- a copy of Exhibit 11 has been admitted in evidence. But can you identify this as the deal jacket for the transaction with Ms. Julie Freeman-Hair?

A. Yes, sir, it is.

Q. All right. And I understand you've recently reviewed those documents; is that right?

A. Yes, that's correct.

Q. Now, do the documents in the deal jacket indicate that this sales transaction took place over a two-day period on July 11th and 12th, 2006?

A. Yes, sir, they do.

Q. And Ms. Freeman purchased a white 2005 Honda Accord?

A. Correct. Yes, sir.

Q. Now, based on your review of the deal jacket, was that car on the company's sales lot on July 11, 2006?

A. Yes, sir. I believe it was, based on my review of all this paperwork.

Q. All right. I'd like you to look at page twenty-nine of the deal jacket. And you don't need ---

A. Okay.

Q. --- to look for it.

A. Very good.

Q. We're going to put it all up on the screen, ---

A. Great. Thanks.

Q. -- Mr. Clemment. This document is identified as a buyer's guide; is that correct?

A. That is correct. Yes, sir.

Q. What is the buyer's guide?

A. A buyer's guide is a form -- it's basically a warranty statement. And it's required by federal law to be placed on every pre-owned or used vehicle that we have on our lot available for sale. And it basically states what warranty our customer's getting if they choose to buy the car at no additional charge to that customer.

Q. Was this sticker on Ms. Freeman's car on that day, July 11, 2006, according to your normal routine

practice?

A. Yes, sir. It's on every used car, so yes.

Q. All right. Does the buyer's guide mention the price of the vehicle or anything about the closing fee?

A. No, sir. It does not.

Q. Does the buyer's guide indicate if this was a Honda certified used car?

A. Yes, sir. It definitely does.

Q. What is a certified used car?

A. I'm going -- it's kind of a long answer, but I'm going to explain it to you. When we take a vehicle in on trade that can possibly be Honda certified, if it meets the criteria of mileage and age, year or how many years old it is, the first thing we do is take that vehicle to our service department for a Honda certified inspection with a Honda technician. That is a one hundred and fifty point inspection with a Honda mechanic or technician. That car when he -- that car then gets inspected, that technical tells us, the sales managers, what work needs to be performed to that vehicle to get it up to Honda certified level. We then perform -- tell him go ahead and do the work. It then, of course, goes into our detailer or clean up shop. Then it comes around and it's available for

sale. We put a buyer's guide on it.

And -- but most importantly I think to our customers is the warranty that the customer gets on a Honda certified vehicle, and it's stated there on the buyer's guide.

Q. All right. Now, did you and Ms. Freeman test drive the car?

A. I would think we did, yes, sir, based on my normal practices.

Q. Do you require any documentation from the customer before they test drive a car?

A. We require a driver -- a photocopy be made of the customers driver's license.

Q. All right. And can you explain why you do that?

A. Yeah. It's -- well, like, it's for two reason. We want to make sure that the customer that wants to drive the vehicle is a legal driver to be driving on public roads and -- but it also provides a little bit of, I guess, safety or security for the sales consultants. When I make that photocopy and I drop it off in the sales office in the appropriate place, I'll just say, guys, I'm going on a test drive with this customer and I'll drop it into, for instance, a basket and then off on the test drive I go. So, two reasons.

Q. All right, sir. Do you also need that information

from that driver's license to fill in certain forms?
A. Good point. Yes, I will need that. Absolutely.
Q. Okay. That are required in the transaction?
A. Yes.
Q. Mr. Clemment, I'd like to have you take a look at the sales worksheet, Exhibit 11, page twenty-three. All right. We've seen this so far in the case, Mr. Clemment. Does this document contain your handwriting?
A. Yes, it does.
Q. All right. Is this form of sales worksheet something that you normally use in sales transactions?
A. Yes, sir, every time.
Q. Now, is the sales worksheet a two-sided document?
A. Yes. Two-sided, that's correct.
Q. So, normally when you first prepare it it's one piece of paper with two sides to it; is that correct?
A. Yes, absolutely. Perfect.
MR. BECKER: Show page twenty-four.
Q. So, when it first starts out is, is that the front or the back page?
A. That's the back page of the sales worksheet.
Q. All right. And does the dealership keep a supply of blank sales worksheets forms on hand for sales consultants to use?

A. Yes, we do.

Q. And we'll go through this document in detail, but right now can you just briefly explain for the jury how you would typically use a worksheet in working with a customer?

A. Sure. A sales worksheet is basically the first form that I get out to collect information on the customer, on the vehicle they're interested in, if there may or may not be a trade-in involved. It's a form I use very early in the negotiation part of the closing process.

Q. All right. Let's look back at page twenty-three. Now, in the upper right-hand corner it's dated July 11, 2006. Is that in your handwriting?

A. Yes, sir, it is.

Q. According to your normal practice, what does that tell you about when you likely first started dealing with Ms. Freeman?

A. I would say on that date, July 11, 2006.

Q. Up at the top of this form there's information about the buyer. Did you fill that in?

A. Yes, sir, I did. It's my writing.

Q. Would you have used her driver's license to do that?

A. Yes, sir. I would have used her driver's license

and possibly asked the customer some questions as well. Yes.

Q. All right. All right. Now, just under that on the left-hand side there's a column with a fair amount of information.

A. Yes, sir, it is.

Q. It includes information on the vehicle being purchased, the used vehicle being traded, and the pay-off verification, and the insurance verification. Is that correct?

A. Yes, sir.

Q. Did you gather and collect all of that information?

A. I did, yes.

Q. All right. The -- did you gather and collect all of that information for the vehicle she was purchasing?

A. Yes, sir.

Q. Did you check the odometer to get the milage correct?

A. I would. Yes.

Q. All right. Is that necessary on the odometer statement that is ultimately signed by the customer?

A. It is. Yes, sir.

Q. And did you collect the information on the used vehicle being traded?

A. I did. Yes, sir.

Q. Did you gather the VIN number off of the car ---

A. Absolutely. Yes.

Q. --- that she was purchasing?

A. Yes.

Q. Is that also necessary to properly title the vehicle in Ms. Freeman-Hair's name?

A. It's absolutely necessary.

Q. All right. There's a section on payoff verification. Tell us how and why you collect this information.

A. Well, of course we only need to collect payoff verification if the customer is either trading a vehicle or selling us a vehicle that they currently owned. In this case, there was a trade-in involved. And I needed to know if there was any lien holder on that trade-in so we could factor in what that payoff amount is to come to the final numbers of the transaction. So I would -- I typically ask a client, do you own free and clear title to your vehicle? And if the answer is no, I would say, who do you make your payments to? In this case it was SC Telco Federal Credit Union. And I gather the information one step at a time.

Q. All right, sir. And down below that there's an

insurance verification. Do you gather and collect that information?

A. I do. Yes, sir.

Q. Tell us how and why you collect it.

A. We collect it because if there is going to be a lien recorded on the vehicle being purchased, that lien holder needs to know that there'll be full coverage automobile insurance on that car. So it's a requirement that we have as a dealer to collect that information and there's a document printed in the finance office -- insurance document printed.

So we -- I -- in this case I called Nationwide, and Mike Boyd was the agent, to get that information. And at some point in time I informed the insurance company, the insurance agent, of what car the customer is buying, give them the VIN number to the car so they can make the adjustment to the automobile policy.

Q. So, is all of the information on the left-hand side of that form, Mr. Clemment, is it necessary to complete the closing of the sale to Ms. Freeman-Hair?

A. Yes, it is. Absolutely.

Q. Is it also necessary to properly register the title with the DMV and complete the registration of the vehicle in her name?

A. Yes, sir, it is. Yes, sir.

Q. And let's look back at the second page, which is page twenty-four. This page has six boxes. It starts over there on the left with MSRP and you filled in eighteen nine ninety-five.

A. I did.

Q. Was that the asking price for this car?

A. It was. Yes, sir.

Q. All right. There are six boxes there over on the right-hand side. Could you explain these items just so the members of the jury fully understand what this is for?

A. Sure. We've already talked about the MSRP in the top left corner. The selling price box is -- possibly a customer may make me an offer and I would make a notation of that in the selling price box. Or possibly I would offer a discount to the customers to maybe get negotiations started and I'd make a notation in that selling price box. But it's -- this is the form we use for our notes as we negotiate with a customer. So as we move through it, the next box on the top to the right says trade. That's going to be where we put in the value of what that trade-in is.

Moving to the middle and on the left it says cash down. That's where we would write in different amounts of cash down or a specific amount. If the customer says, hey I want to put down a certain amount

of money, we'll make a note of that there.

And then there's a payment box over to the right where we would -- if they want to see what monthly payments would be, we would offer different options for monthly payments based upon the cash down.

And then the bottom two boxes, normally it's -- they're really used for a lease transaction on a new vehicle. But when we're selling a used car and maybe there's going to be multiple payment options, we use that space on the worksheet to provide options.

Q. All right. Let's look back at the first page, which is page twenty-three. In the upper right-hand quadrant for the box that has MSRP, there are three different numbers in this section here; is that right, Mr. Clemment?

A. Yes, three. Yes.

Q. Based on what you wrote here and your habit and practice in dealing with customers, what can you tell about the progress of the price negotiations with Ms. Hair -- Ms. Freeman?

A. Based on my experience and practices, our asking price of the car was eighteen nine nine five. I arrowed down to -- and I put a note in there of eighteen six ninety-five. I think I offered a courtesy discount to hopefully get -- to get negotiations started. And I think it worked, because

I arrowed down again to a lower price after that, which says eighteen two ninety-five.

Q. All right. Now, based on your normal practice, when do you believe you would have first shown Ms. Freeman the sales worksheet?

A. It's basically the first document that we show to our customers in the start of that closing negotiation process.

Q. All right.

MR. BECKER: Let's zoom out.

Q. And this document includes the closing fee in the lower right-hand corner; is that right?

A. Yes, sir, it does. It's preprinted in bold print on each of our sales worksheets.

Q. Let's look again at the second page. In the box for selling price, Mr. Clemment, there's a note there. It says, 7/11/06, good two weeks, if this car available. Is that in your handwriting?

A. That's my handwriting. Yes, sir.

Q. Again, based on your normal habit and practice in dealing with customers, what does this indicate to you?

A. Well, I would say that the day I met Ms. Freeman or Ms. Hair, my customer, she chose not to purchase the vehicle that -- that day that I met her. I believe I

showed the car. We probably test drove the car. Looks to me like we negotiated, but she chose not to purchase the vehicle right then and there.

Q. All right. Based on your normal habit and practice, if you had begun negotiations with a customer regarding a particular vehicle and the customer wanted to think about it, would you give them a copy of the sales worksheet?

A. Yes, sir. Absolutely.

Q. Do you believe you gave Ms. Freeman a copy of the sales worksheet when she left the dealership on July 11, 2006?

A. I believe I did.

Q. And would ---

A. Partly because of that note, July 11, 2006, good for two weeks. Yes, sir.

Q. And would you have given her a copy of the entire sales worksheet?

A. Yes, sir, I believe so.

Q. Now, let's look at page twenty-five of Exhibit 11. Mr. Clemment, I'm showing you this document from the original deal jacket and I can tell you that Ms. Hair has previously testified that that's her handwriting. It says white 2004 Ford Accord LX, twenty-six thousand miles. Do you see that?

A. I see it.

Q. How does that compare to the car on Hendrick Honda of Easley's lot that she was interested in purchasing?

A. Well, it's very much a similar car. The car's one year older than what Ms. Freeman purchased from us. We sold a 2005. That says 2004. The miles is very, very close. I think our car had twenty six thousand five hundred and some change miles on it. That one says twenty six thousands miles. So miles is close. So it's the same trim level car, but a year older.

Q. All right. There's also a notation that says seventeen nine seventy-five, three forty-four a month; is that right?

A. Yes, sir.

Q. Okay. And that's in Ms. Freeman's handwriting, also?

A. It's not my handwriting.

Q. All right. Look back at the first page of the sales worksheet. What is the last price that you had listed in the MSRP box on the sales worksheet?

A. Eighteen thousand two hundred and ninety-five dollars.

Q. All right. Let's look back at the second page. Up in the box for selling price. What number is crossed out?

A. Eighteen thousand two hundred and ninety-five dollars. The same number that was on the front in that box.

Q. Did you cross that out?

A. Yes, sir.

Q. And what number's written in and circled?

A. Seventeen thousand nine hundred and seventy-five dollars.

Q. Okay. Is all of that your handwriting?

A. That's my handwriting. Yes, sir.

Q. All right. Well again, based on your normal practice and experience and your review of these copies of the sales worksheet and this document with Ms. Freeman's handwriting on it, what does all of this indicate to you?

A. Well, it indicates to me that she did not purchase the car, like I said, when I first met the customer. It indicates to me that she left the dealership and did some comparison competitive shopping.

MR. THOMAS: Objection to form. Speculation.

THE COURT: Sustained. That's speculative. If you know, you know. If you don't, you don't.

MR. BECKER: All right.

THE COURT: Just disregard that, please.

Can't speculate.

Q. In any event, at some point you agreed to drop the price of the vehicle to the price that was listed in her handwriting; is that right?

A. That's correct. Yes, sir.

Q. Now, look again on the front page. In the lower left corner it's signed by a sales manager. Do you recognize that signature?

A. Yes, I do.

Q. Whose is it?

A. I believe it's John Miller's signature.

Q. Okay. And it's dated July 11, 2006; is that right?

A. It is.

Q. Do you -- is that -- do you recognize that as Mr. Miller's handwriting?

A. I worked with John for several years. I'd say it is, yes.

Q. Is it your handwriting?

A. It's not my handwriting.

Q. Now, according to your normal practice in 2006, would the sales manager have signed the sales worksheet before or after a final price and terms have been agreed to with the customer?

A. He would have signed it after a price had been agreed upon with a customer.

Q. All right. Well let's look back one last time at the front page.

MR. BECKER: You don't need to zoom in.

Q. You started with an asking price of eighteen nine ninety-five. And it looks like you ultimately agreed to sell the car for seventeen nine seventy-five; is that right?

A. Yes, sir.

Q. How much of a discount did she negotiate?

A. I believe it's one thousand and twenty dollars.

Q. All right. Based on these numbers and the price reductions you agreed to, how would you characterize Ms. Freeman's negotiating skills?

A. Very, very, very good. Excellent.

Q. Mr. Clemment, I'd like you to explain for the jury what your normal practice would be in reviewing the sales worksheet with Ms. Freeman before you ask her to sign it.

A. Okay. Absolutely. Mr. Becker, I -- can I use -- I'm going to try to do this as thoroughly as I can. Can I use you as maybe a pretend customer?

Q. That would be fine.

A. Okay. Mr. Becker, I would like to say again thank you very much for picking this car and buying this car from me. I really greatly appreciate it. There's

some information here that I need to cover with you. The top section of this worksheet, sir, is your customer information section. Would you please review this and make sure I have the information correct and spelled correctly?

As we then go down the left side of the worksheet, starting at the top left-hand box, the vehicle being purchased, in this particular case I'd say, Mr. Becker, you're purchasing a 2005 Honda Accord today. It's a used vehicle. It's an LX model. The color is white. And the miles is twenty-six thousand five hundred and fifty-three miles. This box here is your seventeen digit Vehicle Identification Number on that '05 Accord that you're having today. Do you have any questions?

If there's no questions, I'd work down. Vehicle being traded. Mr. Becker, you're trading in a 1999 Mazda 626 today. As I work my way down, payoff verification. Mr. Becker, you've told me that you have a lien holder on your trade-in, the Mazda 626, with SC Telco Federal Credit Union. I've called SC Telco Federal Credit Union, called a few minutes ago. Your exact payoff amount is, I believe it's three hundred seventy-seven dollars and some change. It's a little blurry from where I'm sitting. And that payoff is good until this date. That is a ten-day dealer

payoff. Mr. Becker, you never have to make a payment on that car again. The dealership will be sending SC Telco Federal Credit Union that payoff amount. We'll handle that. You don't have to make any more payments on that car. Do you have any questions?

The last box down is your insurance information, insurance verification. Mr. Becker, you've shared with me that you are with Nationwide Insurance. Mr. Mike Boyd is your insurance agent. I'm going to be calling Mr. Mike Boyd's office to let them know that you're trading the Mazda 626 today, that you're purchasing this Honda Accord with this VIN number, and I'm going to give him all that information to make that adjustment on your automobile insurance policy. And I have to very full coverage auto insurance as well.

I would then move to the right side of the form on the bottom section. And -- can we zoom in on that box? Is that possible, because it's blurry from where I'm sitting. Thank you. Mr. Becker, the final cash price of the vehicle and accessories on that '05 Honda Accord is seventeen thousand nine hundred and seventy-five dollars. That's your selling price of the vehicle. You're trading in that Mazda for a trade-in credit of nine hundred dollars. That leaves a

difference of seventeen thousand and seventy-five dollars. We have an administration fee of two hundred and ninety-nine dollars. It's pre-printed here. State sales tax on an automobile transaction in South Carolina is capped at three hundred dollars and that, that is applicable in this case. That pertains to this.

You -- Mr. Becker, you've told me that you want to get a new license plate and a new vehicle registration, and that fee is thirty-nine dollars with the Department of Motor Vehicles. The total price of the unit would then come to seventeen thousand seven hundred and thirteen dollars, I believe is what it says. You have a lien payoff on your trade-in vehicle of three hundred and seventy-seven dollars and fifty-seven cents. Your total balance due would be eighteen thousand ninety dollars and fifty-seven cents, if I'm reading that correctly. My eyes are going a little bad. Mr. Becker, do you have any questions about all of this?

Q. And if the customer answered no?

A. Mr. Becker, I need you to sign this form for me. Right below where it says buyer, there's a line there, I will need your signature on this form. And again, I appreciate your business.

Q. Now, is that the normal habit and practice you use in explaining this form to customers?

A. For many years. Yes, sir.

Q. Is that the habit and practice you would have used in explaining it to Ms. Freeman-Hair on July 11 or 12, 2006?

A. Yes, sir, I believe so.

Q. Now, Mr. Clemment, in the car industry generally, does the closing fee go by more than one name?

A. Yes, sir, multiple names.

Q. What are some of the other names that it's called?

A. It's called administration fee. It's called documentation fee. It's called doc fee, closing fee. There's many names that mean the same thing.

Q. All right. Does the deal jacket indicate whether or not Ms. Freeman or anyone else who may have been with her asked any questions about the fee or objected to the charging of the fee?

A. No, sir. The deal jacket does not indicate that.

Q. In your experience, has any customer ever been confused in any way by the use of term administration fee?

A. Not -- no, sir. Not that I'm ---

MR. THOMAS: Objection, Your Honor. It

calls for speculation.

THE COURT: Sustained. Disregard that, ladies and gentlemen.

Q. According to your normal practice, what would you have said to Ms. Freeman if she had asked any questions about that?

A. I would have stated that the fee is used to recoup costs regarding document preparation, document storage, document retrieval for all of these documents that need to be prepared for an automobile transaction.

Q. If you were to buy a car from Hendrick Honda of Easley, would you pay the closing fee?

A. Not only would I pay it, I'm required to pay it.

Q. Okay. Well, is the closing fee required by law?

A. No, sir. Not that I'm aware of.

Q. Have you ever told Ms. Freeman or any other customer of Hendrick Honda of Easley that the closing fee is required by law?

A. No, sir.

Q. Was anyone at Hendrick Honda trying to pressure Ms. Freeman into buying this vehicle?

A. I would say no. She left without buying the car at the time I met her.

Q. Was Ms. Freeman free to leave Hendrick Honda without purchasing the vehicle if she decided she didn't want it for any reason?

A. That's correct.

Q. All right. Mr. Clemment, I'd like to -- we know that Ms. Freeman came back on July 12, 2006 to sign some other documents. I'd like to go through those with you. This may take a little time, but I know the process when you do it with a customer takes some time. So ---

MR. THOMAS: Objection, Your Honor. He's leading.

THE COURT: That's not a question. Please quit editorializing and just ask the questions.

MR. BECKER: All right, sir.

THE COURT: Ask direct questions. He's your witness.

Q. Mr. Clemment, we'll go through the documents in the deal jacket that would have been presented to Ms. Freeman and signed by her. I'd like to start first with a document called a deal checklist. It's page twenty-six. Are you familiar with this document? It's entitled, a deal checklist, I believe, down at the bottom.

A. Yes, sir. I'm familiar with it.

Q. Tell us about it. Would you have used this -- did you use this checklist in the sale with Ms. Freeman -- the sale?

A. Yes, sir.

Q. Explain -- is this a document you use in the closing process?

A. Yes, sir. Absolutely.

Q. Okay. What is it designed to make sure you do?

A. It's designed to make sure that different departments in the dealership collect all the information we need to collect, get all the documents filled out correctly and signed correctly. To make sure that we have everything we need in that deal jacket.

Q. Please explain how you and the other dealership employees use this deal checklist in the closing process.

A. Well, I'll start towards the top left where it says sales. I was a sales consultant. I sold this particular vehicle we're discussing. Once I get all of these things collected to put into my deal folder or deal jacket, I then check them off. It's kind of a reminder sheet. Do I have everything there that I'm required to gather to do this deal? That's how I use it. It's a checklist for me.

Q. Does anyone else check to make sure you've obtained all the necessary documents?

A. Yes, sir. My sales manager is supposed to check it. And then behind him our finance manager's supposed to check it.

Q. Is the sales consultant required by the Hendrick Transaction Compliance Policy to review and explain these documents to the customer?

A. Yes, sir.

Q. And is the customer required to execute those documents?

A. Yes. Certain documents on that list the customer needs to execute or sign them. Yes.

Q. Let's go through those. Start with page twenty-seven of the deal jacket. Again, Mr. Clemment, I'd like you to explain as if we were in a transaction. Explain for the jury how you would explain this to your customer.

MR. THOMAS: Your Honor, in the interest of saving time, these running dialogs -- I'm trying to let them go, but they're not proper testimony. These soliloquy from the witnesses are improper. I think it would speed it along if Mr. Becker, instead of doing rehearsed speeches, the witness is asked questions and got answers.

THE COURT: Please ask a question.

Q. How would you have explained this to Ms. Freeman when you conducted business with her on July 11 and 12, Mr. Clemment?

A. Sure. I would say, Ms. Freeman, this is a we-owe statement. Again, I've got your information on the top of the form. I've got the vehicle that you're purchasing. Ms. Freeman, a we-owe statement -- if, we, the dealership, owe you something that we have not done yet or a part or accessory on the car that we've agreed upon, I'd write in this -- on the we-owe document.

In this case, we still owed her a delivery wash. Maybe she asked for an extra one. Maybe I offered to give her an extra one. But we owed her a delivery wash, so I wrote it on there. It has to be signed by the customer and by a manager.

Q. All right, sir. The next document is number twenty-nine -- page twenty-nine. Mike, we've seen this before. But how would you have explained it Ms. Freeman on that day?

A. Ms. Freeman, I ---

Q. And if you need for her to zoom in on any part, just say so.

A. Okay. Ms. Freeman, this form is the buyer's guide.

I have taken off the 2005 Honda Accord that you're purchasing today. It's basically a warranty statement. Tells you the warranty you're getting at no additional charge. And this vehicle is Honda certified. Now, what that means to you, Ms. Freeman, is that you still actually have original Honda warranty left on this 2005 Honda Accord from when that car was brand new, the original in-service date. Because that was three years or thirty-six thousand miles of comprehensive coverage, also called bumper-to-bumper coverage. And it's July 2006 right now, so you've got warranty left there up to thirty-six thousand miles. Once you reach that point, you will get an additional twelve months or twelve thousand miles of comprehensive coverage. That will take you to forty-eight thousand miles on the car or the year 2009, whichever comes first. You will also get a total of seven years or one hundred thousand miles of engine, transmission, drive axle coverage on this car. Seven years from 2005 is 2012, or until your mileage counter read one hundred thousand miles.

This warranty is provided to you by American Honda. There is zero deductible with this warranty. There is no deductible. This warranty is good at any Honda dealership in the United States. Do you have

any questions? And if not, I'm going to need you to sign the back of this form for me.

Q. Thank you. Let's look next a page thirty-one, which includes a privacy notice and trade payoff. How would have explained these documents to Ms. Freeman ---

A. Sure.

Q. --- before she signed them?

A. I'll start at the top. I would say, Ms. Freeman, this is the privacy notice section of this document. We are required to keep your personal information secure and keep it private. It's part of the Safeguards Rule that was developed after 9/11. We have secured document areas throughout the dealership where your information will be stored at all times. We cannot sell or give away your information. And if you don't have any questions, I'll need you to sign it and print your name and date it for me, please.

Q. All right. The next document is page thirty-two.

A. Do you want me to -- I did not cover that trade payoff section on the last page. I'm sorry.

Q. I'm sorry.

A. On the bottom on that last page.

Q. I'm sorry. Go ahead and do that. Go back to that.

A. Okay. Ms. Freeman, you stated that there is a lien

holder on the vehicle you're trading in today. And I'll write in the customer's name there. That's my writing. And then I'll write in -- in that blank space I wrote in three hundred and seventy-seven dollars and fifty-seven cents. That is the ten-day dealer payoff that I called SC Telco, your lien holder, on. And that's the amount Hendrick Honda will be sending them a check for to pay off the vehicle so we can get a free and clear title to your trade-in.

Ms. Freeman, you're also signing that you owe no other liens on this vehicle. If you do owe any other money on this vehicle, you're signing that you would owe Hendrick Honda the difference. If for any reason you owe less than that amount, Hendrick Honda owes you the difference. And if you don't have any questions, I'll need your signature right below where it says customer signature.

Q. Very good. Thank you. How about the document at page thirty-two of the deal jacket.

A. That is addendum to additional terms and conditions document. I would explain this form in this particular example this way. Ms. Freeman, you're doing a loan today through your own finance company that you've arranged, which is SC Telco Federal Credit Union. In a transaction like this, what this form

states is that when you bring us a check from SC Telco Federal Credit Union or SC Telco Federal Credit Union sends us a check, when we take that check to the bank, that those funds will clear when we deposit them into our bank account. Ms. Freeman, if those funds do not clear, you're signing that you'll bring us funds that will clear or you'll return our vehicle to us. Feel free to read the entire document, if you'd like to. And if you don't have any questions, I'll need you to sign the bottom of it for me.

Q. All right. Next look at page twenty-two. This document is entitled, vehicle appraisal. Can you explain what that is?

A. Sure. Vehicle appraisal form is a form I use to gather information on the possible vehicle a customer wants to trade in. It's more of an internal document in our company. I'll, I'll ask the customer questions about the vehicle, but also I'll walk out to that possible trade-in and gather information for the vehicle itself as well. And then I'll give that form to a manager so they can conduct an actual appraisal on the vehicle and set the value for that trade-in.

Q. Is that when you collect the VIN number for the vehicle being traded in?

A. Yes, sir. VIN number and miles. Yes.

Q. And is having that VIN number necessary to transfer title of that vehicle from the purchaser to Hendrick Honda?

A. Yes, sir, it is.

Q. All right. All right. After you've explained -- let me ask you. Are the documents that we've just been through, do those come after the customer signs the sales worksheet?

A. Yes, sir.

Q. After you'd explained and obtained signatures on all of sales documents on the deal checklist, what would you do next?

A. I would compile all of these documents. I'd put them in my deal folder. I would then take them to my sales office, sales manager who works in the sales office, and I'd give my deal folder to him. Let him know I believe I have anything. If I'm something, let me know. And he'll review it. And then he will turn it over to a finance or business manager so we can complete more paperwork in the finance office.

Q. All right. So after the sales manager reviews everything, then the transaction goes to the finance and insurance manager?

A. Yes, it does.

Q. Now, looking back at page twenty-six of Exhibit 11,

what documents on the deal checklist does the finance department prepare?

A. Yes. It's titled finance on the right side of the document. You want me to go ahead and list which ones the finance department prepares?

Q. If you could just explain those generally what those forms are. You don't have to touch every one. Just ---

A. Sure.

Q. --- generally, what will a finance manager -- what documents will they go over with and have the customer sign?

A. Absolutely. A finance manager will prepare and print a, a full buyer's order in the sales office. And, of course, those numbers will match my sales worksheet. Credit application was not applicable in this case. She provided her own -- arranged her own financing. Credit report we didn't need in this case. Bank approval we didn't need in this case because she got her own financing. A PTO. A finance manager prepares and discloses a PTO. That's basically an affidavit, a sale, a notification of motor vehicle. It's a state document, I believe. Form 400 is a Department of Motor Vehicle's form. The finance manager prepares and discloses that, gets the customer

to sign it. And insurance form. When there's a lien recorded we have to print a certain insurance form. Finance managers prepares, prints that, discloses it. The trade PTO. Again, affidavit of sale of motor vehicle. If there's a trade, we need a POA, which is a power of attorney or odometer of disclosure statement so we can get the title out of the customer's name and out of their lien holder's name and into the name of Hendrick Honda once we pay it off. And then the finance manager handles invoice and recap which are internal documents for our accounting office.

Q. All right, sir. Now ---

MR. BECKER: If you'll zoom out.

Q. --- on the deal checklist there's some sections listed for North Carolina and Georgia. Do you see those?

A. I do.

Q. What are those about?

MR. BECKER: Could you zoom in on those, please.

MR. THOMAS: Objection, Your Honor. Relevance.

THE COURT: How is that relevant to this transaction?

MR. BECKER: It's relevant to the different documents that might be required to be completed by the personnel. They have customers from North Carolina and Georgia.

THE COURT: But Ms. Freeman wasn't a North Carolina customer.

MR. BECKER: Excuse me?

THE COURT: She's not a North Carolina customer.

MR. BECKER: Well, there are five hundred -- five thousand three hundred and fourteen others ---

THE COURT: Five thousand three and fourteen. I'll allow you to ask it.

MR. BECKER: --- that might include North Carolina and Georgia customers.

THE COURT: I'll allow it.

Q. Go ahead, Mr. Clemment.

A. Sure. The reason why this is on our deal checklist is because of our location in Easley, being the upstate and western part of the state, we do a lot of business with North Carolina residents. We do a lot of business with Georgia residents. And our personnel needs to be familiar with laws and forms for those states that we need to prepare and disclose to our customers.

Q. All right, sir. Mr. Clemment, after Ms. Freeman-Hair had finished completing all the paperwork with you and the finance and insurance manager, who would have handed her the keys to the car?

A. I would have, I believe, the sales consultant.

Q. Would you have been permitted under your transaction compliance policy to hand her the keys to that car without completing all of this paperwork?

A. No, sir, would not.

Q. Does Hendrick Honda give customers a tank of gas with their car?

A. If the vehicle needs gas, yes, sir, we'll provide gas in the car. Yes.

Q. All right. Who would have purchased the gas in this instance?

A. Myself, again, the sales consultant.

Q. All right. Where would you have purchased the gas?

A. At a local service station near the dealership.

Q. What's the fuel tank capacity of a Honda Accord?

MR. THOMAS: Objection, Your Honor. Relevance.

THE COURT: I really don't see how that's relevant ---

MR. BECKER: All right, sir.

THE COURT: -- particularly where you're

going. Overruled -- I mean, sustained.

MR. BECKER: All right, sir.

Q. Now, do ---

MR. BECKER: Your Honor, if I could just have a drink of water. We're getting close to the end. Your Honor, I probably have ten more minutes with Mr. Clemment.

THE COURT: Move along, Mr. Becker.

MR. BECKER: Would you like me to go ahead and finish with him?

THE COURT: Yes, sir.

Q. Mr. Clemment, do most customers generally engage in negotiations over the price of the vehicle?

A. Yes, sir. Absolutely.

Q. Do customers often negotiate over other aspects of the transaction?

A. Yes, they do.

Q. What are some of the aspects of the transaction that customers often negotiate?

MR. THOMAS: Objection, Your Honor. Relevance.

THE COURT: Well, you're suing in a representing capacity of five thousand people. I'll allow it.

A. Other things that the customers will often

negotiate on are, for instance, accessories for the vehicle. Of course, customers negotiate on what their trade value may be worth. Customers would negotiate on products that we offer in our finance office as well. So quite often they'll negotiate on every aspect of the transaction.

Q. All right. Do customers ever negotiate about the closing fee?

A. It has happened. Yes, sir.

Q. Do customers sometimes negotiate over sales tax?

A. It's happened. Yes, sir.

Q. All right. How do most customers react after being informed of the closing fee?

A. There's typically -- mostly there's no reaction at all. If there is a reaction, I think consumers -- they realize that dealerships charge a fee. So there's no shock to them.

MR. THOMAS: Objection, Your Honor. Speculating.

THE COURT: Sustained. That's pure speculation. Sustained. Move along.

Q. What is the policy of Hendrick Honda if a customer simply refuses to pay the closing?

A. Well, what I would do is I would ask the customer -- if it gets to that point, I would ask the customer,

Mr. and Mrs. Customer, would it -- if I can do this -- if I can deduct the amount of that fee from the selling price of the vehicle so it would lower your bottom line amount by the amount of that fee. But I do want to let you know that that fee has to still to be accounted for on our paperwork. Is it okay if I take it out of the selling price for you?

And then if the customer answers with a yes I would ask, this is where we're at, this is -- I would ask my sales manager that, you know.

Q. Okay.

A. That's what we're probably going to need to do.

Q. In your experience as a sales consultant, a sales manager, and a finance and insurance manager, what are some of the factors that cause the amount of the legally required documentation in a deal to differ from one transaction to another?

MR. THOMAS: Object to -- the witness hasn't been proffered as an opinion -- well, he hasn't been designated as an expert.

Q. All right. The paperwork that's required by your transaction compliance policy. In your experience, what are some of the factors that cause the amount of paperwork that is required under your transaction compliance policy to differ from one transaction to

another?

A. Sure. It's a long list of factors. Is there one buyer on this transaction or is there a co-buyer along with it? If there's two buyers, more paperwork. Is there a trade-in? Is there not a trade-in? If there's a trade-in, it's more paperwork. Are we going to help their customer secure a loan for the vehicle that are being -- that's being purchased? Paperwork. Is there a lien recorded on that vehicle being traded? Paperwork. It's multiple different factors that come into play here.

Q. Would the state in which the trade-in vehicle was titled, would that affect the amount of paperwork that might be required?

A. Yes, sir, it does.

Q. Or the time and effort to obtain the title?

A. Yes, sir.

Q. What about if there was more than one trade-in vehicle?

A. More -- yes, sir. That would affect it. More paperwork if there's more than one trade-in vehicle.

Q. All right. Now, Mr. Clemment, I believe you know this lawsuit involves the period from August 29, 2002 to August 29, 2006. I want to ask you a few questions about polices and practices at Hendrick Honda during

that time period. Let me show you Exhibit 10. Are you familiar with this document?

A. Yes, sir, I am.

Q. During the four-year time period that I just described, August '02 to August '06, has Hendrick Honda of Easley displayed this notice that it charges a closing fee in a conspicuous place in the dealership?

A. I would say in multiple conspicuous places. Yes, sir. Many different place.

Q. What are some of those places where it's displayed?

A. Well, in our showroom, in our business or finance offices, sales persons' desks. I believe I've even seen one throughout the years in, like, our service department waiting rooms or in a hallway. It's throughout the dealership.

Q. All right. I'd like you to look at Exhibit Number 8, Defendant's Exhibit 8. Mr. Clemment, this is a blank version of the sales worksheet. And I'd like to show you next Exhibit Number 9, which is a blank version of the buyer's order that we described. Can you identify both of those documents?

A. Yes, sir, I can.

Q. During this four-year time period from August 2002 to August 2006, has the closing fee charged by Hendrick Honda of Easley on the -- has it been

disclosed on these sales worksheets and buyer's orders used in sales transactions with customers?

A. Yes, sir. Absolutely. It's pre-printed there.

Q. All right. During this four-year time period and based on your habit and practice, the policies, procedures and sales forms used by the dealership, are you aware of any instance in which a customer has purchased a vehicle and not been aware that Hendrick Honda of Easley charges closing fees and why those fees are charged?

MR. THOMAS: Objection, Your Honor. Calls for speculation.

THE COURT: Sustained.

Q. Based on your habit and practice in dealing with customers you've dealt with, Mr. Clemment, during that four-year time period, are you aware of any customer who would have been -- not been aware that Hendrick Honda of Easley charges closing fees and why those fees are charged?

MR. THOMAS: Same objection.

THE COURT: Sustained.

MR. BECKER: In this case, Your Honor, I'm just asking about the customer ---

THE COURT: I sustained the objection. Move on.

MR. BECKER: All right. Then I have no further questions for you, Mr. Clemment.

THE COURT: Thank you. We'll take a break for lunch. It's five after one. We'll start back at two thirty-five. Ladies and gentlemen of the jury panel, please do not discuss the case or start any deliberations. We'll start right back at two thirty-five. Be prepared to go to about five o'clock. Thank you. Leave your pads in your chairs, please. You may be excused.

(WHEREUPON, the jury exited the open court at approximately 1:01 p.m.)

THE COURT: Anything from the plaintiff before we break for lunch?

MR. THOMAS: No, Your Honor.

THE COURT: Mr. Becker?

MR. BECKER: No, sir, Your Honor.

THE COURT: All right. Mr. Clemment, you're in the middle of your examination, so it would not be proper to discuss it with Mr. Becker or anyone else during lunch, obviously. You can go eat lunch wherever you want to, just don't discuss your testimony.

THE WITNESS: Yes, sir.

THE COURT: We'll stand at ease until two

thirty-five.

(WHEREUPON, the court stood at recess for a lunch break.)

THE COURT: Good afternoon. Anything by the plaintiff before we bring the jury in?

MR. THOMAS: Nothing, Your Honor.

THE COURT: Mr. Becker?

MR. BECKER: No, sir.

THE COURT: All right. Let's bring the jury in. Where's the witness?

(WHEREUPON, the jury entered the open court at approximately 2:35 p.m.)

CROSS EXAMINATION

BY MR. THOMAS:

Q. Hey, Mr. Clemment.

A. Hello, sir.

Q. Brady Thomas. Good to see you again.

A. Hey, Mr. Thomas.

Q. Now, you're still employed by Hendrick Honda; right?

A. Yes, sir.

Q. And you still receive a paycheck from Hendrick Honda?

A. I do.

Q. And probably just like me you need those paychecks

Q. Okay. All right. I'm not sure why you guys keep saying it's one. But -- and this one on the back of it's got handwritten -- Julie's handwriting; right?

A. Yes. Yes, it is.

Q. Okay. Now, you talked a little while about how you would explain the closing fees, your habit and customer. Habit and customer with customers that you dealt with?

A. Correct. My habits and practices.

Q. On direct. And in that regard, we talked a lot about -- you talked about the sign.

A. Yes. Posted throughout the dealership.

Q. You posted it. Now, when you explained this, isn't it true that you would tell customers that Hendrick Honda was charging closing fees on every transaction and it's for storage of documents, it's for document preparation, it's for document retrieval?

A. Correct.

Q. All right. And isn't it also true that when you explained this to customers you never told the customers that the customer was charging it to reimburse itself for 401k payments?

A. I've never said that before.

Q. And you've never told any customers that the -- Hendrick Honda was charging the fee to reimbursing

itself for rent for the parking lot?

A. I've never told a customer that.

Q. And you've told any of the customers, similarly, that Hendrick Honda was reimbursing itself for water, electricity or utilities?

A. No, sir. I don't believe I have.

Q. Okay. And that's because you knew that those weren't closing costs; right?

A. I don't know -- it was not part of my training, sir, I think is -- I described the document based on the way I was trained. That's, that's how I, I present our administrative or closing fee to our customers, based on my training.

Q. Okay. And you weren't trained that water, electricity, rent, and 401k is a closing cost?

A. That's correct.

Q. In fact, you were trained that storage of documents, document preparation and document retrieval, that's why they were -- that's what they were reimbursing themselves for; right?

A. Correct.

Q. Okay. And then my last question would be, I think it's clear from your testimony, but isn't it true that you have no idea whether Hendrick Honda of Easley did the math to calculate their closing costs before they

MADAM CLERK: State your full name for the record.

MR. PENDLETON: Don Lee Pendleton.

MADAM CLERK: Please be seated.

THE COURT: Good afternoon, Mr. Pendleton.

MR. PENDLETON: Good afternoon.

THE COURT: Mr. Becker.

DON LEE PENDLETON

BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BECKER:

Q. Good afternoon, Mr. Pendleton.

A. Good afternoon.

Q. Mr. Pendleton, where are you currently employed?

A. At Hendrick Honda Easley.

Q. And what is your position there?

A. I'm the general manager.

Q. When did you first start with Hendrick Honda of Easley?

A. 2000 -- actually, the first day of December in 2000.

Q. All right. Tell us a little bit about your personal background. Where do you currently live?

A. Simpsonville, South Carolina.

Q. And how long have you lived in this area?

it has a statement under that that says, policy, doc fee not to exceed three hundred and ninety-nine dollars.

Under that policy, Mr. Pendleton, whose responsibility is it to set the closing fee for the dealership?

A. It's my responsibility.

Q. All right. May you set a closing fee that exceeds three hundred and ninety-nine dollars at your dealership?

A. We cannot. That's the max.

Q. What state agency administers the Closing Fee Statute?

A. The South Carolina Consumer Affairs.

Q. Okay. And does that department have any regulations or guidance for automotive dealerships charging closing fees?

A. Yes, they do.

Q. I'd like to show you what's been marked as Defendant's Exhibit 18.

MS. CASKEY: Mr. Becker, I think that you -- are you referring to the Department of Consumer Affairs notice?

MR. BECKER: I'm referring to -- I'm sorry. I may have the exhibit number wrong. I'm sorry, it's

Exhibit 1.

Q. Do you see this is ---

MR. BECKER: Zoom in on the top half.

Q. This is a -- on the letterhead of the State of South Carolina Department of Consumer Affairs. And it's dated June 7, 2001. It's an administrative interpretation and it goes on to state the requirements which a dealer must charge in -- comply with in charging a closing fee. Are you familiar with this document?

A. Yes. Very much.

Q. All right. Did you rely on this document in deciding to charge a closing fee?

A. That was the main thing.

Q. All right. There are four requirements that the dealer must annually register their fee with the Department of Consumer Affairs and pay the department a fee of ten dollars. The closing fee charged by the dealership must be disclosed on the sales contract. A notice of the closing fee charged by the dealership must be displayed in a conspicuous location in the motor vehicle dealership. And the closing fee must be included in the price of a motor vehicle. Is that the requirements you understand from the ---

A. Those four. Yes, sir.

Q. All right. Prior to this lawsuit, were you aware of any other legal requirement for lawfully charging a closing fee?

A. Absolutely not.

Q. Prior to this lawsuit, were you aware of any limitation on the amount of the fee, other than what the Department of Consumer Affairs would approve?

A. No, sir.

Q. Since you became general manager of Hendrick Honda of Easley in 2000 has the dealership done all four of those things listed here in the administrative interpretation on a regular basis?

A. Yes, sir.

Q. Let me show you what's been marked as Exhibits 3 through 7. Let's start with Exhibit 3. And I'll just move through these quickly, Mr. Pendleton. And I know you can't read from there. But this is a South Carolina Department of Consumer Affairs registration fee and disclosure for motor vehicle dealer closing fees. It's for JLH Investments LP in Easley, South Carolina. And it's stamped by the Department of Consumer Affairs on June 27, 2002. Is that your signature at the bottom of this document?

A. Yes.

Q. Did you submit this to the South Carolina

Department of Consumer Affairs?

A. Yes, we did.

Q. Exhibit Number 4. This is a similar form. Up at the top ---

MR. BECKER: Do the -- yeah.

Q. It is date stamped June 27, 2003 by the South Carolina Department of Consumer Affairs. It is for Hendrick Honda in Easley, South Carolina. It shows the registrant and contact person as Don Pendleton. Look at the bottom of the form. Is that your signature?

A. That is.

Q. Did you submit this to the Department of Consumer Affairs on or about that time?

A. Yes, we did.

Q. Look at Exhibit Number 5. This is, again, a similar form. It is date stamped by the South Carolina Department of Consumer Affairs on August 4th, 2004. It shows the contact person as Vicky Edgerton. Is she the office manager?

A. She is.

Q. The registrant is Hendrick Honda of Easley, South Carolina. Look at the bottom. Is that your signature?

A. That is.

Q. Did you submit that form on or about that time to Consumer Affairs?

A. Yes.

Q. Look at Exhibit 6. Again, the same form, motor vehicle dealership closing fee registration form. This one is date stamped by the Department of Consumer Affairs June 17, 2005. The contact person is Don Pendleton. The company name is Hendrick Honda. At the bottom of the form, is that your signature?

A. Yes, it is.

Q. Did you submit this to Consumer Affairs on or about that day?

A. We did.

Q. Finally, Exhibit Number 7. Again, this is the same form showing the contact person as Don Pendleton. The registrant is Hendrick Honda. Down at the bottom ---

MR. BECKER: Include the date stamp.

Q. --- we see it is date stamped by the South Carolina Department of Consumer Affairs June 19, 2006. And it is signed. Is that your signature?

A. It is.

Q. Did you submit it to the Department of Consumer Affairs on or about June 19, 2006?

A. Yes, we did.

MR. BECKER: You can zoom out.

Q. Now, Mr. Pendleton, in the box where you state the fee that you would charge at Hendrick Honda ---

MR. BECKER: Do the whole third of the bottom page.

Q. --- up there in the box it says the fee will not exceed three hundred and ninety-nine dollars prior to July 1, 2007. Do you see that?

A. Yes.

Q. Has Hendrick Honda of Easley ever charged a closing fee over two hundred and ninety-nine dollars?

A. We never have.

Q. Why did you register a three hundred and ninety-nine dollar amount with the Department of Consumer Affairs?

A. Because in our transaction compliance there was -- that was somewhere around the time period that it changed, and we -- they changed it to the max we could do was three ninety-nine. And we decided just to go along with the transition -- transaction and compliance.

Q. All right.

A. To be, you know, consistent. But we never charged any more than two ninety-nine.

Q. All right. Did you make the decision to charge a closing fee of two ninety-nine at Hendrick Honda of