

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

Case No. 2014-CP-40-1484
Appellate Case No. 2015-001187

Autovest, LLC Appellant

v.

Portia Smith a/k/a Portia Sentennial Smith, ... Respondent

RECORD ON APPEAL

Gregory P. Cowan
BROCK & SCOTT, PLLC
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Winston-Salem, NC 27103
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Telefax: (336) 354-1588
Attorney for Appellant

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Post Office Box 12519
Columbia, SC 29211
Attorney for Respondent

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Autovest, L.L.C.,)

Civil Action No. 2014-CP-40-1484

Plaintiff,)

vs.)

Portia Smith a/k/a Portia
Sentennial Smith, for herself and
on behalf of all other similarly
situated individuals,)

Defendant.)

**ORDER GRANTING DEFENDANT'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

This matter came before the Court upon Defendant's Motion for Partial Summary Judgment on April 16, 2015. Specifically, Defendant seeks the dismissal of the debt collection claim asserted against her by Plaintiff. In support of its Motion, Defendant relied on the exhibits attached to Plaintiff's Complaint and Amended Complaint, Plaintiff's Verification of Account, and the documents provided during discovery. In opposition to the Motion, Plaintiff submitted discovery responses from Defendant. Each party also submitted a Memorandum of Law in support of their respective positions.

Having heard the arguments of counsel and after reviewing the pleadings, documents, and memoranda, I find and conclude as follows:

FINDINGS OF FACT

1. On October 29, 2006, Defendant purchased a used car from Carmax. In connection with the purchase, Defendant executed a Buyer's Order that described the car she was buying, calculated the purchase price of the car, and described the warranties provided by Carmax.

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JEANETTE M. MCBRIDE
C.C.P. & S.S.

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2. Also on October 29, 2006, Defendant executed a Retail Installment Contract to finance the purchase of the car. The Retail Installment Contract set forth the terms of the financing, including the interest rate, the amount financed, the amount of the monthly payments, and the collateral for the financing. According to the Retail Installment Contract, the financing was provided by Wells Fargo Auto Finance, Inc.

3. Defendant failed to make payments when due on the Retail Installment Contract, and Wells Fargo sent notice of right to cure default in 2008.

4. Defendant failed to cure the default, and Wells Fargo repossessed Defendant's car. Wells Fargo sent Defendant notice of its intent to sell the car on January 19, 2009, and sold the car at a private sale on February 10, 2009.

5. Wells Fargo then sent Defendant a notice of deficiency balance due on February 13, 2009.

6. The Retail Installment Contract was assigned to Plaintiff by Wells Fargo on April 30, 2011.

7. Through requests for admissions served by Plaintiff, it has been established that the last payment made by Defendant on the Retail Installment Contract was on November 17, 2008.

8. This action to collect the deficiency balance due on the Retail Installment Contract was filed on March 6, 2014.

CONCLUSIONS OF LAW

1. "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is proper when there is no genuine issue as to any material fact

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and the moving party is entitled to judgment as a matter of law. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002), citing Rule 56(c), SCRPC.

2. When considering a motion for summary judgment, all inferences which can be reasonably drawn from the evidence before the court are viewed in the light most favorable to the nonmoving party. *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002).

3. The issue presented to the Court by Defendant's Motion is whether the cause of action asserted by Plaintiff is subject to the three-year statute of limitations contained in Section 15-3-530(1) of the South Carolina Code for breach of contract actions, or the six-year statute of limitations contained in Article 2 of the Uniform Commercial Code, S.C. Code Section 36-2-725.

4. It appears that the six-year statute of limitations contained in Section 36-2-725 is intended to apply to breach of warranty claims and other claims related to goods that were sold, but not to a debt collection action that arises out of a secured transaction. Section 36-2-102 of the South Carolina Code specifically provides that a contract for sale of goods that is intended to operate as a secured transaction is not subject to Article 2 of the Uniform Commercial Code. As stated in the South Carolina Reporter's Comments, "Expressly excluded [from Article 2] are transfers of a security interest in goods which are covered under Article 9, Secured Transactions." S.C. Code Section 36-2-102, S.C. Reporter's Comments.

5. The exhibits attached to Plaintiff's Amended Complaint indicate that Plaintiff's assignor, Wells Fargo, believed that this was a secured transaction governed by Article 9, as evidenced by the notice of intent to sell that it mailed to Defendant in order to comply with Section 36-9-614 of the South Carolina Code.

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6. The exhibits attached to Plaintiff's Amended Complaint also indicate that Wells Fargo believed that this was a secured consumer credit transaction governed by the South Carolina Consumer Protection Code, Section 37-1-101, *et seq.*, as evidenced by the notice of right to cure default that it mailed to Defendant in order to comply with Section 37-5-110 of the South Carolina Code.

7. Although no South Carolina appellate court has addressed this issue, appellate courts in other jurisdictions have concluded that debt collection actions arising out of secured transactions are subject to the general statute of limitations for breach of contract, rather than the statute of limitations contained in Article 2 of the UCC. *See, NCNB v. Holshouser*, N.C. App. 165, 247 S.E.2d 645 (1978) (holding that the six-year statute of limitations in Article 2 did not apply to an action to collect a debt arising out of the purchase money financing of an automobile).

8. In support of its position that this contract is subject to the six-year statute of limitations contained in Section 36-2-275, Plaintiff relies on *Atlas Food Systems and Services, Inc. v. Crane National Vendors, Inc.*, 319 S.C. 556, 462 S.E.2d 858 (1995). However, it appears that case involved Article 2 breach of warranty claims asserted by a purchaser against the seller of vending machines. *See, Atlas Food Systems and Services, Inc. v. Crane National Vendors, Inc.*, 99 F.3d 587 (4th Cir. 1996). Therefore, the holding in *Atlas Food Systems* is not determinative of the statute of limitations in a debt collection action that arises out of an Article 9 secured transaction.

9. In this case, the contract for the sale of the car to Defendant was contained in the Buyer's Order. The Retail Installment Contract was intended to operate as a separate secured transaction governed by Article 9 of the UCC, rather than Article 2 of the UCC. Therefore, the

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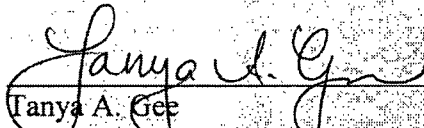
general statute of limitations for breach of contract found in S.C. Code Section 15-3-530(1) applies to Plaintiff's debt collection action against Defendant.

10. The last payment on the Retail Installment Contract was made by Defendant on November 17, 2008, and this action was not filed until March 6, 2014. Therefore, Plaintiff's claim against Defendant is barred by the three-year statute of limitations.

Based on the foregoing Findings of Fact and Conclusions of Law, it is:

ORDERED that Defendant's Motion for Partial Summary Judgment on the claim asserted against her by Plaintiff is GRANTED, and that claim is hereby DISMISSED.

AND IT IS SO ORDERED.


Tanya A. Gee
Presiding Judge
Richland County Court of Common Pleas

Columbia, South Carolina

April 20, 2015

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-40-1484

Autovest, LLC

Portia Smith

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Thomas E. Lydon

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

Gregory P. Cowan, 1315 Westbrook Plaza Drive,
Winston-Salem, NC 27103

Thomas E. Lydon, POBox 12519, Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

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

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

JUDGMENT IN CIVIL CASE

CASE NO. 2014 CP-40-1484

Autovest, LLC

Portia Smiht, a/ka/ Portia Sentennial Smith

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's Motion to Reconsider the order granting partial summary judgment to the Defendant is respectfully denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2756

Judge Code

5/14/2015

Date

This judgment was entered on the 19 day of July, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

CLERK OF COURT

p. 10

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

AUTOVEST, L.L.C.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVER SHEET

2014-CP-40-1484

Plaintiff)

vs.

PORTIA SMITH, A/K/A PORTIA SENTENNIAL SMITH,

Defendant)

(Please Print)

Submitted By: Richard L. Jackson, Brock & Scott, PLLC
Gregory P. Cowan, Brock & Scott, PLLC
Brook D. Dangerfield, Brock & Scott, PLLC
Address: 1315 Westbrook Plaza, Suite 100
Winston-Salem, NC 27103

SC Bar #: 77669
SC Bar #: 100299
SC Bar #: 77912
Telephone #: (336) 354-1797
Fax #: (336) 354-1588
E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of court for the purposes of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in the complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|---|
| Contracts
☐ Constructions (100)
☒ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20__ - CP - __ - __
☐ Notice/File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript of Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Lis Pendens (750)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510) | Special/Complex/Other
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660) | | |

Submitting Party Signature :

Date :

02-26-2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 13-36-10 et. seq.

SCCA / 234 (04/2012)

Page 1 of 2

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FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigence should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND
AUTOVEST, L.L.C.,
Plaintiff,

vs.

PORTIA SMITH,, A/K/A PORTIA
SENTENNIAL SMITH,

Defendant.

**PORTIA SMITH, a/k/a PORTIA SENTENNIAL SMITH
80 BRIGHTON HILL RD APT 6231
COLUMBIA SC 29223**

TO THE DEFENDANT ABOVE-NAMED:

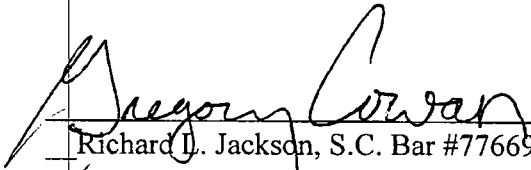
YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Dated: 02-26-2014

IN THE COURT OF COMMON PLEAS
5TH JUDICIAL CIRCUIT
DOCKET NO.

SUMMONS

RICHLAND COUNTY
FILED
2014 MAR -6 PM 12:49
JEANETTE W. HARRIS
C.C.P. & G.S.


Richard L. Jackson, S.C. Bar #77669
Gregory P. Cowan, S.C. Bar # 100299
Brook D. Dangerfield, S.C. Bar # 77912
BROCK & SCOTT, PLLC
Attorneys for the Plaintiff
1315 Westbrook Plaza Drive
Winston-Salem, NC 27103
Telephone: (336) 354-1797
Telefax: (336) 354-1588

oHSG00453

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

AUTOVEST, L.L.C.,
Plaintiff,

vs.

PORTIA SMITH, A/K/A PORTIA SENTENNIAL
SMITH,
Defendant.

IN THE COURT OF COMMON PLEAS
5TH JUDICIAL CIRCUIT
DOCKET NO.

COMPLAINT

COMES NOW the Plaintiff, and complaining of the Defendant, avers and says as follows:

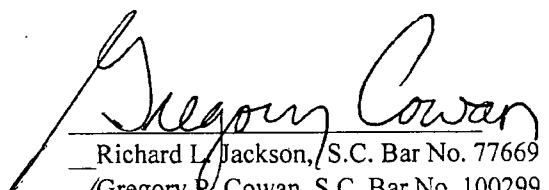
1. The Plaintiff is a foreign corporation authorized to prosecute this civil action in the State of South Carolina. The Plaintiff is the owner of the account numbered *****9001, forming the basis of this civil action, and holds all right, title, and interest therein.
2. Upon information and belief, the Defendant is an adult citizen and resident of Richland County, South Carolina.
3. Defendant requested and received a loan from Plaintiff, or Plaintiff's predecessor-in-interest. Defendant has defaulted upon the loan by failing and refusing to make payments to Plaintiff when due, and the default of the Defendant continues to the date of this Complaint. Plaintiff has sent to the Defendant a notice of right to cure pursuant to S.C. Code §§ 37-5-110 *et seq.*
4. The Defendant is indebted to the Plaintiff in the original principal amount of \$8,989.56. The provisions of the account allow Plaintiff to recover the costs of court.
5. Attached hereto and incorporated herein by reference as though set forth verbatim are Plaintiff's Exhibits which together establish Plaintiff's claim against the Defendant.

WHEREFORE, Plaintiff respectfully prays the Court for relief as follows:

That Plaintiff have and recover Judgment against the Defendant for the original principal amount of \$8,989.56; and, that the costs of this civil action to be taxed to the Defendant and, for such other, further, and general relief as to which the Plaintiff may be entitled in law or equity alike.

This 26th day of February, 2014.

**This communication is from a debt collector.
This is an attempt to collect a debt, and any
information will be used for that purpose.**


Richard L. Jackson, S.C. Bar No. 77669
✓ Gregory R. Cowan, S.C. Bar No. 100299
BROCK & SCOTT, PLLC
1315 Westbrook Plaza Drive
Winston-Salem, NC 27103
Phone: (888) 461-7908, ext. 3193
Fax: (336) 354-1588

cHSG00453

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PLAINTIFF'S VERIFICATION OF ACCOUNT

STATE OF MICHIGAN

)
)ss
)

COUNTY OF OAKLAND

CURRENT ACCOUNT HOLDER: AUTOVEST, L.L.C.
ORIGINAL ACCOUNT NUMBER: X-XXXX-XXXX-XXXX-9001
Name : PORTIA SMITH
Defendant

OAKLAND COUNTY
FILED
2014 MAR - 6 PM 2:49
JEANETTE
C.P.

I am an Authorized Representative for Autovest, L.L.C. (hereafter the "Plaintiff") and hereby certify as follows:

1. I have personal knowledge regarding Plaintiff's creation and maintenance of its normal business records, including computer records of its account receivables. I am authorized to execute this affidavit on behalf of Plaintiff and the information below is true and correct to the best of my knowledge, information and belief based on regularly and contemporaneously maintained the business records with respect to the account.
2. The records provided to Plaintiff have been represented to include information provided by the original creditor. Such information includes the debtor's name, social security number, account balance, the identity of the original creditor and the account number.
3. Based on the business records maintained on account X-XXXX-XXXX-XXXX-9001 (hereafter "Account") which are a compilation of the information provided upon acquisition and information obtained since acquisition, the Defendants defaulted on Contract dated on or about October 29, 2006. Said business records further indicate that the Contract was sold to Plaintiff. Thereafter, all ownership rights were assigned to, transferred to and became vested in Plaintiff, including the right to collect the purchased balance owing.
4. Based on the business records maintained in regard to the Contract, the above stated amount is justly and duly owed by the Defendant to the Plaintiff and that all just and lawful offsets, payments and credits to the account have been allowed. Demand for payment was made more than thirty days ago.
5. The principal balance due and owing to Plaintiff by the Defendant as of February 17, 2009 was \$7,955.22 plus interest/fees of \$6,356.64.
6. That to the best of Affiant's knowledge, based on information provided by the Defense Manpower Data Center, the Defendant is not now on active duty in the military.
7. The last payment was made on or about February 25, 2009 and the Account has been credited properly..

I affirm under penalty of perjury that the above facts are true and correct.

Autovest, L.L.C.

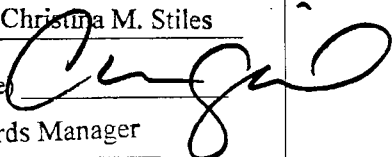
Given under my hand on:

Dated: 1-31-2014

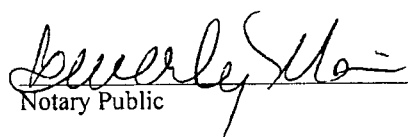
Subscribed and sworn to before me on this 31 day of

January, 2014.

Affiant Name (Printed) Christina M. Stiles

Affiant Name (Signature) 

Title of Affiant Records Manager


Notary Public

FNAME	LNAME	SYS_OF_REC	ORIGINAL_ACCOUNT	EFFECTIVE_DATE	TRANSACTION_CODE	TRANSACTION_AMOUNT	COMMENTS
PORTIA	SMITH	Pre Charge-off	*****9001	10/29/2006	Cost allocation	\$ 35.00	
PORTIA	SMITH	Pre Charge-off	*****9001	10/29/2006	Cost allocation	\$ 4.00	
PORTIA	SMITH	Pre Charge-off	*****9001	10/29/2006	Cost allocation	\$ 10.00	
PORTIA	SMITH	Pre Charge-off	*****9001	10/29/2006	Cost allocation	\$ 2.00	
PORTIA	SMITH	Pre Charge-off	*****9001	10/29/2006	Cost allocation	\$ 1.00	
PORTIA	SMITH	Pre Charge-off	*****9001	12/12/2006	NULL	\$ 291.74	
PORTIA	SMITH	Pre Charge-off	*****9001	12/12/2006	Payment	\$ 333.00	
PORTIA	SMITH	Pre Charge-off	*****9001	1/23/2007	Late Charge Assessed	\$ 14.00	
PORTIA	SMITH	Pre Charge-off	*****9001	1/25/2007	Payment	\$ 331.52	
PORTIA	SMITH	Pre Charge-off	*****9001	1/29/2007	Late Charge Waived	\$ 14.00	
PORTIA	SMITH	Pre Charge-off	*****9001	2/12/2007	Payment	\$ 347.00	
PORTIA	SMITH	Pre Charge-off	*****9001	3/23/2007	Late Charge Assessed	\$ 14.00	
PORTIA	SMITH	Pre Charge-off	*****9001	3/30/2007	Payment	\$ 346.00	
PORTIA	SMITH	Pre Charge-off	*****9001	4/23/2007	Late Charge Assessed	\$ 14.00	
PORTIA	SMITH	Pre Charge-off	*****9001	5/21/2007	Payment	\$ 350.00	
PORTIA	SMITH	Pre Charge-off	*****9001	6/23/2007	Late Charge Assessed	\$ 14.00	
PORTIA	SMITH	Pre Charge-off	*****9001	6/29/2007	Payment Reversal	\$ 347.00	
PORTIA	SMITH	Pre Charge-off	*****9001	6/29/2007	Payment	\$ 347.00	
PORTIA	SMITH	Pre Charge-off	*****9001	7/9/2007	Payment	\$ 347.00	
PORTIA	SMITH	Pre Charge-off	*****9001	7/23/2007	Payment	\$ 333.00	
PORTIA	SMITH	Pre Charge-off	*****9001	8/3/2007	Payment	\$ 167.00	
PORTIA	SMITH	Pre Charge-off	*****9001	8/13/2007	Payment	\$ 146.00	
PORTIA	SMITH	Pre Charge-off	*****9001	8/31/2007	Payment	\$ 333.00	
PORTIA	SMITH	Pre Charge-off	*****9001	9/23/2007	Late Charge Assessed	\$ 14.00	
PORTIA	SMITH	Pre Charge-off	*****9001	10/12/2007	Payment	\$ 346.00	
PORTIA	SMITH	Pre Charge-off	*****9001	10/23/2007	Late Charge Assessed	\$ 14.00	
PORTIA	SMITH	Pre Charge-off	*****9001	11/9/2007	Payment	\$ 346.00	
PORTIA	SMITH	Pre Charge-off	*****9001	11/23/2007	Late Charge Assessed	\$ 14.00	
PORTIA	SMITH	Pre Charge-off	*****9001	11/26/2007	Payment	\$ 333.00	
PORTIA	SMITH	Pre Charge-off	*****9001	12/17/2007	Payment	\$ 33.00	
PORTIA	SMITH	Pre Charge-off	*****9001	12/21/2007	Payment	\$ 150.00	
PORTIA	SMITH	Pre Charge-off	*****9001	12/21/2007	NULL	\$ 2,386.18	
PORTIA	SMITH	Pre Charge-off	*****9001	12/23/2007	Late Charge Assessed	\$ 7.46	
PORTIA	SMITH	Pre Charge-off	*****9001	1/23/2008	Late Charge Assessed	\$ 14.00	
PORTIA	SMITH	Pre Charge-off	*****9001	1/28/2008	Payment	\$ 150.00	
PORTIA	SMITH	Pre Charge-off	*****9001	2/19/2008	Payment	\$ 367.00	
PORTIA	SMITH	Pre Charge-off	*****9001	3/14/2008	Payment	\$ 333.00	
PORTIA	SMITH	Pre Charge-off	*****9001	3/17/2008	Extension	\$ -	

EXHIBIT

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PORTIA SMITH	Pre Charge-off	*****9001	3/17/2008 Extension - simple interest loans	\$	-
PORTIA SMITH	Pre Charge-off	*****9001	4/23/2008 Late Charge Assessed	\$	14.00
PORTIA SMITH	Pre Charge-off	*****9001	4/25/2008 Dealer interest payment	\$	8.42
PORTIA SMITH	Pre Charge-off	*****9001	4/25/2008 Payment	\$	333.00
PORTIA SMITH	Pre Charge-off	*****9001	5/23/2008 Late Charge Assessed	\$	14.00
PORTIA SMITH	Pre Charge-off	*****9001	6/9/2008 Dealer interest payment	\$	8.98
PORTIA SMITH	Pre Charge-off	*****9001	6/9/2008 Payment	\$	333.00
PORTIA SMITH	Pre Charge-off	*****9001	6/23/2008 Late Charge Assessed	\$	14.00
PORTIA SMITH	Pre Charge-off	*****9001	7/18/2008 Dealer interest payment	\$	7.74
PORTIA SMITH	Pre Charge-off	*****9001	7/18/2008 Payment	\$	333.00
PORTIA SMITH	Pre Charge-off	*****9001	8/23/2008 Late Charge Assessed	\$	14.00
PORTIA SMITH	Pre Charge-off	*****9001	9/23/2008 Late Charge Assessed	\$	14.00
PORTIA SMITH	Pre Charge-off	*****9001	9/29/2008 Payment	\$	665.00
PORTIA SMITH	Pre Charge-off	*****9001	9/29/2008 Other Charge Assessed	\$	10.00
PORTIA SMITH	Pre Charge-off	*****9001	9/29/2008 Payment To Other Charges	\$	10.00
PORTIA SMITH	Pre Charge-off	*****9001	9/29/2008 Dealer interest payment	\$	14.38
PORTIA SMITH	Pre Charge-off	*****9001	10/23/2008 Late Charge Assessed	\$	14.00
PORTIA SMITH	Pre Charge-off	*****9001	11/17/2008 Dealer interest payment	\$	9.47
PORTIA SMITH	Pre Charge-off	*****9001	11/17/2008 Payment	\$	333.00
PORTIA SMITH	Pre Charge-off	*****9001	11/18/2008 NULL	\$	1,921.32
PORTIA SMITH	Pre Charge-off	*****9001	12/23/2008 Late Charge Assessed	\$	14.00
PORTIA SMITH	Pre Charge-off	*****9001	1/16/2009 Debit dealer paid	\$	132.24
PORTIA SMITH	Pre Charge-off	*****9001	1/16/2009 Debit current dealer rebate 1	\$	132.24
PORTIA SMITH	Pre Charge-off	*****9001	1/16/2009 Dealer interest payment	\$	11.32
PORTIA SMITH	Pre Charge-off	*****9001	1/16/2009 Misc Fee Assessed	\$	350.00
PORTIA SMITH	Pre Charge-off	*****9001	2/10/2009 Sale Proceeds	\$	4,688.79
PORTIA SMITH	Pre Charge-off	*****9001	2/17/2009 Year To Date Interest	\$	-
PORTIA SMITH	Pre Charge-off	*****9001	2/17/2009 Misc. Fee Waived	\$	350.00
PORTIA SMITH	Pre Charge-off	*****9001	2/17/2009 Charge-Off	\$	9,154.45
PORTIA SMITH	Post Charge-off	*****9001	2/26/2009 PAYMENT	\$	254.81 Dealer Receivables9

UBBt

**SCDMV**

Application for Certificate of Title and Registration for Motor Vehicle or Manufactured Home/Mobile Home

Form 400 Rev. 10/00

For more information, visit our website at www.scdmvonline.org or call our Customer Call Center at (800) 737-4000.

Check the box next to the type of transaction you need. Please enclose the required documents and fees with your completed and signed application. For expedited services (within 3 business days) include an additional \$20.00 fee. Please print or type in black ink only. **DO NOT SEND CASH.**

☐ NEW TITLE & REGISTRATION 1) Manufacturer's Statement of Origin (MSO) or Title 2) Paid Property Tax Receipt 3) \$18.00 title fee and regular registration fee 4) Sales Tax (5% of selling price or \$300.00 max.) 5) Insurance Information	☐ TITLE AND PLATE TRANSFER 1) Manufacturer's Statement of Origin (MSO) or Title 2) Last Previous Tag # 3) Previous registration in owner's name 4) \$18.00 title + \$3.00 transfer fee 5) Sales Tax (5% of selling price or \$300.00 max.) 6) Insurance Information	☐ MOBILE OR MANUFACTURED HOME 1) Manufacturer's Statement of Origin (MSO) or Title 2) Consumer Protection Report required for \$300.00 sales tax cap, if mobile home is energy efficient 3) \$18.00 title fee	☐ TITLE ONLY 1) Manufacturer's Statement of Origin (MSO) or Title 2) Sales Tax (5% of selling price or \$300.00 max.) 3) DUPLICATE TITLE 1) ___ Lost ___ Stolen or Destroyed Title 2) \$18.00 title fee	☐ LEASED VEHICLE 1) Do not complete Section 3. Complete Section 4 and all other applicable sections. MAIL YOUR APPLICATION TO: SCDMV P.O. Box 1488 Columbia, SC 29216-0148
--	---	--	---	--

SECTION 1 - VEHICLE INFORMATION

VEHICLE IDENTIFICATION NUMBER 1B663	MAKE HONDA	YEAR/MAKE 2005	BODY STYLE 4D SEDAN	MODEL CIVIC	EMPTY WEIGHT 0	OWN
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SECTION 2 - ODOMETER MILEAGE

FEDERAL AND STATE LAWS REQUIRE THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP FAILURE TO COMPLETE OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.

I STATE THAT THE ODOMETER NOW READS 35,823 (NO TENTHS) AND TO THE BEST OF MY KNOWLEDGE THAT IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE DISCLOSED ABOVE UNLESS ONE OF THE FOLLOWING STATEMENTS IS CHECKED.



DO NOT CHECK ONE OF THE FOLLOWING UNLESS IT APPLIES.

☐ EXEMPT☐ I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS.☐ I CERTIFY THAT THE ODOMETER READING IS NOT THE ACTUAL MILEAGE WARNING ODOMETER DISCREPANCY.**SECTION 3 - OWNER INFORMATION**

Your complete legal name must be used on all title and registration documents.

OWNER'S COMPLETE LEGAL NAME (LAST, FIRST, MIDDLE) PORTIA SENTENNIAL SMITH	CUSTOMER NO. DRIVER LICENSE NO. SOC. SEC. OR FEIN NO. 4487 2041	DATE OF BIRTH
CO-OWNER'S COMPLETE LEGAL NAME (LAST, FIRST, MIDDLE)	JOINT OWNERSHIP AND OR	CUSTOMER NO. DRIVER LICENSE NO. SOC. SEC. OR FEIN NO. DATE OF BIRTH
RESIDENCE STREET ADDRESS (APT. NO. IF APPLICABLE) 207 GREY ST	CITY LEXINGTON	STATE SC ZIP CODE 29072
MAILING ADDRESS (IF DIFFERENT FROM ABOVE)	CITY	STATE ZIP CODE
ADDRESS WHERE VEHICLE IS HOUSED (IF DIFFERENT FROM ABOVE)	CITY	STATE ZIP CODE
DAYTIME TELEPHONE NUMBER	TEMPORARY ADDRESS (IF APPLICABLE)	EXPIRATION OF TEMPORARY ADDRESS

SECTION 4 - LEASING INFORMATION

Complete only for a leased vehicle.

LEASING COMPANY NAME	PHONE NO.	CONTACT PERSON	CUSTOMER NO.
ADDRESS	CITY	STATE	ZIP CODE
NAME OF LESSEE (PERSON LEASING VEHICLE)	DRIVER LICENSE NO. SOC. SEC. NO. OR FEIN NO.	DATE OF BIRTH	
RESIDENCE STREET ADDRESS (APT. NO. IF APPLICABLE)	CITY	STATE	ZIP CODE
MAILING ADDRESS (IF DIFFERENT FROM ABOVE)	CITY	STATE	ZIP CODE
ADDRESS WHERE VEHICLE IS HOUSED (IF DIFFERENT FROM ABOVE)	CITY	STATE	ZIP CODE

SECTION 5 - LIEN INFORMATION

CUSTOMER NO. OR FEIN NO.	LIENHOLDER NAME (FIRST, LAST) Wells Fargo Auto Finance, Inc.	DATE OF LIEN 10/29/2006	CONTACT PERSON	TELEPHONE NUMBER
MAILING ADDRESS PO BOX 51439	CITY PHOENIX	STATE AZ	ZIP CODE 85072-3439	
CUSTOMER NO. OR FEIN NO.	LIENHOLDER NAME (SECOND LIEN)	DATE OF LIEN	CONTACT PERSON	TELEPHONE NUMBER
MAILING ADDRESS	CITY	STATE	ZIP CODE	

EXHIBIT

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SECTION 6 - SATISFACTION OF LIEN

SATISFACTION OF FIRST LIEN THIS IS TO CERTIFY THAT THE LIEN AGAINST THE VEHICLE HAS BEEN FULLY SATISFIED ON DATE _____ NAME OF LENDER _____ CERTIFIED BY _____ TITLE _____		SATISFACTION OF SECOND LIEN THIS IS TO CERTIFY THAT THE LIEN AGAINST THE VEHICLE HAS BEEN FULLY SATISFIED ON DATE _____ NAME OF LENDER _____ CERTIFIED BY _____ TITLE _____	
--	--	---	--

SECTION 7 - SALES TAX EXEMPTION Complete this section if you are entitled to a sales tax exemption

VEHICLE PURCHASED FROM INDIVIDUALS AND TITLED IN SOUTH CAROLINA ARE SUBJECT TO SALES TAX UNLESS IN WRITING THE TAX IS 5% OF THE SALES PRICE UP TO A MAXIMUM OF \$300.00 (SPECIAL HOMES ARE CALCULATED DIFFERENTLY)

☐ THE VEHICLE WAS TRANSFERRED FROM ☐ MY PARENT ☐ MY SPOUSE ☐ MY CHILD ☐ MY BROTHER/SISTER ☐ MY GRANDPARENT ☐ MY GRANDCHILD
☐ THE VEHICLE WAS TRANSFERRED TO ME AS ☐ LEGAL HEIR ☐ BENEFICIARY ☐ DISTRIBUTOR
☐ I AM NON-RESIDENT MILITARY PERSONNEL ☐ THE VEHICLE WAS A DONOR GIFT

SECTION 8 - ADDITIONAL INFORMATION

DATE OF PURCHASE 10/29/2006	DATE FIRST OPERATED IN SC 10/29/2006	ENERGY EFFICIENT MANUFACTURED MOBILE HOME? ☐ YES ☒ NO
NEVORULED BY Used	PHON TITLE NUMBER	PHON TITLE STATE
THE VEHICLE DESCRIBED ON THIS APPLICATION IS ☐ REGULABLE ☐ NON-REGULABLE		
THE VEHICLE SUSTAINED THE FOLLOWING DAMAGE: ☐ COLLISION ☐ FIRE ☐ WATER ☐ STOLEN (RECOVERED) ☐ STOLEN (RECOVERED)		
AGENCY REFERENCE NUMBER		
SALVAGE# _____		
Estimated Salvage Percentage _____ Estimated to Repair _____ Percentage _____		

SECTION 9 - SELLER INFORMATION

SELLER/DEALER NAME CarMax	SC DEALER/WHOLESALE NUMBER 31233	SC SALES TAX NUMBER 7117	SALES PRICE \$15,497.00
ADDRESS 555 JAMIL ROAD	CITY COLUMBIA	STATE SC	ZIP CODE 29210

SECTION 10 - INSURANCE CERTIFICATION

EVERY VEHICLE MUST BE INSURED WITH LIABILITY INSURANCE COVERAGE WHEN IT IS REGISTERED AND IT MUST REMAIN INSURED WHILE REGISTERED. WHETHER OR NOT IT IS OPERATED OR THE UNINSURED MOTORIST FEE MUST BE PAID. PENALTIES ARE SEVERE FOR VIOLATION OF THIS REQUIREMENT.

UNDER PENALTIES OF PERJURY I DECLARE THAT THIS VEHICLE IS INSURED BY A LIABILITY INSURANCE POLICY ISSUED THROUGH AN INSURANCE COMPANY LICENSED TO DO BUSINESS IN SOUTH CAROLINA AND IT WILL REMAIN INSURED THROUGHOUT THE REGISTRATION PERIOD.

NAME OF INSURANCE COMPANY: PROGRESSIVE

SECTION 11 - GIFT OF LIFE TRUST FUND

DO YOU WISH TO DONATE AN ADDITIONAL \$1.00 OR MORE TO THE GIFT OF LIFE TRUST FUND? ☐ YES ☐ NO AMOUNT \$ _____

SECTION 12 - SIGNATURE OF OWNER

UNDER PENALTIES OF PERJURY I DECLARE THAT I AM THE OWNER OF THIS VEHICLE AND REQUEST THAT A SOUTH CAROLINA CERTIFICATE OF TITLE AND/OR REGISTRATION BE ISSUED. I FURTHER CERTIFY THAT THE INFORMATION ON THIS APPLICATION IS CORRECT TO THE BEST OF MY KNOWLEDGE. THE VEHICLE IS SUBJECT TO THE LIENS NAMED AND NO OTHERS.

Dante J. Anderson Smith 10/29/2006
SIGNATURE OF OWNER (S) MUST BE SIGNED IN INK BY OWNER OR AUTHORIZED AGENT (ATTACH POWER OF ATTORNEY IF APPLICABLE) DATE

DISCLOSURE STATEMENT

56-53 (SOUTH CAROLINA CODE OF LAWS) - THE DEPARTMENT SHALL OBTAIN THE FEW RAIL EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER WHEN A VEHICLE IS REGISTERED WITH A GROSS VEHICLE WEIGHT OF MORE THAN 26,000 POUNDS OR A BUS COMMON CARRIER. THE DRIVER'S PRIVACY PROTECTION ACT OF 1994 (DPPA) IS USC SECTION 2721-2725. RESPECT THE DISCLOSURE OF PERSONAL INFORMATION CONTAINED IN OUR RECORDS.

PENALTY FEES

FAILURE TO REGISTER WITHIN 60 DAYS OF THE DATE OF PURCHASE WILL RESULT IN PENALTY FEES IN ADDITION TO REGULAR TITLE AND/OR REGISTRATION FEES. THE LATE PENALTY FEE SCHEDULE IS AS FOLLOWS:

46-60 DAYS LATE - \$10.00	61-75 DAYS LATE - \$25.00	76-90 DAYS LATE - \$50.00	OVER 90 DAYS LATE - \$75.00
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THIS SECTION FOR DMV USE ONLY

STAMP VEHICLE BRANDS	
RAT (BY) _____ OFFICE OF TITLE NUMBER _____ PLATE NUMBER _____ EXPIRATION DATE _____ PLATE CLASS _____ SUSPENSE REASON _____	TRANSACTION FEES EXPEDITED FEE _____ LICENSE FEE _____ TRANSFER FEE _____ USE OR SALES TAX _____ PENALTY _____ WEIGHT INCREASE _____ TRANSFER _____ TITLE _____ GIFT OF LIFE FUND _____ TOTAL _____

N.A.D.A. Official Used Car Guide
Vehicle Summary Trade Value
10/30/2006

2005 HONDA
Civic-4 Cyl.
Sedan 4D Value

Region: Southeastern October, 2006
Stock #:
VIN: [REDACTED] 9663

N.A.D.A. Base Trade-In	\$12,475
Mileage (35,823)	-\$250
Accessories	\$0

N.A.D.A. Trade-In Value	\$12,225
--------------------------------	-----------------

Optional Equipment:

Option Total:	\$0
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STATE OF SOUTH CAROLINA
CERTIFICATE OF TITLE
OF A VEHICLE

VEHICLE ID NUMBER: 2443 YEAR: 2015 MAKE: HONDA MODEL: CIVIC NEW/USED: USED

BODY STYLE: DATE ISSUED: 02-05-2006 ODOMETER: 252823 WEIGHT: 2544 TITLE NUMBER: 23861

VEHICLE BRAND(S): ACTUAL MILEAGE:

SUB NAME OF OWNER(S): CUSTOMER NUMBER: 23861

1ST LIEN: LEASED BY: AUTHORIZED AGENT

WELLS FARGO AUTO FINANCE, INC.
PO BOX 53439
PHOENIX AZ 850723439

DATE OF SALE: 02/01/2006

MARK SANFORD
GOVERNOR

MARCUS ADAMS
EXECUTIVE DIRECTOR

6453

SEE REVERSE SIDE FOR OPENING INSTRUCTIONS

South Carolina
Department of Motor Vehicles
P.O. Box 1498
Columbia, SC 29216-0024

IMPORTANT Presorted First-Class
This Envelope Contains Your
CERTIFICATE OF TITLE
"OPEN CAREFULLY"

PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE PAID
COLUMBIA, S.C.
PERMIT NO. 543

WELLS FARGO AUTO FINANCE INC
PO BOX 53439
PHOENIX AZ 850723439

EXHIBIT

C
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Wells Fargo Auto Finance
2501 Seaport Drive
Suite BH300
Chester, PA 19013

02/02/2009

7265-COLUMBIA
Attn: Office Manager
555 JAMIL ROAD
COLUMBIA

Request for Refund

Dear Office Manager:

Wells Fargo Auto Finance financed a vehicle sold through your dealership which included funds to purchase one or more of the ancillary products listed below. It is Wells Fargo Auto Finance's policy to cancel these policies/contracts and obtain a refund for unearned premiums or ancillary products if the collateral is repossessed by the insurance company.

We are hereby notifying you that we have requested the cancellation of the policy/contract for the account referenced below and we are requesting credits totaling \$(281.96) on the indicated policies/contracts.

Borrower's Name:	PORTIA S SMITH
Account Number:	9001
Vin #:	9663
Contract Date:	10/29/2006
Repossession Date:	01/16/2009
End Mileage:	84537
Credit Life / Disability Refund Amount:	\$0.00
Service Contract Refund Amount:	\$281.96
GAP Refund Amount:	\$0.00
Maintenance Agreement Refund Amount:	\$0.00

Please remit payment within 10 business days to:

WELLS FARGO AUTO FINANCE
MAC# F6582-030
2501 Seaport Drive, Suite BH300
Chester, PA 19013
Attn: Dealer Rebate Group

If you have any questions regarding this matter, please call 866-457-4241 Annie ext. 73262. Your prompt attention to this matter is greatly appreciated.

Sincerely,

Wells Fargo Auto Finance
Dealer Rebate Group

Cc: WFAF Sales Representative

LTR042

EXHIBIT

D

2012

DMS Tracking # 27635

Report # 3

Sales Consult Phone: 2402 Office Number: BUS

CREDIT APPLICATION

DEALER'S NAME: CarMax

(Check appropriate box)
(California Residents: A married applicant may apply for an individual account)

- ☐ If you are applying for individual credit and relying on your own assets and income, please complete Sections A and B.
☐ If you are relying on income or assets of another person to guarantee repayment of your debt, complete Sections A and B.
☐ If this is a joint credit application, please complete Sections A and B.

E21112

A. APPLICANT'S PERSONAL INFORMATION

PRINT NAME LAST FIRST MIDDLE	PORTIA S SMITH	DATE OF BIRTH MM DD YY	00 06
PRESENT HOME ADDRESS NUMBER AND STREET CITY STATE ZIP CODE	207 GREY ST LEXINGTON SC 29072	PHONE NUMBER AREA CODE NUMBER	(803) 957-6342
PREVIOUS ADDRESS NUMBER AND STREET CITY STATE ZIP CODE	310 ARLINGTON RD GREER SC 29651	DATE OF BIRTH MM DD YY	13 01
INDICATE BANKING RELATIONSHIP	SALARY WEEKLY	ANNUAL NEW ANNUAL QUARTERLY MONTHLY	SAVINGS CHECKS DEBIT CREDIT
EMPLOYMENT NAME OF EMPLOYER POSITION SALARY WEEKLY	BUSINESS PHONE NUMBER	HOW LONG YEARS MONTHS	EDUCATION HIGH SCHOOL JUNIOR COLLEGE COLLEGE GRADUATE
NAME OF PREVIOUS EMPLOYER POSITION SALARY WEEKLY	BUSINESS PHONE NUMBER	HOW LONG YEARS MONTHS	EDUCATION HIGH SCHOOL JUNIOR COLLEGE COLLEGE GRADUATE
NAME AND ADDRESS NUMBER AND STREET CITY STATE ZIP CODE	PHONE NUMBER	RELATIONSHIP	
TYPE OF CREDIT OTHER INCOME	ANNUAL NEW ANNUAL QUARTERLY MONTHLY	WEEKLY	

CHILD SUPPORT

B. JOINT APPLICANT'S INFORMATION

PRINT NAME LAST FIRST MIDDLE	PORTIA S SMITH	DATE OF BIRTH MM DD YY	00 06
PRESENT HOME ADDRESS NUMBER AND STREET CITY STATE ZIP CODE	207 GREY ST LEXINGTON SC 29072	PHONE NUMBER AREA CODE NUMBER	(803) 957-6342
PREVIOUS ADDRESS NUMBER AND STREET CITY STATE ZIP CODE	310 ARLINGTON RD GREER SC 29651	DATE OF BIRTH MM DD YY	13 01
INDICATE BANKING RELATIONSHIP	SALARY WEEKLY	ANNUAL NEW ANNUAL QUARTERLY MONTHLY	SAVINGS CHECKS DEBIT CREDIT
EMPLOYMENT NAME OF EMPLOYER POSITION SALARY WEEKLY	BUSINESS PHONE NUMBER	HOW LONG YEARS MONTHS	EDUCATION HIGH SCHOOL JUNIOR COLLEGE COLLEGE GRADUATE
NAME OF PREVIOUS EMPLOYER POSITION SALARY WEEKLY	BUSINESS PHONE NUMBER	HOW LONG YEARS MONTHS	EDUCATION HIGH SCHOOL JUNIOR COLLEGE COLLEGE GRADUATE
NAME AND ADDRESS NUMBER AND STREET CITY STATE ZIP CODE	PHONE NUMBER	RELATIONSHIP	
TYPE OF CREDIT OTHER INCOME	ANNUAL NEW ANNUAL QUARTERLY MONTHLY	WEEKLY	

VEHICLE INFORMATION

YEAR 2005 MAKE HONDA MODEL CIVIC BODY STYLE 4D SEDAN VIN 1HGCS16356L009863 MSRP \$35,823
 CASH PRICE \$14,494.00 DOWN PAYMENT \$1700.00 TRADE IN CREDIT \$13,794.00

I represent that the information in this credit application is complete and accurate in all respects. I authorize CarMax to forward this application to any financial institution that may purchase a resulting sales finance contract. I also authorize CarMax and the financial institutions to gather whatever information from whatever source it considers necessary and appropriate. This includes, among other things, verifying income and employment information, and obtaining consumer credit reports from consumer reporting agencies. I understand that this means multiple financial institutions will separately obtain and review consumer credit reports about me. This authorization is for this transaction only, but I understand that this application may be submitted more than once. Ohio Consumers: The Ohio laws against discrimination require that all creditors make credit equally available to all creditworthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission enforces this law.

10/29/2006

We intend to apply for joint credit

CarMax

www.carmax.com

7285 - CARMAX - COLOMBIA

EXHIBIT

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Auto Customer Service
Wells Fargo Bank, N.A.

Collateral Liquidation Transmittal

Date: 02/13/2009

TO: Responsible Center AU # 1997 B/S 5326 FROM: Liquidation Center AU # 2768
Borrower: PORTIA SMITH Lease/Loan #: 9001
Balance: \$12,898.82

SECTION I:

Auction: Manheim's Statesville Auto Auction
Intended Sale Date: 02/10/2009
Floor Price: \$5,200.00

SECTION II:

Actual Sale Date:	02/10/2009	Sale Amount:	\$5,200.00
		Sale Fee:	\$90.00
		Recondition Fee:	\$83.00
		Transport 1:	\$165.00
		Transport 2:	
		Mech Labor:	
		Mech Parts:	
		Mechanical Fee:	
		Frame Check:	
		Battery:	
		Tires:	
		Storage Fee:	
		Repo Fee:	
		DMV Fee:	
		Fuel:	
		Keys:	\$173.21
		Windshield:	
		Winterizing:	
		Adv. Charge:	
		CA	
		Other Fee:	
Vehicle's Realized Value:		Total Fee:	\$511.21
		Proceeds:	\$4,688.79
		Check #:	

Insurance Claim Filed: ☐
Stock #: 9403
Book Value: \$5,675.00
Adjusted Value: \$4,383.27
VIN: 9663

Other Book Value: _____
Adjusted Other Value: _____

Originator

Comments: _____

Requested By: Sheri Buckey
(480) 457-2247

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EXHIBIT

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SELLER'S COPY		BID# 1702	KEY [REDACTED] 0222 LMARTIN		SALE DATE 11/05/11 2/10/2009		ENTRY NO. 222 LANE 18																				
MANHEIM STATESVILLE 145 AUCTION LANE (P.O. BOX 749, 28687) STATESVILLE, NC 28625 (800) 853-7404 FAX(704) 876-3900 AUTOCONECT-SWAMANHEIM.COM		[REDACTED] 9663	[REDACTED] 015B SC 2/02/2009 TITLE REC'D X		811780																						
YEAR	MAKE	MODEL/SUB SERIES	VIN	COLOR	ENG	INT	INT	R	T	M	P	S	PB	AC	EW	ES	TOP	CC	EL	4X	TL	SRS	SI	RD			
2005	HONDA	CIVIC	4DSN	BLACK	4G	GRY	C	C	A	X	X	X									X	D		X			
ANN COND: REPO;																								NOTES:			
GREEN : GUARTEE :																								FULL : FULL : FRAME : FRAME : MECH : MECH : F CLERK SOLD BY 7 CHK 14 CHK 7 CHK 14 CHK 7 CHK 14 CHK AJS MAD			
I OR WE BY USE OF OUR PLATE OR AUTHORIZED SIGNATURE, HEREBY AGREE TO PAY THE INDICATED SALE PRICE FOR THE VEHICLE DESCRIBED IN THIS VOUCHER, UNDER THE TERMS AND RULES OF THE ABOVE NAMED AUCTION AND SUBJECT TO AGREEMENT ON REVERSE SIDE.																								LICENSE NO. NO TAG		TAB	
23177 1 CHECK 1702 PIEDMONT AUTO SALES NETWORK LLC 5730 OLD WALKERTOWN RD WALKERTOWN, NC 27051 (336) 754-4382 CHRISTOPHE BLAKE WHITE																								9001 9403 CERT/NO HELLS FARRO FINANCIAL ACCEPTANCE 2501 SEAPORT DR CHESTER, PA 19013		BUYER PLEASE CHECK ONE ☐ CLEAN ☐ ROUGH ☐ AVERAGE (1) (2) (3)	
PRINTED PURCHASER'S NAME (BUYER) _____ PURCHASER'S SIGNATURE (BUYER) _____																								NOTICE: • Do not re-purchase or finance without certificate of title. • Auction retains security interest in vehicle until good funds received.		SELLING PRICE \$ 5,200.00 BUYER'S FEE \$ 230.00 DRAFT FEE \$ BUYER'S ADJ 2 \$ BUYER'S ADJ \$ \$ BUY NET \$ 5,430.00	
ODOMETER DISCLOSURE STATEMENT Section 580.5 Disclosure form 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. ☐ (1) I hereby certify 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																								STATE THAT THE ODOMETER NOW READS MILES (NO TENTHS) AND TO THE BEST OF MY KNOWLEDGE THAT IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE DESCRIBED HEREIN, UNLESS NOTED DIFFERENTLY ABOVE. For value received I hereby sell, assign or transfer the vehicle described on this document to the purchaser named at left. X TRANSFEROR'S SIGNATURE (SELLER) X SIGNATURE ON FILE PRINTED NAME OF (SIGNOR)		HELLS FARRO FINANCIAL ACCEPTANCE 84537 DIG 4	
AUCTION ASSUMES NO RESPONSIBILITY NOR GUARANTEES THE ACCURACY OF THE ODOMETER READING DOCUMENT NOT VALID FOR EXPORT																								 Manheim NOT A RECEIPT OF PAYMENT		THIS SALE IS SOLELY A TRANSACTION BETWEEN THE BUYING AND SELLING PARTIES. NO REPRESENTATION OF TITLE TO THIRD PARTIES IS MADE OR INTENDED. SUBJECT TO AGREEMENT ON REVERSE SIDE.	

EXHIBIT 6 pg 25

SELLER and PURCHASER agree by their signatures on the face of this agreement to abide by all auction policies, which are incorporated herein, and all policy decisions of management.

PURCHASER and SELLER agree that this agreement shall be of the same force and effects as though personally signed by them even though it only contains their identification plate, or other authorized signature.

Any adjustments or objections must be made prior to settlement. The Vehicle must be paid for on day of purchase or this sale may be considered null and void at AUCTION's discretion.

SELLER and PURCHASER each agree that should any vehicle be left on AUCTION premises for a period in excess of six days, AUCTION may charge a reasonable daily storage fee of \$10 per day.

SELLER and PURCHASER agree that AUCTION and its affiliates retain the right to cease doing business with either of them as it sees fit, and that AUCTION is not a broker.

Title to the Vehicle does not pass to PURCHASER until good funds are received. PURCHASER grants AUCTION and its affiliates a security interest in the Vehicle to secure payment of the purchase price and of any other debt owing from PURCHASER to the AUCTION or its affiliates. PURCHASER agrees AUCTION may re-sell Vehicle, if repossessed, at regular AUCTION sale.

The PURCHASER agrees to purchase this vehicle for the purchase price shown provided the vehicle is found to be as recommended; before settling for this vehicle, to check the serial and/or engine numbers on the vehicle with those on the title; to check the actual condition of the vehicle with its description and with the recommendation, if any, when offered for sale at this auction; not to resell the Vehicle until good funds have been transmitted to AUCTION; upon making settlement in cash or by check or draft in lieu of cash to consider the transaction a fully consummated cash transaction for present consideration; that no stop payment of his check to this AUCTION shall be honored, **that any stop payment order of a check/draft or giving a check/draft which is returned unpaid shall be deemed by the parties to be prima facie evidence of fraud existing at the time the transaction was consummated, and shall be construed by the parties as an intent to defraud in order to consummate the transaction;** and that AUCTION may deposit any check or draft immediately upon receiving it, regardless of whether the Vehicle's certificate of title has been submitted by the seller; or whether AUCTION has agreed to hold the check or draft pursuant to a float arrangement with the seller.

PURCHASER agrees to make any claim of defects with the car with SELLER, and immediately to notify AUCTION pursuant to its policies. PURCHASER agrees that it is responsible for its own transportation.

PURCHASER represents to AUCTION that it is solvent, and that the Vehicle is purchased solely for resale.

The SELLER covenants with the PURCHASER that he is the true and lawful owner of the described vehicle ("Vehicle"), that the same is free from all liens and encumbrances; that he has good right and full power to sell and transfer title to the same; and that he will warrant and defend the same against the lawful claims and demands of all persons whomsoever. If SELLER is a corporation, by the execution of the agreement, the officers of said corporation do, jointly and severally, individually and personally guarantee performance of the corporation's warranties.

SELLER agrees that any amounts owing to AUCTION, MAFS, or other Marheim auctions may be deducted from the proceeds due SELLER, and that AUCTION may stop payment or refuse to authorize payment on any check or draft to SELLER pursuant to this right of set-off.

SELLER agrees to be bound by the TERMS OF SALE and acknowledges responsibility for completion and execution of the required odometer mileage statement pertaining to the Vehicle described herein. Upon payment to SELLER, AUCTION shall be subrogated to all of the SELLER's and PURCHASER's rights, and the SELLER and PURCHASER agree to do whatever is necessary to secure such rights and

TITLE GUARANTEE

Upon payment of the purchase price and upon delivery of the title to the PURCHASER, AUCTION, in accordance with the following terms and conditions, GUARANTEES THE TITLE of the Vehicle to be FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES at the time of the execution of this instrument and upon delivery of the title to the PURCHASER for a period of FOUR (4) YEARS from the date of sale as shown on face. This guaranty applies only to motor vehicles and mortgage liens. The amount of the AUCTION's liability under this guaranty of title shall never exceed the sale price of the vehicle and the maximum amount of the AUCTION's liability under this guaranty shall be reduced by deducting from said sale price 2% thereof on the first of each month following the date of this transaction, and all liability of the AUCTION will expire and terminate on the first day of the forty eighth month after the date of this transaction.

The AUCTION's guarantee of title is expressly limited to use PURCHASER of the Vehicle, and said guarantee is not negotiable or transferable. This shall be void if the purchase price for the vehicle is not paid by the PURCHASER. This guarantee does not protect against defects in the title known to the PURCHASER whether or not listed as exceptions to the title on the reverse of this agreement.

Whenever any claim is made by any person against the title of the Vehicle, whether by suit or otherwise, the PURCHASER shall within five days after becoming aware of said claim notify the AUCTION, giving full particulars of the claim and shall cooperate fully in defending any legal action and in taking any other steps to minimize possible loss. Time is of the essence of this entire agreement and any failure on the part of the PURCHASER to notify the AUCTION of any such claim shall void the AUCTION's liability under this guarantee. Likewise, failure of the PURCHASER to cooperate in defense of such claim shall release the AUCTION of liability under this guarantee.

The PURCHASER shall not surrender possession of the vehicle except as required by legal process, to any such claimant, nor shall it voluntarily pay or acknowledge the validity of any such claim, without the prior approval of the AUCTION.

On payment of any claim under this guarantee, the PURCHASER will execute all necessary papers subrogating its right to recover against the SELLER, or others, to the AUCTION.

DISCLAIMERS and INDEMNIFICATION

SELLER and PURCHASER agree that AUCTION is neither responsible for odometer mileage on the consigning vehicles nor for the information contained in the odometer mileage statement which SELLER, as Transferor is required to complete and sign and PURCHASER as transferee is required to acknowledge.

SELLER and PURCHASER agree that all representation concerning the vehicle are solely the responsibility of the SELLER, whether made on the block before the sale, on this agreement or otherwise, and acknowledge and agree that AUCTION has made no representations whatsoever about the Vehicle.

AUCTION is merely performing an auction service and expressly disclaims all express and/or implied warranties, as to merchantability, fitness or any other matter whatsoever other than the title guarantee set forth above.

SELLER and PURCHASER agree to indemnify and hold AUCTION harmless from any liability, loss, costs, damage or expense, including attorney's fees which may arise either directly or indirectly from the sale and purchase of the Vehicle including, but not limited to, any matters relating to odometer mileage or odometer mileage statements.

If the AUCTION is required to make a claim as a result of this transaction against either SELLER or PURCHASER or an agent or employee of SELLER or PURCHASER or an insurance carrier insuring or bonding SELLER or PURCHASER, then the Auction shall recover in addition to the amount of the claim and the costs incurred in the claim, reasonable attorney's fee in an amount not less than 25% of the amount of the claim, regardless of whether suit is filed, including appellate fees and costs. Interest shall accrue on the unpaid balance of any such claim at the rate of 1.5% per month.

The Vehicle is purchased for resale in the form of tangible personal property in the regular course of business and is the sort usually purchased by the PURCHASER for resale. In the event that the property is used for any purpose other than for resale, PURCHASER will pay direct to the proper taxing authorities such sale or use tax as may then be accrued and become payable. The PURCHASER further certifies that he holds a valid sales tax, registration and title license or other permit, issued by the sales tax authority of this state and county.

AUCTION MANAGEMENT RESERVES THE RIGHT TO VOID A TRANSACTION

Page 26

CARmax®**Retail Installment Contract****Consumer Credit Sale**Contract Number **112**
Contract Date **Oct 29, 2006**Seller (Creditor) **CarMax, 555 JAMIL ROAD, COLUMBIA, SC 29210**Buyer Name **PORTIA S SMITH** Address **207 GREY ST, LEXINGTON, SC 29072**

Co-Buyer Name _____ Address _____

Co-Buyer Name _____ Address _____

In this Contract, the words "you" and "your" mean anyone signing this Contract as a Buyer or Co-Buyer. The words "we" and "our" mean the Seller or anyone to whom the Seller transfers its rights under this Contract. If there is more than one buyer, each will be obligated, separately and together, for all sums due and the performance of agreements as provided in this Contract to the extent not prohibited by applicable law.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.	The total cost of your purchase on credit, including your downpayment of
15.84 %	\$ 8,643.72	\$ 16,279.00	\$ 23,922.72	\$ 700.00 \$ 24,622.72

Your Payment Schedule will be:	Amount of Payments	*e means an estimate
Number of Payments 72	\$ 332.26	When Payments are Due
		Monthly, beginning Dec 13, 2006

Security: You are giving a security interest in the motor vehicle being purchased.	Prepayment: If you pay off the full amount owed under this Contract early, you will not have to pay a penalty.
Late Charge: If a payment is received late, you will be assessed the following Late Charge: The lesser of \$14 or 5% of the unpaid installment if a payment is received after 10 days from the due date.	Additional Information: See the remainder of this Contract for additional information about nonpayment, default, any required repayment in full before the scheduled due date, and prepayment refunds.
	Filing Fees: \$ N/A

By executing this Contract, you agree that you are purchasing the following vehicle (the "Vehicle") from Seller:

Year **2005**
Make **HONDA**
Model **CIVIC**
VIN **1HGES163551009563**
New ☐ Used ☒

You will use the Vehicle as follows:

Personal ☒ Commercial ☐ Agricultural ☐

As part of this transaction, you sold the following vehicle(s) to Seller as a "Trade-In":

Year **1996**
Make **HONDA**
Model **ACCORD**
VIN **[REDACTED]**

Year _____
Make _____
Model _____
VIN _____

PROMISE TO PAY

You agree to pay the Amount Financed shown above, together with Finance Charges on the unpaid portion of the Amount Financed computed at the Annual Percentage Rate shown above, by monthly installments in the regular monthly payment amount shown above beginning on the date shown above, and continuing until the unpaid balance of the Amount Financed, together with accrued Finance Charges, is paid in full. (You understand that the number of regular monthly payments and the amount of the final payment shown above, as well as the Finance Charge, Total of Payments and Total Sale Price shown above are all estimates based on the assumption that you will make each payment in the required amount and on the exact due date shown above.) Your payments shall be made to Creditor at the address shown above. If this Contract is assigned, you agree to make payments to the subsequent holder of this Contract at the address provided by the subsequent holder of this Contract after you have received notice of the assignment. In the event that this Contract is assigned by Creditor to an Assignee, and in connection with such assignment the Assignee fails to pay to Creditor all amounts owed to Creditor to purchase this Contract, Creditor shall continue to retain all rights and remedies under this contract.

ITEMIZATION OF AMOUNT FINANCED

A. CASH PRICE	
1. Cash Price of Vehicle	\$ 13,998.00
2. Cash Price of CarMax Accessories	\$.00
3. Sales / Excise Tax	\$ 300.00
4. Dealer Documentation / Processing Fee	\$ 149.00
5. Other: N/A	\$.00
6. Other: N/A	\$.00
7. Total Cash Sale Price	\$ 14,447.00
B. DOWN PAYMENT	
1. Cash Down Payment	\$.00
2. Manufacturer's Rebate	\$.00
3. Credit From "Trade-In" Sold to CarMax	
a. Value of "Trade-In"	\$ 700.00
b. Pay-Off of "Trade-In"	\$.00
c. Net Value of "Trade-In" (a - b, if a is greater than b)	\$ 700.00
4. Other: N/A	\$.00
5. Other: N/A	\$.00
6. Total Down Payment (B(1) + B(2) + B(3)(c) + B(4) + B(5))	\$ 700.00
C. UNPAID BALANCE OF CASH PRICE	\$ 13,747.00
D. AMOUNTS PAID TO OTHERS ON YOUR BEHALF	
1. To Public Officials	
a. License, Title and Registration Fees	\$ 25.00
b. Filing Fees	\$.00
c. Other Official Fees: N/A	\$.00
d. Other Official Fees: N/A	\$.00
2. To Consumer Program Administrators, Inc. for Extended Service Agreement	\$ 1,499.00
3. To N/A for Pay-Off of the "Trade-In" where Pay-Off exceeds value of "Trade-In" (B(3)(b) - B(3)(c))	\$.00
4. To Dept. of Revenue, Tire Fee	\$ 8.00
5. To N/A	\$.00
6. To N/A	\$.00
7. Total of Amounts Paid to Others on Your Behalf	\$ 1,532.00
E. MISCELLANEOUS	
1. Other: N/A	\$.00
F. AMOUNT FINANCED (C + D(7) - E(1))	\$ 15,279.00

*Seller may retain a portion of this amount.

The amount of the Late Charge (Delinquency Charge) is, subject to biennial change.

You understand that this Contract consists of four (4) pages. This is page one (1). By initialing below you represent that you have read and agree to all provisions on all pages.

Buyer's Initials **PS**

Co-Buyer's Initials _____

Business ID PFF1000
Order # 118779
Revision Date 04/04

carmax.com

MIS ID 50000024
Contact Code JK

EXHIBIT**Pg 27**

LET. 800 511

Retail Installment Contract

Additional Terms and Conditions

Late Charge: If a payment is received late, you will be assessed a late charge as noted in the Late Charge section on Page 1 of this Contract.

NSF Fees: You have a responsibility in the form of a check that is returned unpaid by your bank or other depository institution, to the extent not prohibited by law, you will be charged a NSF fee based on the following NSF Fee Schedule or as may be modified from time to time by state law.

State NSF Fee	
Alabama	\$30
Florida	\$25 if the face amount of the check is \$50 or less; \$30 if the face amount of the check exceeds \$50 but is less than or equal to \$300; \$40 if the face amount of the check exceeds \$300. If the face amount of the check exceeds \$800, 5% of the face amount of the check.
Georgia	\$30 or 5% of the face amount of the check, whichever is greater.
Indiana	\$20
Kansas	\$30
Kentucky	\$25
Maryland	\$15
North Carolina	\$25
South Carolina	\$30
Tennessee	\$20
Virginia	\$35

Care of Vehicle: Until the entire unpaid balance and all other amounts owed under this Contract are paid in full, you agree as follows: to keep the Vehicle in good condition and repair; not to remove the Vehicle from the address disclosed on the face of this Contract for more than 30 days without notifying Creditor in writing; not to sell or transfer the Vehicle or use the Vehicle as collateral in another transaction; not to use the Vehicle for hire or lease, or permit the Vehicle's use in any illegal manner; not to allow someone else to seize the Vehicle or create a lien or other claim to or on the Vehicle; and to give Creditor written notice of any loss or damage to the Vehicle.

Insurance Requirements: You agree to maintain insurance on the Vehicle at all times, with comprehensive, collision, fire, and theft coverage in amounts acceptable to Creditor and with the minimum available deductible. Such insurance must be with a properly licensed insurer acceptable to Creditor and must name Creditor as an additional insured and loss-payee. You agree to provide Creditor with evidence of such insurance upon request. You agree that any insurance monies payable by reason of damage to or loss of the Vehicle shall be paid directly and solely to Creditor and may be used to pay all or part of the amounts you owe Creditor under this Contract. Creditor may also use the insurance proceeds (money) to replace or repair the Vehicle, at Creditor's sole discretion. You agree that Creditor can settle any insurance claim or sign any insurance checks on your behalf, as necessary, and to the extent not prohibited by applicable law. You understand and agree that any damage to the Vehicle (including, but not limited to, loss or destruction of the Vehicle) shall not affect your duty to pay all amounts owed under this Contract.

Failure to Maintain Insurance: If you fail to maintain insurance on the Vehicle, or fail to pay any loss, taxes or other costs necessary to keep the Vehicle in good condition and repair, Creditor may, at its sole discretion, obtain replacement insurance and/or advance any sums necessary to pay such fees, taxes or other costs. In the event Creditor obtains replacement insurance, the amount of such coverage may be limited to that which you owe under this Contract. Consequently, the insurance obtained may not cover the full value of the Vehicle nor any loss that you may sustain. To the extent not prohibited by law, any amount Creditor advances on your behalf (including for insurance) will accrue Finance Charges at the Annual Percentage Rate of this Contract. The amounts advanced shall be repayable: (i) immediately upon demand; (ii) along with your monthly payments; or (iii) at the end of the Contract, as Creditor may specify. Any payments made by Creditor on your behalf will not cure any default under this Contract.

Service Contracts: This Contract may contain charges for service contracts. If you are in default under this Contract or the Vehicle is repossessed, you agree that Creditor, to the extent not prohibited by applicable law, may claim benefits under these contracts and/or terminate them to obtain refunds for unearned charges. Any benefits and/or refunds received shall be applied toward your obligations under this Contract in accordance with applicable law. If you voluntarily cancel any such service contract, you authorize Creditor to receive any refunds due you, which shall be applied by Creditor towards your obligations under this Contract in accordance with applicable law.

"Trade-In" and Down Payment: You promise that you own and have valid title to the vehicle you sold to Creditor as a "trade-in." You further promise that except as disclosed to Creditor in writing, the Vehicle is free from any lien or security interest and no such appears on the certificate of title. You also promise that you have made the down payment disclosed on the face of this Contract and that you have not borrowed it. By signing this Contract, you warrant your solvency and agree that the return of any down payment check by the payor bank as NSF (non-sufficient funds) or Account Closed evidences your insolvency.

Creditor's Interest in Vehicle: The Vehicle is collateral that secures your financing for this Contract. You and we agree that Creditor shall have a security interest in the Vehicle and that the security interest has attached. A security interest means that if you default, Creditor can repossess the Vehicle and under certain circumstances sell it to satisfy your payment obligations. "Vehicle" shall include the tires, parts, and equipment, any replaced parts, all accessories and additions to the Vehicle, and any vehicle insurance refunds or proceeds resulting from loss of or damage to the Vehicle.

Title and Security: You promise that you are, and will be, the registered owner of the Vehicle throughout the term of this Contract. You also promise

that unless you obtain prior written consent, Creditor will be the only party with a security interest in and to the Vehicle and that Creditor's security interest shall be the only security interest that appears on the certificate of title. You agree that Creditor can apply for a certificate of title that will reflect Creditor's security interest in the Vehicle, and you agree to assist Creditor in doing so. In the event the Vehicle is returned to Creditor for any reason, you agree to assist Creditor in obtaining an amended certificate of title to reflect any ownership change.

Events of Default and Right to Demand Payment in Full: Each of the following shall, to the extent not prohibited by applicable law, be an Event of Default. Upon the occurrence of an Event of Default, Creditor can require that the entire unpaid balance owed under this Contract, together with all accrued Finance Charges and other amounts owed under this Contract, be paid immediately and in full, without prior notice or demand, subject to any right you have to cure the default.

1. You break one of your promises set forth under this Contract; or
2. You pay any installment owing under this Contract late as noted in the Late Charge Section on Page 1 of this Contract, or you fail to pay any other amount you owe Creditor, now or in the future, the day it becomes due; or
3. You have made a false or misleading statement on this Contract and/or on the credit application; or
4. The Vehicle is lost or damaged without sufficient insurance coverage; sold, given away or seized, or is removed from the United States (except to Canada and only for a maximum period of 30 days); or
5. You file a petition in bankruptcy or one is filed against you; or you file any proceeding seeking relief from your debts under applicable state or federal law, or one is instituted against you; or
6. You die or become legally unable to manage your affairs; or
7. The Vehicle is seized by a third party because of involvement in criminal activity or forfeiture proceedings have been instituted by a third party in any federal or state court, or through an administrative proceeding; or
8. Something else happens that Creditor reasonably believes affects your ability to pay the remaining amounts due under this Contract.

To the extent not prohibited by applicable law, if an Event of Default occurs and Creditor demands payment in full, you agree to pay collection costs incurred by the Creditor, including reasonable attorneys' fees if Creditor refers this Contract for collection to an attorney who is not Creditor's salaried employee, plus court costs. Until paid in full, and to the extent not prohibited by applicable law, the unpaid balance of the Amount Financed will continue to accrue Finance Charges at the Annual Percentage Rate disclosed on the face of this Contract.

NORTH CAROLINA TRANSACTIONS ONLY: You promise that you have not made any false or misleading statements on this Contract or on the credit application. You further promise that you will not take any action, or permit any event to occur, that materially impairs your ability to pay the amounts you owe under this Contract. By way of example, such event may include, but is not limited to, your death; you become legally unable to manage your affairs; you become insolvent; you file (or have filed against you) any other proceeding seeking relief from your debts; or you breach any other promise you have made in this Contract.

Right to Repossess: If one of the Events of Default occurs, Creditor can repossess the Vehicle. To the extent not prohibited by applicable law, Creditor may enter the premises where the Vehicle is kept and take it without giving you prior notice and without seeking a judicial remedy first. Creditor may alternatively request you to deliver the Vehicle to Creditor, and you agree to deliver the Vehicle as reasonably requested by Creditor. In the event of a default, Creditor has all of the rights and remedies of a secured party under the Uniform Commercial Code and other applicable state laws, including, to the extent not prohibited by applicable law, the right to sell the Vehicle and pursue a claim against you for any deficiency amount you still owe. You may have certain rights under applicable state laws to recover the personal property contained in the Vehicle at the time of repossession.

Application of Payments / Partial Prepayments: Your payments will be applied in accordance with any mandatory provisions of applicable law. In the absence of any such provisions, each payment will be applied according to the payment application protocol of the creditor or any assignee. In all other instances, your payments will be applied first to accrued Finance Charges, then to any other fees or charges for which you are responsible which are not included in the Amount Financed, then to the unpaid balance of the Amount Financed. Partial prepayments will not relieve you of the obligation to continue making the monthly payments as required under this Contract, and acceptance of partial or late payments does not waive Creditor's rights under this Contract, including but not limited to, the right to call a default, accelerate the debt or repossess the Vehicle.

Waivers and Releases: To the extent not prohibited by applicable law, (i) Creditor can waive or delay enforcing any of Creditor's rights without losing them; (ii) Creditor can waive or delay enforcing a right as to one of you without waiving it as to the other; and (iii) Creditor need not give anyone notice of the waiver, delay or release. Creditor's failure to file a security interest, release of a security interest or granting extensions or deferrals of payment, shall not affect your obligations under this Contract.

Applicable Law: This Contract shall be governed by federal law and the law of the state where the CarMax store selling the Vehicle is located. If the Vehicle is sold in Kansas, the provisions of the Kansas Uniform Consumer Credit Code shall govern this Contract. If the Vehicle is sold in Maryland, this Contract shall be governed by Subtitle 10 of Title 12 of Maryland's Commercial Law Article. If any provision is found to be ineffective under any applicable law or regulation, the remainder of this Contract shall not be affected and shall continue to be binding and effective.

You understand that this Contract consists of four (4) pages. This is page two (2). By initialing below you represent that you have read and agree to all provisions on all pages.

Buyer's Initials

Co-Buyer's Initials

Retail Installment Contract
Additional Terms and Conditions

Arbitration Provision

This Arbitration Provision describes when and how a Claim (defined below) may be arbitrated. Arbitration is a way of resolving disputes before one or more neutral persons, instead of having a trial in court before a judge and/or jury. By signing this Contract, you and we agree to be bound by the following arbitration terms.

(a) What Claims are Covered: "Claim" means any claim, dispute or controversy between you and us that in any way arises from or relates to this consumer credit sale and/or the purchase you are financing by way of this Contract. "Claim" has the broadest possible meaning and includes initial claims, counterclaims, cross-claims and third-party claims. "Claim" includes disputes based upon contract, tort, consumer rights, fraud and other intentional torts, whether at law or in equity (including any claim for injunctive or declaratory relief). "Claim" also includes disputes based on constitutional, statutory, regulatory, ordinance-based, or similar grounds. "Claim" further includes disputes about the validity, enforceability, arbitrability or scope of this Arbitration Provision or this Contract. However, "Claim" does not include any self-help remedy, such as repossession, reclamation or retaking of the collateral or the right of set-off. "Claim" also does not include any individual action in court by one party that is limited to preventing the other party from using a self-help remedy and that does not involve a request for damages or monetary relief of any kind.

(b) Commencing Arbitration: Either you or we may require any Claim to be arbitrated. Arbitration begins by giving written notice to the other party of the intent to start or to compel arbitration. This notice may be given before or after a lawsuit has been started over the Claim or with respect to other Claims brought later in the lawsuit. Arbitration of a Claim must comply with this Arbitration Provision and the applicable rules of the arbitration Administrator. We will not choose to arbitrate an individual claim that you bring against us in small claims court or your state's equivalent court, if any. But if that Claim is transferred, removed or appealed to a different court, we then have the right to choose arbitration.

(c) Choosing the Administrator: You may choose the arbitration Administrator from the following list:

- American Arbitration Association ("AAA"), 335 Madison Avenue, New York, NY 10017, www.adr.org, (800) 778-7879.
- JAMS, 45 Broadway, 28th Floor, New York, NY 10008, www.jamsadr.com, (800) 352-5267
- National Arbitration Forum ("NAF"), P.O. Box 50191, Minneapolis, MN 55405, www.arb-forum.com, (800) 474-2371

If we initiate the arbitration proceeding, we will give you 20 days to choose the Administrator. If you do not choose the Administrator within that time, we will choose for you. If for any reason the chosen organization is unable or unwilling or ceases to serve as the Administrator, you will have 20 days to choose a different Administrator from the above list. If you fail to choose a different Administrator within the 20-day period, we will choose one. In all cases, the arbitrator(s) must be a lawyer with more than 10 years of experience.

(d) Choosing the Location: Any arbitration hearing that you attend must take place at a location reasonably convenient to your residence.

(e) Paying for Arbitration: Each Administrator charges fees to administer an arbitration proceeding. This may include fees not charged by a court. When you choose an Administrator, you should carefully review the fees charged by the Administrator. We will pay these fees if required by applicable law, or if otherwise necessary to ensure that this Arbitration Provision is enforceable. We will not ask you to pay or reimburse us for any fees we pay the Administrator. If we require a Claim to be arbitrated, we will pay or reimburse you for up to \$1000 in fees that would otherwise be charged to you by the Administrator. However, if either we or you require a Claim to be arbitrated, you may tell us in writing that you are unable to pay the fees charged by the Administrator or that you believe those fees to be excessively high. If you do so, we will pay or reimburse you for up to all of the fees that would otherwise be charged to you by the Administrator if your request is reasonable and in good faith. Each party must pay the expense of that party's attorneys, experts and witnesses, regardless of which party prevails in the arbitration, unless applicable law and/or this Arbitration Provision gives a party the right to recover any such fees from the other party.

(f) Impact of Arbitration on Legal Rights: If arbitration is chosen with respect to a Claim, all of the following apply:

- There will be no right to try that Claim in court.
- There will be no jury trial on that Claim.
- There will be no discovery, except as allowed by the arbitration rules of the Administrator or this Arbitration Provision.
- We and you are prohibited from participating in a class action or class-wide arbitration with respect to that Claim (the "Class Action Waiver"). This means that neither we nor you can be a representative or member of any class of claimants or act as a private attorney general in court or in arbitration with respect to that Claim.
- Claims brought by or against one buyer (or co-buyer) may not be joined or consolidated in the arbitration with Claims brought by or against any other buyer (or co-buyer) not a party to this Contract.
- Other rights that you or we would have in court may also not be available in arbitration.

(g) Effect of Class Action Waiver: Notwithstanding any other part of this Arbitration Provision, the validity and effect of the Class Action Waiver must be determined only by a court and not by an arbitrator. If a court limits or voids the Class Action Waiver, then this entire Arbitration Provision (except for this paragraph) shall be null and void.

(h) Right to Discovery: In addition to the parties' rights to obtain discovery pursuant to the arbitration rules of the Administrator, either party may submit a written request to the arbitrator to expand the scope for discovery normally allowable under the arbitration rules of the Administrator. The Arbitrator shall have discretion to grant or deny that request.

(i) Arbitration Result and Right of Appeal: Judgment upon the award given by the arbitrator may be entered in any court having jurisdiction. In response to a timely request from either party, the arbitrator must provide a brief written explanation of the basis for any award. The arbitrator's decision is final and binding, except for any right of appeal provided by the Federal Arbitration Act. However, if the amount of the Claim exceeds \$100,000, or if an arbitration award is a "zero" or "take nothing" award, any party can appeal the award to a three-arbitrator panel administered by the Administrator which shall reconsider any aspect of the initial award requested by the appealing party. Reference in this Arbitration Provision to the "arbitrator" means the panel of arbitrators if an appeal of the arbitrator's decision has been taken. Subject to applicable law, costs of such an appeal will be borne by the appealing party regardless of the outcome of the appeal. However, we will consider any good faith, reasonable request for us to pay all or any part of those fees if you are the appealing party.

(j) Governing Law: This Arbitration Provision is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. and not by any state arbitration law. The arbitrator must apply applicable substantive law consistent with the Federal Arbitration Act and applicable statutes of limitations and claims of privilege recognized at law. The arbitrator is authorized to award all remedies permitted by the substantive law that would apply if the action were pending in court.

(k) Rules of Interpretation: This Arbitration Provision shall survive the repayment of all amounts owed to us, any legal proceedings or our use of any self-help remedy to collect a debt you owe us, and any bankruptcy by you, to the extent not inconsistent with applicable bankruptcy law. Except as provided above in the last sentence of paragraph (g), if any part of this Arbitration Provision is determined to be invalid or unenforceable, it shall not invalidate the remaining parts of this Arbitration Provision or this Contract. In the event of a conflict or inconsistency between this Arbitration Provision, and the applicable arbitration rules or the other provisions of this Contract, this Arbitration Provision shall govern.

You understand that this Contract consists of four (4) pages. This is page three (3). By initialing below you represent that you have read and agree to all provisions on all pages.

Buyer's Initials

Co-Buyer's Initials

pg 30

OP84A

February 13, 2009

Portia Smith
80 Brighton Hill Rd
Columbia, SC 29223

RE: Sale of Repossessed Property: 05 HONDA CIVIC
VIN: [REDACTED] 9663
Account # [REDACTED] 9001 at Wells Fargo Bank, N.A. of
South Carolina("Wells Fargo")

Dear Portia Smith:

Consistent with our previous notice to you, Wells Fargo has sold the repossessed property described above at a private sale on February 10, 2009.

After applying the proceeds from the sale of this repossessed property to your account (described above) a Deficiency Balance Due remains owing, as shown in the following explanation as of the date of this letter:

A.	Aggregate Amount of Obligations Secured	\$13,328.35
	(includes current principal balance due, accrued interest, late fees and charges, less rebate of unearned interest or credit service charge, if any)	
B.	Proceeds from Disposition/Sale	\$5,200.00
C.	Aggregate Obligations Secured After Applying Proceeds ("A" minus "B")	\$8,128.35
D.	Costs of Repossession, Storage, Preparation, Sale and Attorney's Fees/ Legal Expenses	\$861.21
E.	Credits Not Included in "A"	\$0.00
1 F.	Deficiency Balance Due ("C" plus "D" minus "E")	\$8,989.56*

EXHIBIT I

*Future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the Balance Due.

Re: Account # [REDACTED] 9001

Please contact our office within ten (10) days to make satisfactory arrangements to pay this Deficiency Balance Due. If satisfactory arrangements are not made within that time, we may pursue legal action to recover this Deficiency Balance Due.

Any payment, notice or inquiry should be directed to:

Wells Fargo Auto Finance
Asset Recovery Group
1460 Northwest Vivion Road, Eastbrook Park
Kansas City, MO 64118
Telephone: 800-284-0692

IF YOU HAVE RECEIVED A DISCHARGE OF THIS DEBT IN BANKRUPTCY OR ARE CURRENTLY IN A BANKRUPTCY CASE, THE PRECEDING NOTICE IS NOT INTENDED AS AN ATTEMPT TO COLLECT A DEBT. THIS COMPANY HAS A SECURITY INTEREST IN THE ABOVE DESCRIBED PROPERTY THAT CONTINUES EVEN AFTER THE BANKRUPTCY DISCHARGE. THIS NOTICE IS GIVEN ONLY FOR THE PURPOSE OF COMPLYING WITH THE REQUIREMENTS OF STATE LAW REGARDING REPOSSESSION OF COLLATERAL, AND SHOULD NOT BE CONSTRUED AS A DEMAND FOR PAYMENT.

Some state laws require us to inform you that this communication is an attempt to collect a debt and that any information obtained will be used for that purpose.



Wells Fargo
711 W. Broadway
Tempe, AZ 85282

73 1 SP 0.420

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1 73

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Date of Notice: 09/19/2008

Portia Smith
80 Brighton Hill Rd Apt 6231
Columbia, SC 29223-8626



NOTICE OF RIGHT TO CURE DEFAULT

Creditor: Wells Fargo Bank
(Please send payment to address below)

RE: Your installment loan obligation owed to Wells Fargo with Account # [REDACTED] 9001

You are late in making your payment(s). If you pay the **Amount Now Due** (below) by the **Last Date for Payment** (below) you may continue with the contract as though you were not late. If you do not pay by this date, Wells Fargo may exercise its rights under the law.

Your default consists of your failure to make the following payment(s):

Scheduled payment(s) in the total amount of \$996.04

Plus accumulated late charge(s) of \$52.36

For a total **Amount Now Due** of \$1,048.40

Last Date for Payment: 10/09/2008

Please send the Amount Now Due to:

Wells Fargo Bank
Attn: Collections
711 W. Broadway
Tempe, AZ 85282

If you do not correct your default by the **Last Date for Payment** (above), Wells Fargo may accelerate your credit obligation and exercise its rights and remedies against you as permitted under applicable law. These rights include the right to repossess any property held as collateral for this obligation and the right, in many instances, to hold you personally responsible for any difference between the amount the property brings in a sale and the balance due Wells Fargo on the credit obligation in question. If you default on this credit obligation again, Wells Fargo may exercise its rights without sending you another notice like this one.

As you know, you previously signed a contract in which you agreed to make payments according to a specific payment schedule. This letter also serves as notice to you that Wells Fargo expects you to strictly comply with each and every term of the contract.

If you have any questions, please call 1-800-288-0766 (TDD: please use relay service).

Sincerely,

Kenon L. Irvin

LTR174

WFA006 00000073 / 00000080

EXHIBIT 5

Some states have laws which require us to inform you that this communication is an attempt to collect a debt and any information will be used for that purpose.

LTR174

WFA005 00000073 / 00000081

Page 2 of 2

pg 36



Wells Fargo
711 W. Broadway
Tempe, AZ 85282

148 1 MB 0.369

00000148

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148

2

Date of Notice: 09/22/2008

Portia Smith
80 Brighton Hill Rd Apt 6231
Columbia, SC 29223-8626



NOTICE OF RIGHT TO CURE DEFAULT

Creditor: Wells Fargo Bank
(Please send payment to address below)

RE: Your installment loan obligation owed to Wells Fargo with Account # [REDACTED]-9001

You are late in making your payment(s). If you pay the **Amount Now Due** (below) by the **Last Date for Payment** (below) you may continue with the contract as though you were not late. If you do not pay by this date, Wells Fargo may exercise its rights under the law.

Your default consists of your failure to make the following payment(s):

Scheduled payment(s) in the total amount of \$996.04

Plus accumulated late charge(s) of \$52.36

For a total **Amount Now Due** of \$1,048.40

Last Date for Payment: 10/12/2008

Please send the Amount Now Due to:

Wells Fargo Bank
Attn: Collections
711 W. Broadway
Tempe, AZ 85282

If you do not correct your default by the **Last Date for Payment** (above), Wells Fargo may accelerate your credit obligation and exercise its rights and remedies against you as permitted under applicable law. These rights include the right to repossess any property held as collateral for this obligation and the right, in many instances, to hold you personally responsible for any difference between the amount the property brings in a sale and the balance due Wells Fargo on the credit obligation in question. If you default on this credit obligation again, Wells Fargo may exercise its rights without sending you another notice like this one.

As you know, you previously signed a contract in which you agreed to make payments according to a specific payment schedule. This letter also serves as notice to you that Wells Fargo expects you to strictly comply with each and every term of the contract.

If you have any questions, please call 1-800-288-0766 (TDD: please use relay service).

Sincerely,

LTR174

WFA005 00000148 / 00000181

Page 1 of 2

Pg 37

Some states have laws which require us to inform you that this communication is an attempt to collect a debt and any information will be used for that purpose.

LTR174

WFA005 00000148 / 00000182

Page 2 of 2

Pg 38



Wells Fargo
711 W. Broadway
Tempe, AZ 85282

31 1 SP 0.420 00000031 1 31
Portia Smith
80 Brighton Hill Rd Apt 6231
Columbia, SC 29223-8626

2

Date of Notice: 11/19/2008



NOTICE OF RIGHT TO CURE DEFAULT

Creditor: Wells Fargo Bank
(Please send payment to address below)

RE: Your installment loan obligation owed to Wells Fargo with Account # [REDACTED]-9001

You are late in making your payment(s). If you pay the **Amount Now Due** (below) by the **Last Date for Payment** (below) you may continue with the contract as though you were not late. If you do not pay by this date, Wells Fargo may exercise its rights under the law.

Your default consists of your failure to make the following payment(s):

Scheduled payment(s) in the total amount of \$995.56

Plus accumulated late charge(s) of \$80.36

For a total **Amount Now Due** of \$1,075.92

Last Date for Payment: 12/09/2008

Please send the Amount Now Due to:

Wells Fargo Bank
Attn: Collections
711 W. Broadway
Tempe, AZ 85282

If you do not correct your default by the **Last Date for Payment** (above), Wells Fargo may accelerate your credit obligation and exercise its rights and remedies against you as permitted under applicable law. These rights include the right to repossess any property held as collateral for this obligation and the right, in many instances, to hold you personally responsible for any difference between the amount the property brings in a sale and the balance due Wells Fargo on the credit obligation in question. If you default on this credit obligation again, Wells Fargo may exercise its rights without sending you another notice like this one.

As you know, you previously signed a contract in which you agreed to make payments according to a specific payment schedule. This letter also serves as notice to you that Wells Fargo expects you to strictly comply with each and every term of the contract.

If you have any questions, please call 1-800-288-0766 (TDD: please use relay service).

Sincerely,

irvinkl

LTR174

WFA005 00000031 / 00000036

Page 1 of 2

pg 39

Some states have laws which require us to inform you that this communication is an attempt to collect a debt and any information will be used for that purpose.

LTR174

WFA005 00000031 / 00000037

Page 2 of 2

pg 40



Wells Fargo
711 W. Broadway
Tempe, AZ 85282

68 1 SP 0.420 00000068 1 68
Portia S Smith
80 Brighton Hill Rd Apt 6231
Columbia, SC 29223-8626

2

Date of Notice: 12/19/2008



NOTICE OF RIGHT TO CURE DEFAULT

Creditor: Wells Fargo Bank
(Please send payment to address below)

RE: Your installment loan obligation owed to Wells Fargo with Account # [REDACTED]-9001.

You are late in making your payment(s). If you pay the **Amount Now Due** (below) by the **Last Date for Payment** (below) you may continue with the contract as though you were not late. If you do not pay by this date, Wells Fargo may exercise its rights under the law.

Your default consists of your failure to make the following payment(s):

Scheduled payment(s) in the total amount of \$994.82

Plus accumulated late charge(s) of \$80.36

For a total **Amount Now Due** of \$1,075.18

Last Date for Payment: 01/08/2009

Please send the Amount Now Due to:

Wells Fargo Bank
Attn: Collections
711 W. Broadway
Tempe, AZ 85282

If you do not correct your default by the **Last Date for Payment** (above), Wells Fargo may accelerate your credit obligation and exercise its rights and remedies against you as permitted under applicable law. These rights include the right to repossess any property held as collateral for this obligation and the right, in many instances, to hold you personally responsible for any difference between the amount the property brings in a sale and the balance due Wells Fargo on the credit obligation in question. If you default on this credit obligation again, Wells Fargo may exercise its rights without sending you another notice like this one.

As you know, you previously signed a contract in which you agreed to make payments according to a specific payment schedule. This letter also serves as notice to you that Wells Fargo expects you to strictly comply with each and every term of the contract.

If you have any questions, please call 1-800-288-0766 (TDD: please use relay service).

Sincerely,

LTR174

WFA006 00000068 / 00000070

Page 1 of 2

pg 41

Some states have laws which require us to inform you that this communication is an attempt to collect a debt and any information will be used for that purpose.

LTR174

WFA005 00000088 / 00000071

Page 2 of 2

pg 42



Wells Fargo
2501 Seaport Drive BH 300
Chester, PA 19013

150 1 MB 0.369

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150

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01/19/2009

Portia S Smith
80 Brighton Hill Rd Apt 6231
Columbia, SC 29223-8626



WELLS FARGO NOTICE OF OUR PLAN TO SELL PROPERTY

Subject: [REDACTED]-9001

We have your 05 Honda Civic, Serial No. [REDACTED] 9663 because you broke promises in our agreement.

We will sell your 05 Honda Civic, Serial No. [REDACTED] 9663 at a private sale sometime after 01/31/2009. A sale could include a lease or a license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you will still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at 866-262-9153 (TDD: Please use relay service) or write us at Wells Fargo.

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at 866-262-9153 or write us at Wells Fargo and request a written explanation.

If you need more information about the sale, call us at 866-262-9153 or write us at Wells Fargo.

We are sending this notice to the following other people who have an interest in the 05 Honda Civic, Serial No. [REDACTED] 9663 or who owe money under your agreement: .

You can reclaim any personal property contained in the 05 Honda Civic, Serial No. [REDACTED] 9663 at the time of repossession by calling our office and making an appointment to pick it up. If you do not pick up such personal property within thirty (30) days from the date of this Notice, it will be considered unwanted and abandoned, and it will be disposed of without further notice.

Some states have laws which require us to inform you that this communication is an attempt to collect a debt and any information obtained will be used for that purpose.

LTR519

WFA005 00000150 / 00000170

EXHIBIT K

P 43

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Autovest, L.L.C.,)
Plaintiff,)

Civil Action No. 2014-CP-40-1484

vs.

) **ANSWER AND COUNTERCLAIMS**
) **IN RESPONSE TO AMENDED COMPLAINT**

Portia Smith a/k/a Portia)
Sentennial Smith, for herself and)
on behalf of all other similarly)
situated individuals,)
Defendant.)

Defendant Portia S. Dantzler (formerly known as Portia Smith), for herself and on behalf of all other similarly situated individuals, hereby responds to the Amended Complaint of Plaintiff as follows:

AS A FIRST DEFENSE

1. Denies each and every allegation of the Amended Complaint not hereinafter specifically admitted, qualified, or explained.
2. Is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Amended Complaint and, therefore, denies those allegations.
3. Denies the allegation contained in Paragraph 2 of the Amended Complaint that Defendant is a citizen and resident of Richland County.
4. Denies the allegations contained in Paragraph 3 of the Amended Complaint.
5. Denies the allegations contained in Paragraph 4 of the Amended Complaint.

6. Responding to Paragraph 5 of the Amended Complaint, admits that the account records attached to Plaintiff's Motion to Amend pertain to Defendant's car loan, but denies that the documents establish a claim against Defendant.

AS A SECOND DEFENSE

7. The claim asserted by Plaintiff is barred by the applicable statute of limitations.

AS A THIRD DEFENSE

8. The Amended Complaint should be dismissed pursuant to Rule 12(b)(6), SCRCF, for failure to state a claim upon which relief may be granted.

AS A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM (Violation of Fair Debt Collection Practices Act)

Parties

9. Defendant is citizen and resident of the State of South Carolina.

10. Upon information and belief, Plaintiff is a limited liability company with its principal place of business in the State of Michigan, and is not authorized to do business in South Carolina.

11. Upon information and belief, Plaintiff is engaged in the business of purchasing charged-off debts allegedly owed by consumers and attempting to collect them from the consumers.

12. Upon information and belief, Plaintiff and its agents regularly use the United States mail to attempt to collect these debts.

13. Plaintiff has filed hundreds of lawsuits in South Carolina seeking to collect consumer debts.

14. Because the purported obligations were originally owed to other entities and were charged off prior to purchase, Plaintiff is a "debt collector" as defined in the Fair Debt Collection Practices Act. Moreover, Plaintiff's website specifically acknowledges that Plaintiff "is a debt collection agency." A copy of the home page of Plaintiff's website is attached as Exhibit A.

15. Plaintiff and the transaction that is the subject of this litigation are subject to the South Carolina Consumer Protection Code, S.C. Section 37-1-101, *et seq.*

Class Allegations

16. Defendant brings these counterclaims on behalf of a class, pursuant to Rule 23, SCRCP.

17. The class consists of (a) all South Carolina residents (b) against whom Plaintiff filed a lawsuit (c) to collect a debt for a deficiency balance that it acquired from another creditor (d) more than three years after the deficiency balance was demanded by the creditor that sold the collateral.

18. This class is so numerous that joinder of all members is not practicable.

19. On information and belief, there are more than 100 South Carolina residents against whom Plaintiff has filed lawsuits to collect a debt for a deficiency balance that it acquired from another creditor. Most or all of the lawsuits were filed more than three years after the deficiency balance was demanded by the creditor that sold the collateral.

20. There are questions of law and fact common to the class members, which common questions predominate over any questions relating to individual class members. The predominant common questions are whether Plaintiff engages in a practice of filing

time-barred Amended Complaints and whether such practice violates the Fair Debt Collection Practices Act (FDCPA) and the South Carolina Consumer Protection Code (SCCPC).

21. Defendant's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

22. Defendant will fairly and adequately represent the class members and has retained counsel with experience in class actions and consumer protection litigation.

23. The amount in controversy exceeds \$100.00 for each member of the class.

24. A class action is superior for the fair and efficient adjudication of this matter in that individual actions are not economically feasible and members of the class are unlikely to be aware of their rights.

Facts

25. On March 6, 2014, Plaintiff filed this action against Defendant to collect a purported debt for the deficiency balance remaining after the sale of a repossessed automobile.

26. According to documents provided by Plaintiff, the obligation that is the subject of this action became delinquent in 2008. Defendant's automobile was repossessed and sold on February 10, 2009. Thereafter, a letter demanding the deficiency balance was mailed to Defendant on or about February 13, 2009. A copy of this letter is attached as Exhibit B.

27. The statute of limitations applicable to the claim asserted by Plaintiff in the Amended Complaint is three years, as provided in Section 15-3-530 of the South Carolina Code.

28. Plaintiff regularly threatens to file and files lawsuits to collect deficiency balances arising out of the sale of repossessed automobiles, which balances are more than three years old at the time of the filing or threat.

29. Plaintiff, as a regular collector of such debts, knew or should have known that the South Carolina statute of limitations applicable to such debts is three years.

30. Many of the lawsuits Plaintiff brings and threatens are of modest amounts. As a result, the persons sued cannot economically retain counsel to defend such suits.

31. Plaintiff regularly engages in a pattern and practice of filing suits on debts barred by the statute of limitations.

32. As a result of Plaintiff's actions in filing this time-barred lawsuit, Defendant has been damaged in that she has been compelled to spend time defending the lawsuit and retaining counsel, and in that the time-barred lawsuit is a matter of public record. Members of the class defined herein have also been damaged.

33. The filing and prosecution of time-barred lawsuits is both a deceptive collection practice, in violation of 15 U.S.C. Section 1692e, and an unfair collection practice, in violation of 15 U.S.C. Section 1692f.

34. Defendant and class member have been damaged by Plaintiff's actions and are entitled to monetary relief (including attorney's fees and costs) as provided in the FDCPA, along with an Order declaring that the purported debts are time-barred and enjoining Plaintiff from instituting, prosecuting, or threatening suit to collect such debts.

**AS A FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Violation of South Carolina Consumer Protection Code)**

35. The allegations contained in Paragraphs 1 through 34 above are realleged and incorporated herein by reference.

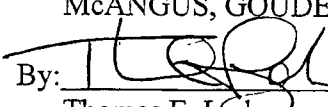
36. Plaintiff engaged in unconscionable conduct in violation of Section 37-5-108(2) by threatening and filing suits on time-barred debts.

37. Defendant and class member have been damaged by Plaintiff's actions and are entitled to monetary relief (including attorney's fees and costs) as provided in the SCCPC, along with an Order declaring that the purported debts are time-barred and enjoining Plaintiff from instituting, prosecuting, or threatening suit to collect such debts.

WHEREFORE, Defendant prays for the following relief for herself and members of the class:

- a. the dismissal of the claims asserted in the Amended Complaints filed by Plaintiff against Defendant and other class members;
- b. an award of damages and other monetary relief as provided in the FDCPA and the SCCPC;
- c. for an Order declaring that the purported debts are time-barred and enjoining Plaintiff from instituting, prosecuting, or threatening suit to collect such debts;
- d. for an award of the costs and attorney's fees as provided in the FDCPA and the SCCPC; and
- e. and for such other and further relief as the Court may deem just and proper.

McANGUS, GOUDELOCK & COURIE, LLC

By: 

Thomas E. Lydon

1320 Main Street, 10th Floor

Post Office Box 12519

Columbia, South Carolina 29211

803-779-2300

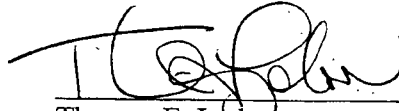
Attorney for Defendant Portia S. Dantzler (formerly known as Portia Smith), for herself and on behalf of all other similarly situated individuals

September 10, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of September, 2014, served a copy of the foregoing Answer and Counterclaims in Response to Amended Complaint by mailing a copy of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

Gregory P. Cowan, Esquire
Brock & Scott, PLLC
1315 Westbrook Plaza Drive
Winston-Salem, NC 27103



Thomas E. Lydon

State of South Carolina)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2014-CP-40-1484

Autovest LLC,

Plaintiff,

vs.

Portia Smith,

Defendant.

Transcript of Record

April 16, 2015
Columbia, South Carolina

B e f o r e:

The Honorable Tanya A. Gee, Judge

A p p e a r a n c e s:

Patrick McCabe, Esquire
Attorney for the Plaintiff

Thomas E. Lydon, Esquire
Attorney for the Defendant

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

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Proceedings	4
Certificate Page	22

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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No exhibits marked during this proceeding.

1 PROCEEDINGS

2 (Whereupon, the proceedings commenced at 3:35 p.m.)

3 THE COURT: All right. Good afternoon. We are here
4 on *Autovest v. Portia Smith*. And we have a motion for
5 partial summary judgment. I'll ---

6 MR. LYDON: Thank you ---

7 THE COURT: --- hear ---

8 MR. LYDON: --- Your Honor.

9 THE COURT: --- from you.

10 MR. LYDON: Tommy Lydon on behalf of the defendant,
11 Portia Smith. This is my motion for partial summary
12 judgment.13 It's partial summary judgment because there are some
14 counterclaims that we've asserted against the plaintiff
15 that are not part of the motion. The motion relates only
16 to the claim of Autovest to collect a deficiency balance
17 resulting out of an automobile repossession and sale from
18 my client, Portia Smith.19 The facts -- I mean, I've read both sides' memos. And
20 they're -- they couldn't be more undisputed.21 THE COURT: Sure. It's -- the question is which
22 statute of limitations to apply.

23 MR. LYDON: Exactly.

24 THE COURT: Okay.

25 MR. LYDON: It's -- it's our position, Your Honor,

1 that the three-year breach of contract, 15-3-530, applies.
2 It's the plaintiff's position that the Article 2, six-year
3 statute of limitations applies.

4 After reviewing their memorandum, I did a little more
5 research and came up with a couple of things that I think
6 are -- are important. One is -- and this was in my
7 memorandum already. The -- the reporter's comment that
8 Article 2 only -- expressly excluded from Article 2 are
9 transfers of security interest in goods, which are covered
10 under Article 9. And this is clearly an Article 9
11 transaction, as evidenced by the fact that Wells Fargo sent
12 a notice of right to redeem, all of the predefault notices,
13 and -- and that sort of thing.

14 The case they cited, Your Honor, is -- and for the
15 proposition -- for -- for 36-2-725 ---

16 THE COURT: Uh-huh.

17 MR. LYDON: --- is *Atlas Food Systems*. And it's not
18 clear from the Supreme Court's opinion -- that was a
19 certified question from the federal district court --
20 exactly what kind of case that was. And -- and the issue
21 was a little different, because the three -- the six-year
22 statute of limitations under Title 15 had been reduced to
23 three years. And they were arguing that that repealed or
24 overrode the six-year statute of limitations in 725.

25 And the -- the Court said that it -- it did not. But

1 it doesn't say whether it's a debt-collection case or
2 breach-of-warranty case. Our -- our position is that 725
3 applies to breach-of-warranty and defective-products-type
4 cases.

5 So in trying to figure out what *Atlas Food Systems* was
6 all about, I did a little more research and was fortunate
7 to find a 4th circuit opinion. And if I could ---

8 THE COURT: Yeah.

9 MR. LYDON: -- hand it up?

10 THE COURT: Absolutely, please.

11 MR. LYDON: After the Supreme Court answered the
12 certified question, *Atlas* went to trial in district court
13 and ultimately ended up in the 4th circuit. And we've got
14 a published opinion from the 4th circuit. And it's clear
15 from that opinion that it was a defective-product/breach-
16 of-warranty case, not a debt-collection action, not a
17 secured transaction. And so I -- I don't think that --
18 that the *Atlas Food Systems* case has any application to
19 what we're here about today.

20 The other ---

21 THE COURT: So ---

22 MR. LYDON: --- thing I found ---

23 THE COURT: --- just -- just so I can make sure that I
24 understand, the way I'm picturing it is that you are
25 arguing that there was a transaction for a sale of good,

1 the car; they came to an agreement on the price. And she
2 could have just paid that price, and then she -- that --
3 that was the sale of good.

4 But then, there was another transaction, which was the
5 loan-servicing agreement, which is ---

6 MR. LYDON: A financing ---

7 THE COURT: --- although related ---

8 MR. LYDON: --- transaction ---

9 THE COURT: --- it's just a financing agreement, and
10 that doesn't mean that has anything to do with the sale of
11 goods. So if she was suing about the car not being what
12 she expected, that there was some sort of breach of
13 warranty, then that -- the ---

14 MR. LYDON: Six years.

15 THE COURT: --- six-year statute of limitations would
16 apply. But because this is based on a separate agreement
17 -- and I have financed cars before; I know you first talk
18 with the person and you come to the deal and then you --
19 unless you're fortunate enough to be able to stroke a check
20 right there, they send you along the way, although
21 sometimes, even if you can't stroke the check, you have
22 already had a financing agreement with some bank your ---

23 MR. LYDON: Right.

24 THE COURT: --- or some credit union.

25 MR. LYDON: Right.

1 THE COURT: So they're two separate ---

2 MR. LYDON: Right.

3 THE COURT: --- transactions.

4 MR. LYDON: Right. And in ---

5 THE COURT: Okay.

6 MR. LYDON: --- in preparing for this -- and -- and
7 looking back over the retail-installment contract -- and
8 it's an exhibit to their amended complaint; it's also an
9 exhibit to their memorandum -- it -- it dawned on me that
10 -- that this is not the contract for the sale of the car.
11 It -- it doesn't say what the -- the mileage is on the car,
12 which is required under state and federal law. It doesn't
13 talk about what warranties, if any, went with the car or
14 what warranties are being waived or -- or disclaimed or
15 whatever.

16 So I went back through my file and found this document
17 that had been obtained from the plaintiff during the course
18 of discovery. And this actually is the contract of sale
19 for the car. And that document sets forth what kind of car
20 it is, the mileage on the car, the limitation of
21 warranties, and is between the seller and the buyer.

22 And so it -- this, Your Honor, is the contract for the
23 sale of the car that is governed by Article 2 and the six-
24 year statute of limitations. The retail-installment
25 contract is -- relates solely to the financing of the car;

1 therefore, is under Article 9, not Article 2; and is
2 subject to the three-year statute of limitations.

3 As I mentioned in my memorandum, there aren't any
4 South Carolina appellate court opinions on this. There are
5 two circuit court judges that have entered orders that I've
6 got copies of -- and I can hand those up if you'd like to
7 see them.

8 THE COURT: I would.

9 MR. LYDON: In -- two different judges in Autovest
10 cases in Greenville both -- it -- it wasn't summary
11 judgment; it was 12(b)(6) motions. And I recall that rule
12 that the plaintiff's complaint failed to state a cause of
13 action because, on its face, it established that the
14 statute of limitations on the claim had expired.

15 And so based on all of that, we believe that the
16 three-year statute of limitations in Section 15-3-530 is
17 the applicable statute of limitations and that the -- this
18 collection action was filed two years after that statute
19 had expired. And we would ask that the Court grant summary
20 judgment on the plaintiff's claim.

21 THE COURT: Okay.

22 MR. LYDON: Thank you.

23 THE COURT: Thank you so much. I'll hear from you.

24 MR. MCCABE: Thank you, Your Honor. Patrick McCabe on
25 behalf of the plaintiff. I'm -- I'm -- I'm assuming you've

1 read the memorandum, so I'm ---

2 THE COURT: I have.

3 MR. MCCABE: --- just -- I'm just going to hit the --
4 the -- the high points ---

5 THE COURT: Sure.

6 MR. MCCABE: --- the plaintiff would like to bring up.
7 First point is that an automobile is -- in this case is
8 defined as a good. South Carolina Code 36-2-105 defines a
9 good to mean all things which are moveable at the time of
10 identification to the contract for sale.

11 Applying the statute, the vehicle that was purchased
12 is obviously a good. And I don't think we'd have any
13 disagreement about that. Where the disagreement occurs, I
14 think, is when we start talking about South Carolina Code
15 36-2-102.

16 And basically, our point is this: that transaction
17 that both transfer title and operate as a security interest
18 are not excluded from the UCC. The code that I cited
19 earlier talks about the scope of the UCC.

20 And -- and it says as follows (as read): "This
21 chapter applies to the transactions in all goods. It does
22 not apply to transactions which, although in the form of an
23 unconditional contract of sale or present sale, is intended
24 to operate only" -- and I'd stress that word, only -- "as a
25 security transaction."

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1 The retail-installment contract entered into by the
2 defendant did two things: It transferred the title of the
3 automobile. And it secured the financing for it. We
4 believe that those go together; without one, you don't have
5 the other.

6 The third point is that the statute of limitations
7 under the UCC is six years. The applicable statute comes
8 from South Carolina Code 36-2-725, which reads (as read):
9 "An action for the breach of any contract for sale under
10 the UCC must be commenced within six years."

11 And, of course, we do cite the *Atlas Food Systems*
12 case, where the Supreme Court -- South Carolina Supreme
13 Court held that the actions under rising -- under Article 2
14 of the UCC are governed by the six-year statute of
15 limitations. It's our -- our belief that this transaction
16 falls under the UCC and is allowed a six-year statute of
17 limitations.

18 And we request that the defendant's motion for summary
19 judgment should be denied. Thank you.

20 THE COURT: Can I ask you about the comment that Mr.
21 Lydon pointed out in Article 2 that talks about securities,
22 that those are excluded -- a secured transaction.

23 MR. MCCABE: Yes, ma'am. It's our belief that the --
24 that if a contract is used -- or if it's only a security,
25 then it would be excluded.

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1 THE COURT: And you ---

2 MR. MCCABE: But ---

3 THE COURT: --- don't think there were two different
4 contracts here?

5 MR. MCCABE: No, ma'am. We say that there's one.
6 Because without the contract for the financing, the other
7 contract doesn't happen. There is -- there is one document
8 that's put together; one goes with the other.

9 THE COURT: So she -- you think that she financed the
10 car first and then purchased the car?

11 MR. MCCABE: No, ma'am. But -- but without the
12 financing, she doesn't leave with the car.

13 THE COURT: And she ---

14 MR. MCCABE: And that is all of one transaction.

15 THE COURT: So this separate contract that was just
16 handed up to me for the sale of the car that shows the
17 mileage, has the warranties -- doesn't have anything about
18 financing; just sets forth the purchase price -- what --
19 why was that even necessary, if it was all in one document?

20 MR. MCCABE: Because the documents aren't put together
21 at -- at the -- at the same. They're separate documents,
22 but they're all part of one transaction.

23 THE COURT: Hmm.

24 MR. MCCABE: You wouldn't say that I'm going to
25 purchase something with cash and say but the cash is not

1 part of that transaction.

2 So what you're -- what he's -- what the defendant is
3 trying to say is, Well, the transaction occurred, but the
4 way they paid for it was completely separate and had no
5 bearing on this first agreement. And we completely
6 disagree with that. Because without one, the other one's
7 not there.

8 THE COURT: Well, but that's always true when you
9 finance something. Without having an agreement to buy and
10 setting a purchase price, you -- I -- I mean, that's true
11 with any sort of sale.

12 MR. MCCABE: Correct. So ---

13 THE COURT: But she didn't have -- I mean, it may have
14 been for this particular -- it doesn't really matter. That
15 might've been her only option, was to finance it through
16 this particular company. But usually, people have options
17 at that point. They can use the in-house financing; they
18 can use their own bank. They can stroke a check; they can
19 call their dad; they can call their mom.

20 So that doesn't affect their agreement to purchase the
21 car at a certain price. Then, you have a separate
22 agreement explaining how you're going to pay for the car.

23 MR. MCCABE: Correct.

24 THE COURT: Okay.

25 MR. MCCABE: But it's our -- it's our belief that

1 these are combined in -- in -- as one transaction.

2 THE COURT: But two contracts were signed?

3 MR. MCCABE: Two contracts, but one transaction. And
4 the keyword, under 36-2-102, is transaction. Doesn't say
5 contract; it says transaction. And this is all one
6 transaction to purchase an automobile.

7 If -- if it said contracts, then yes. I would say
8 that the -- that he -- there's a point there. There's two
9 separate contracts. Maybe there's some -- maybe there's
10 some room there.

11 But this talks specifically about transactions and
12 that transactions that operate only as security
13 transactions are excluded. Our contract did not
14 specifically act -- or our transaction was not specifically
15 a security transaction. It was a transaction that
16 transferred the title of the car and also acted as
17 security. That is our -- that's our -- our stance in the
18 matter.

19 THE COURT: Okay. Do you have any case law to support
20 that argument?

21 MR. MCCABE: Case law to support the argument that
22 they're one transaction?

23 THE COURT: Well, to -- to support the six-year
24 statute of limitations. Mr. Lydon has cited to the
25 *Holshouser* case. I know you disagree with that case from

1 North Carolina. But the North Carolina statute is very
2 similar to the South Carolina statute. And when ---

3 MR. MCCABE: Correct.

4 THE COURT: --- I looked at cases outside of South
5 Carolina, although there is some disagreement among the
6 states, it's based on the particular Article 2 language.
7 And ours does reflect what North Carolina's reflects.

8 MR. MCCABE: Right. The *Holshouser* decision was later
9 qualified under *Hudson v. Game World*. And the appellate
10 court determined that under a credit-purchasing agreement,
11 the credit account for the goods constitutes the pure sale
12 of the transaction and would be governed under the
13 Universal Commercial Code.

14 THE COURT: Say that one more time?

15 MR. MCCABE: This is *Hudson v. Game* ---

16 THE COURT: I read ---

17 MR. MCCABE: --- *World* ---

18 THE COURT: --- that case. Yeah.

19 MR. MCCABE: --- 126 N.C. -- it's an appellate -- 139,
20 484 S.E.2d 435. And the appellate court determined that
21 under a credit-purchasing agreement, the credit account for
22 the goods constitute the pure sale of the transaction and
23 would be governed under the -- or -- excuse me -- the
24 Uniform Commercial Code.

25 So they're saying that the credit agreement -- it's

1 what they consider to be the pure sale and, therefore,
2 because of that, it falls under the Uniform Commercial
3 Code.

4 So I -- I mean, once again, these are North Carolina
5 cases.

6 THE COURT: Sure.

7 MR. MCCABE: As you said, they are similar. But
8 that's how we would respond to that: that it was later
9 qualified.

10 I -- I think, Your Honor, that -- you know, this is --
11 I -- I mean, the defendant brings two trial orders --
12 trial-court orders, but two out of how many have -- you
13 know, how many times have this been attempted. And, you
14 know, he -- the -- this -- this type of argument may have
15 been attempted 100/200/300 times and we get the two cases
16 to where ---

17 THE COURT: Well, do ---

18 MR. MCCABE: --- it's been ---

19 THE COURT: --- you have ---

20 MR. MCCABE: --- successful.

21 THE COURT: --- any trial-court orders to the
22 contrary?

23 MR. MCCABE: No -- no, ma'am, we don't. And once
24 again, they're not binding on this Court.

25 THE COURT: I understand that.

1 MR. MCCABE: But we say that -- that it has been
2 commonplace for these types of transactions to fall under
3 the six years. It's -- it's occurred for years that way.
4 And just recently has there been pushback with -- with
5 cases such as this.

6 THE COURT: But when your client took over the
7 servicing of this loan, you did -- would you then be
8 subject to any breach-of-warranty claims that the plaintiff
9 would have against you?

10 MR. MCCABE: We would say that if they take over, they
11 stand in the -- under -- let me look at the case here. I
12 would say yes, because of the simple fact of this: that
13 under *Twelfth RMA v. National Safe Corp.*, which is a
14 Supreme Court case here -- South Carolina Supreme Court --
15 which is 335 S.C. 635 -- and I've got a copy of that case
16 if you'd like.

17 What that case says is that an assignee should have
18 all the same rights and privileges, include the right to
19 sue as the assignor. So if they have the same rights as
20 the -- stepping in, then I would say that yes ---

21 THE COURT: So when ---

22 MR. MCCABE: --- that they ---

23 THE COURT: --- there's ---

24 MR. MCCABE: --- would be ---

25 THE COURT: --- a -- when a car is sold that's a

1 lemon, the plaintiff has the right to not just sue the
2 dealer or the manufacturer of the car; they can also sue
3 the financing company for ---

4 MR. MCCABE: I think they ---

5 THE COURT: --- those ---

6 MR. MCCABE: --- could ---

7 THE COURT: --- warranties ---

8 MR. MCCABE: --- attempt ---

9 THE COURT: --- that are ---

10 MR. MCCABE: --- they could ---

11 THE COURT: --- breached?

12 MR. MCCABE: --- attempt to. But I don't know what --
13 what role the financing company ---

14 THE COURT: Well ---

15 MR. MCCABE: --- would have ---

16 THE COURT: --- the financing companies didn't sign
17 the contract with the warranties that were attached to it.
18 Because they were separate contracts, right?

19 MR. MCCABE: Separate contracts, but the same
20 transaction.

21 THE COURT: Hmm.

22 MR. MCCABE: That's our point. And the word
23 transaction is specifically used in the code.

24 THE COURT: Okay.

25 MR. MCCABE: I mean, there's no argument that there

1 are two separate contracts there. But it's all part of the
2 same transaction. And I stress that because that's the
3 language that's in the code.

4 And that's -- I mean, that's the way the law was
5 written. Plain reading of the language specifically says
6 transaction. And that's what we rely upon: the plain
7 reading of the -- of the -- of the code.

8 THE COURT: Okay. Any reply?

9 MR. LYDON: Just two things, Your Honor. Both of
10 these contracts have got merger language in it: that this
11 is the sole agreement between the parties and there are no
12 written -- you know, they -- it doesn't merge them with any
13 other agreements or say that it's part of one transaction.
14 In fact, they both specifically say to the contrary; that
15 this is, you know, an -- what does it say here? This is
16 the entire agreement of the parties.

17 THE COURT: Uh-huh.

18 MR. LYDON: Any change must be in writing, signed by
19 the creditor, etc., etc.

20 As to the *Hudson v. Game World*, when I read that case,
21 the way I understood it is somebody was buying goods on
22 credit and they didn't pay for it and it was question of
23 who was obligated to pay. But there was no security
24 interest taken in the goods that were being sold on credit.
25 So it was not a secured transaction.

1 So I understand why Article 2 would apply to that
2 transaction, because it was a sale of goods. But it was
3 not a secured transaction. And that's what takes it out
4 from under Article 2, according to 36-2-102 and the
5 reporter's comment.

6 So that's all I've got.

7 MR. MCCABE: Your Honor, if I may respond ---

8 THE COURT: Sure.

9 MR. MCCABE: --- just briefly?

10 THE COURT: Absolutely.

11 MR. MCCABE: Just to 36-2-102, only if the transaction
12 operates only as a security transaction is it removed. As
13 -- once again, as we say, that -- we're saying that these
14 were together, part of the same transaction. Therefore,
15 it's -- it falls under the -- the UCC. That's all I have.

16 THE COURT: Okay. All right. Well, the -- the issue
17 before me one purely of law. There's no issue of material
18 fact at stake. And I find that in looking at the various
19 statutes and case law from out of state that the attorneys
20 have provided, that the South Carolina Consumer Protection
21 Code governs this contract and the default three-year
22 statute of limitations that's found in 15-3-531 applies.

23 And therefore, the motion for partial summary judgment
24 is granted. I would ask Mr. Lydon to please draft a
25 proposed order and send that to me as soon as you can. I

1 don't know how much time you need to -- to get that ---

2 MR. LYDON: I can get it to you by Monday.

3 THE COURT: That would be fantastic. And please send
4 it to Mr. McCabe first, just to -- so he has seen it, and
5 then send it to my law clerk.

6 MR. LYDON: You want me to send it to the LC ---

7 THE COURT: --- LC ---

8 MR. LYDON: --- e-mail address?

9 THE COURT: --- address.

10 MR. LYDON: Okay.

11 THE COURT: Please.

12 MR. LYDON: Got it.

13 THE COURT: All right.

14 MR. LYDON: Thank you very much ---

15 THE COURT: Thank you ---

16 MR. LYDON: --- Judge.

17 THE COURT: --- both very much.

18 MR. MCCABE: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (Whereupon, the proceedings concluded at 3:55 p.m.)

21 --- END OF TRANSCRIPT OF RECORD ---

22

23

24

25

CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Richland County, South Carolina, on the 16th day of April, 2015.

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



Maryann S. Nevers, CVR-M-CM
Official Court Reporter

Columbia, South Carolina
November 20, 2015



Greenville County Sheriff's Office

Civil Division

601 E. McBee Ave., Suite 210
Greenville, South Carolina 29601
Phone (864) 282-0008 Fax (864) 235-9171



Party Requesting Service:

BROCK & SCOTT
Attn: Mr. Richard Jackson
1315 Westbrook Plaza Drive, Suite 200
Winston-Salem,, NC 27103

AFFIDAVIT OF SERVICE*Portia Smith, A/K/A Portia Sentennial Smith*

Autovest, L.L.C., et. al., Plaintiff(s)

vs.

Portia Smith, et. al., Defendant(s)

Case No: 2014-CP-40-1484

Name of Deputy: Ronnie M. Pettit, undersigned, being duly sworn, deposes and says that at time of service, s/he was over the age of twenty-one, was not a party to this action;

Date/Time of Service that on 06-May-2014 06:10 pm

Place of Service: at 115 Crest Hill Drive, City of Fountain Inn, State of SC

Documents Served: the undersigned served the documents described as:
Civil Action Coversheet

Alias SummonsComplaintPlaintiff's Verification of AccountAttachment(s)

Service of Process on, Person Served, and Method of Service: A true and correct copy of the aforesaid document(s) was served on:
Portia Smith, A/K/A Portia Sentennial Smith
By personally delivering them into the hands of same.

Signature of Deputy: Subscribed and sworn to before me this
9th day of May, 2014.

Kathy J Williams
Notary Public for South Carolina
My Commission Expires: 3/29/16

Undersigned declares under penalty of perjury that the foregoing is true and correct.

Ronnie M Pettit
Ronnie M. Pettit

PORTIA SENTENTIAL SMITH

Purchaser/Buyer #1

Purchaser/Buyer #2

207 GREY ST

Home Address
LEXINGTON, SC 29072

City
(803) 957-6342

Home Phone

Work Phone

☐ New ☒ Used ☐ Demonstrator

Make
HONDA

Body Type
4D SEDAN

Model
CIVIC

Vehicle ID Number

Year
2005

Mileage
35,823

Color
BLACK

Unless otherwise indicated, the odometer mileage listed on the Odometer Disclosure Statement on the reverse side of the title (or in a separate Odometer Disclosure Statement) to the vehicle transferred to Purchaser hereunder is based on the best knowledge and belief of CarMax, and Purchaser agrees that CarMax shall have no liability to Purchaser under this agreement or otherwise if the odometer is determined to be inaccurate for reasons beyond the control of and without the actual knowledge of CarMax.

NO LIABILITY INSURANCE INCLUDED

Purchaser's Insurance Company **PROGRESSIVE**

(800) 776-4737

Agent's Name

Phone Number

Address City State Zip

TRADE-IN INFORMATION (Vehicle sold to CarMax)

Make

Body Type

Model

Vehicle ID Number

Year

Mileage

Make

Body Type

Model

Vehicle ID Number

Year

Mileage

The CarMax Warranty Brochure, by this reference, is made a part of this contract. Please read it in its entirety because it contains the details of the Limited Warranty.

LIMITATION OF WARRANTIES: CARMAX MAKES NO EXPRESS WARRANTIES UNLESS SEPARATELY SET FORTH IN WRITING. ANY AND ALL IMPLIED WARRANTIES APPLICABLE TO THE PRODUCTS SOLD HEREUNDER, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED TO THE DURATION OF THE WRITTEN LIMITED WARRANTY GIVEN BY CARMAX, IF ANY.

To the extent allowed by applicable law, CarMax shall not be liable for any damages relating to loss of use of the products, loss of time, inconvenience or commercial loss, or any other incidental or consequential damages. Any and all warranties are extended only to the original purchaser.

SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS OR EXCLUSION OR LIMITATIONS ON RELIEF SUCH AS INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU ALSO MAY HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

PLEASE READ THE BACK OF THIS FORM, IT CONTAINS TERMS THAT ARE PART OF THIS BUYERS ORDER THAT AFFECT YOUR PURCHASE.

By executing this Order, Purchaser acknowledges he has read front and back and agrees to be bound by all of its terms and has received a fully completed copy. Purchaser must be 18 years of age or older.

Purchaser #1 Signature

Social Security Number

Purchaser #2 Signature

Social Security Number

This order is not valid unless signed and accepted by an authorized representative of the Dealership.

Salesperson

Date

Authorized Representative of Dealership

SC 800

www.carmax.com

PFF001



1) Base Price of Vehicle X CarMax ValiMax New	1) \$ 13,998.00
2) Accessories (see Accessories Addendum attached hereto and made a part hereof)	2) \$ 0.00
3) Extended Service Agreement SVC POLICY 60 MTHS/50K X MaxCare ValiServ iManuf	3) \$ 1,499.00
4) Credit Life, Involuntary Unemployment Insurance	4) \$ 0.00
5) Total Vehicle Balance	5) \$ 15,497.00
6) Total 'Trade-In' Value \$ 750.00 Cash Delivered to Purchaser \$ 50.00 Total Amount not Applied to Purchase \$ 50.00 Applied Equity from 'Trade-In'	6) \$ 700.00
7) Total Balance Due (5-6)	7) \$ 14,797.00
8) Other Charges Tire Fee \$ 8.00 Transfer Plate Fee \$ 10.00 Title Fee \$ 15.00 Sales Tax \$ 300.00 N/A \$ N/A N/A \$ N/A N/A \$ N/A DOCUMENTARY PREPARATION FEE \$ 149.00	8) \$ 482.00
9) Discharge of Lien TO	9) \$ 0.00
10) Total Selling Price (7+8+9)	10) \$ 15,279.00
11) Downpayment	11) \$ 0.00
12) Incentives and Rebates N/A \$ N/A N/A \$ N/A N/A \$ N/A	12) \$ 0.00
13) BALANCE DUE AT SETTLEMENT (10-11-12)	13) \$ 15,279.00
Cash Sale X Financed Lease If applicable, Finance Company Name Wells Fargo Auto Finance, Inc.	

I have decided not to purchase extended service coverage for my vehicle at this time

Purchaser Initial

IF THIS AGREEMENT IS FOR A USED VEHICLE, THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

Prior written or oral statements, negotiations, communications or representations about the products sold hereunder have been merged into or superceded by this writing and, if not included in this writing are not binding. This is the total agreement about any and all warranties related to the products sold hereunder.

BUYER'S ORDER ADDITIONAL TERMS AND CONDITIONS

If this contract involves dealer-arranged financing, then this sale is conditioned upon approval and funding of the retail installment sale contract by the finance company, as submitted to or through CarMax. If that retail installment sale contract is not approved or funded by the finance company, CarMax may cancel this sale and this contract shall be deemed void. In such event, Purchaser agrees to return the vehicle to CarMax in the same condition delivered to Purchaser within twenty-four (24) hours of written or oral notice from CarMax, and CarMax will return to Customer the cash amount of any down payment submitted less any Use Fee. Purchaser agrees to pay a Use Fee based on the number of miles the vehicle was driven.

If this is a cash sale and any part of the purchase price paid by check or CarMax voucher is returned or voided, Purchaser agrees to (i) pay the amount of the returned check/voided voucher, plus any applicable fee, in cash or certified funds, or (ii) return the vehicle, either of which must occur within twenty-four (24) hours of written or oral notice from CarMax.

If Purchaser does not return the vehicle as required or agreed to, Purchaser agrees that CarMax may immediately repossess it, and Purchaser will be liable for any and all costs associated with repossessing the vehicle or collecting any amounts owed hereunder.

Return Policy: You may return your vehicle to CarMax for a refund and rescind this contract within 5 days assuming the condition of the vehicle does not change. This return policy only applies to used vehicles. In the event any vehicle purchased from CarMax is returned under this policy or otherwise, for any reason whatsoever, CarMax may charge and/or deduct a Use Fee based on the number of miles the vehicle was driven.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Autovest, LLC,

☐ Plaintiff

v.

Portia Smith,

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2014-CP-40-1484

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Gregory P. Cowan, Bar No.

Address:

1315 Westbrook Plaza Drive, Winston Salem, NC

phone: fax:

e-mail: other:

Defendant's Attorney:

Thomas E. Lydon, Bar No.

Address:

Post Office Box 12519, Columbia, SC 29211

phone: fax:

e-mail: other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Defendant's Motion for Partial Summary Judgment

Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief of action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

February 17, 2015

Date submitted: 2015 FEB 17 PM 3:50

SECTION III: Motion Fee

☒ PAID - AMOUNT: 25.00

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE:

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Autovest, L.L.C.,)
Plaintiff,)
vs.)

Civil Action No. 2014-CP-40-1484

Portia Smith a/k/a Portia)
Sentennial Smith, for herself and)
on behalf of all other similarly)
situated individuals,)
Defendant.)

**DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

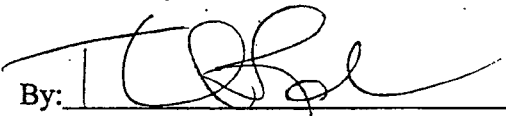
2015 FEB 17 PM 2:50
RICHLAND COUNTY CLERK
JENNIFER L. HARRIS

TO: GREGORY P. COWAN, ESQUIRE, ATTORNEY FOR PLAINTIFF

You will please take notice that on the tenth (10th) day after service hereof, or as soon thereafter as may be scheduled, the undersigned will move before the presiding judge of the Richland County Court of Common Pleas for an Order granting summary judgment on the Plaintiff's claim for a judgment against Defendant. The basis for this Motion is that there is no genuine issue as to any material fact related to the Plaintiff's claim, and Defendant is entitled to judgment as a matter of law. More specifically, Plaintiff's claim is barred by the applicable statute of limitations.

This motion will be based upon Rule 56 of the South Carolina Rules of Civil Procedure, applicable statutory and case law, the pleadings in this matter, Plaintiff's Verification of Account, the exhibits to Plaintiff's Complaint and Amended Complaint, and such other materials as may be presented to the Court.

McANGUS, GOUDELOCK & COURIE, LLC

By: 

Thomas E. Lydon
1320 Main Street, 10th Floor
Post Office Box 12519
Columbia, South Carolina 29211
803-779-2300

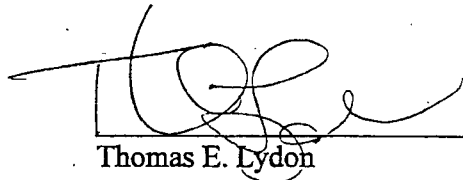
February 17, 2015

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of February, 2015, served a copy of Defendant's Motion For Partial Summary Judgment by mailing a copy of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

Gregory P. Cowan, Esquire
Brock & Scott, PLLC
1315 Westbrook Plaza Drive
Winston-Salem, NC 27103


Thomas E. Lydon

RECEIVED
2015 FEB 17 PM 2:50
U.S. DISTRICT COURT
MIDDLE DISTRICT
NORTH CAROLINA
WINSTON-SALEM

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Autovest, L.L.C.,)
Plaintiff,)

Civil Action No. 2014-CP-40-1484

vs.)

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Portia Smith a/k/a Portia)
Sentennial Smith, for herself and)
on behalf of all other similarly)
situated individuals,)
Defendant.)

This Memorandum is submitted in support of Defendant's Motion for Partial Summary Judgment. Specifically, Defendant seeks an Order granting summary judgment on the Plaintiff's claim for a judgment against Defendant. The basis for the Motion is that there is no genuine issue as to any material fact related to the Plaintiff's claim, and Defendant is entitled to judgment as a matter of law. More specifically, Plaintiff's claim is barred by the applicable statute of limitations.

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002), citing Rule 56(c), SCRCP.

In this case, the facts relevant to Defendant's Motion are undisputed, in that they are all contained in the pleadings and Verification filed by *Plaintiff*. The facts established Plaintiff's pleadings and Verification are as follows:

1. Defendant financed the purchase of a 2005 Honda Civic from Carmax on October 29, 2006. The financing was provided by Wells Fargo Auto Finance, Inc. (Exhibit H to Amended Complaint).

2. Defendant failed to make payments when due, and Wells Fargo sent notices of right to cure the default in 2008. (Amended Complaint, Exhibit J).
3. Wells Fargo repossessed Defendant's car sent notice of its intent to sell the car on January 19, 2009. (Amended Complaint, Exhibit K)
4. Wells Fargo sold the car at a private sale on February 10, 2009. (Amended Complaint, Exhibit I).
5. Wells Fargo sent Defendant a notice of deficiency balance due on February 13, 2009. (Amended Complaint, Exhibit I).
6. Plaintiff alleges that Defendant made the last payment on this loan on February 25, 2009. (Verification of Account attached to Complaint). Defendant disputes this date and alleges that the last payment she made was in 2008. However, for the purpose of the Motion for Partial Summary Judgment, Defendant will use the February 25, 2009 date.

Based on the facts listed above, Plaintiff's action to collect the deficiency balance from Defendant is barred by the statute of limitations. An action to collect a debt is governed by the three year statute of limitations contained in Section 15-3-530(1). The statute begins to run when the loan is in default. *CoastalStates Bank v. Hanover Homes*, 408 S.C. 510, 759 S.E.2d 152 (Ct. App. 2014). In this case, Wells Fargo sent notice of default in 2008. Plaintiff contends that Defendant made a payment as late as February 25, 2009. Using this date, the statute of limitations for this deficiency balance expired on February 25, 2012. However, the Complaint in this action was not filed until March 6, 2014, more than two years after the statute of limitations expired.

Defendant anticipates that Plaintiff will argue that the six year statute of limitations found in Section 36-2-725 of the Uniform Commercial Code applies to this lawsuit. However, this six year statute of limitations is found in Article 2 of the UCC which governs sales of goods, and is intended to apply to breach of warranty claims related to defective products, not to debt collection actions. Indeed, Section 36-2-102 specifically provides that a contract for sale of goods that is intended to operate as a secured transaction is not subject to Article 2 of the UCC. As stated in the South Carolina Reporter's Comments, "Expressly excluded [from Article 2] are transfers of a security

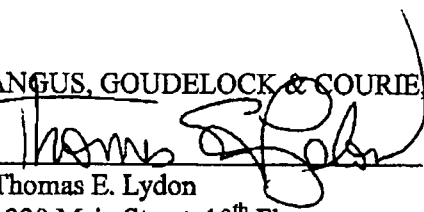
interest in goods which are covered under Article 9, Secured Transactions.” S.C. Code Section 36-2-102, S.C. Reporter’s Comments. It is clear that Wells Fargo believed this transaction was governed by Article 9, as evidenced by the notice of intent to sell (Exhibit K to Amended Complaint) that it mailed to Defendant in order to comply with Section 36-9-614 of the South Carolina Code.

Although no South Carolina appellate courts have addressed this issue, judges in our lower courts and appellate courts in other jurisdictions have concluded that debt collection action are subject to the general statute of limitations for breach of contract, rather than the statute of limitations contained in Article 2 of the UCC. In *NCNB v. Holshouser*, N.C. App. 165, 247 S.E.2d 645 (1978), the North Carolina Court of Appeals held that the six year statute of limitations in Article 2 did not apply to an action to collect a debt arising out of the purchase money financing of an automobile. The court reasoned that the contract was intended to operate as a secured transaction governed by Article 9 of the UCC. Therefore, it found that the general contract statute of limitations was applicable, not the UCC Article 2 statute of limitations.

Regarding the decisions of the lower courts in South Carolina, two circuit court judges have addressed this exact issue in two different lawsuits filed by Autovest, LLC. In both cases, the judges held that the actions were barred by the three year statute of limitations in Section 15-3-530 and dismissed the lawsuits. See *Autovest, LLC v. Giles*, 2014-CP-23-0336 (6/10/14); *Autovest, LLC v. Steen*, 2014-CP-23-1552 (9/4/14).

Based on the foregoing, Plaintiff’s debt collection action is barred by the three year statute of limitations contained in Section 15-3-530. Therefore, Defendant’s motion for partial summary judgment should be granted.

McANGUS, GOUDELOCK & COURIE, LLC

By: 

Thomas E. Lydon
1320 Main Street, 10th Floor
Post Office Box 12519
Columbia, South Carolina 29211
803-779-2300
Attorneys for Defendant

April 8, 2015

STATE OF SOUTH CAROLINA

RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS

5TH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-1484

AUTOVEST, L.L.C.,

Plaintiff,

vs.

PORTIA SMITH, A/K/A PORTIA SENTENNIAL

SMITH,

Defendant.

)
)
)
)
)
)
)

MEMORANDUM OF LAW

Plaintiff Autovest, LLC, by and through its undersigned counsel, respectfully submits this memorandum in opposition to Defendant's motion for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. For the reasons set out below, Plaintiff respectfully requests an order denying Defendant's request for partial summary judgment as to the claim.

I. INTRODUCTION

This is an action to collect a debt from Defendant. Plaintiff, through counsel, filed the present action to collect a debt on March 6, 2014 seeking to collect a deficiency following the auction of a motor vehicle in the amount of \$8,989.56, court costs and attorney's fees as authorized under the terms of the retail installment sale agreement. On October 29, 2006, Defendant executed a Retail Installment Contract for the purchase price of a 2005 Honda Civic to CarMax. The note was subsequently assigned to Plaintiff. Defendant was unable to make payment as required and entered into default. After giving notice of right to cure, the vehicle was repossessed and sold at auction, leaving a deficiency balance due and owing on the loan to purchase the vehicle.

II. STANDARD OF REVIEW

Under Rule 56, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), S.C. R. Civ. P. A genuine issue of fact can exist only if the non-moving party presents evidence that would be admissible at trial. See Hansen v. DHL Labs., Inc., 316 S.C. 505, 510, 450 S.E.2d 624, 627 (Ct. App. 1994).

III. STATEMENT OF FACTS

Defendant entered a retail installment contract. See Ex. A, no. 2. A true and complete copy of the

contract has been attached to the complaint and provided to the Defendant in discovery. *See Ex. A*, no. 3. Defendant admits that she agreed to be bound by the terms of the contract, and that she signed the same. *See Ex. A*, no. 4, 14. After acquiring the vehicle, Defendant admits she received a monthly invoice for the payment due on the vehicle. *See Ex. A*, no. 8.

Defendant defaulted on the payments due under the contract. *See Ex. A*, no. 13. For purposes of the present action, Defendant has admitted that she made a payment on the account on November 17, 2008. *See Ex. C*, no. 1. As of the date of the present memo, Plaintiff's counsel has not received a response to Plaintiff's Second Set of Request for Admissions.

A true and accurate duplicate copy of the Retail Installment Contract was attached to this memorandum as *Ex. D*.

IV. DISCUSSION OF LAW

A. S.C. Code § 36-2-725 applies to Plaintiff's Claim

Defendant's motion for partial summary judgment argues Plaintiff's claim is barred by the statute of limitations. Defendant raised the statute of limitations as an affirmative defense under SCRCP, Rule 8(c). *See Ans. and Counterclaim*, ¶ 7. Defendant admits she purchased a vehicle under the retail installment contract. *See Ex. A*, no. 4. Defendant incorrectly applies the general three-year statute of limitations found under S.C. Code § 15-3-530(1).

The applicable statute of limitations comes from the Uniform Commercial Code. S.C. Code § 36-2-102 concerns the scope of Chapter 2 of the South Carolina Uniform Commercial Code, and states as follows:

[u]nless the context otherwise requires, this Chapter applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

Plaintiff, through counsel, notes Defendant's memorandum in support of her motion for partial summary judgment excludes the modifier "only" in the above statute. Clearly, transactions may both transfer title as a sale, and operate as a secured transaction. Thus, transactions that also function as a secured transaction are not excluded from the provisions of Article 2.

S.C. Code § 36-2-105 defines "goods" to mean: "all things [...] which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities [...] and things in action." Applying the definition contained in this statute, the vehicle purchased by Defendant under the Retail Installment Contract is a "good," and thus the contract falls within the scope of Article 2 of the Uniform Commercial Code.

"An action for breach of any contract for sale under the Uniform Commercial Code must be commenced within six years after the cause of action accrues." S.C. Code § 36-2-725. Since Defendant purchased a vehicle under a contract for sale, Plaintiff had six years from the time the action accrued in which to bring the present civil action to collect the balance owed.

The Supreme Court of South Carolina has held that the statute of limitations found in S.C. Code § 36-2-725 applies over the more general three-year statute of limitations found in S.C. Code § 15-3-530(1). *See Atlas Food Systems and Services, Inc., v. Crane National Vendors Division of Unidynamics Corporation*, 462 S.E.2d 858, 319 S.C. 556 (S.C. 1995). In *Atlas Food Systems*, the Supreme Court held that "[a]ctions arising under Article 2 of the U.C.C. are governed by § 36-2-725's statute of limitations." Defendant's memorandum argues that the statute applies only to actions for warranties; however, the statute has no such limitation. Indeed, S.C. Code § 36-2-709 explicitly allows sellers to recover "the price [...] of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer." Defendant admits accepting the vehicle, and not paying the price for the same as it became due; thus, Plaintiff's cause arose under Article 2, and the more specific statute of S.C. Code § 36-2-725 applied to provide a six year statute of limitations.

Defendant finds support under *NCNB v. Holshouser* in her memorandum. Although a decision of a North Carolina Court, Plaintiff, through counsel, notes this opinion was later qualified under *Hudson v. Game World*, 126 N.C.App. 139, 484 S.E.2d 435 (N.C.App.1997). The North Carolina Court of Appeals in *Hudson* determined that under a credit purchasing agreement, the credit account for the goods constitutes the pure sales aspect of the transaction, which would be governed by North Carolina's statute of limitations under the commercial code, whereas an action to recover the goods would be governed by the general limitations period. *Id.* at 143-145, 484 S.E.2d 435, 439-440.

B. Plaintiff's Claim accrued within the applicable statute of limitations

Defendant's payment under the contract constitutes an acknowledgment for purposes of S.C. Code § 15-3-120. S.C. Code § 15-3-120 states: "No acknowledgment or promise shall be sufficient evidence of a new or continuing contract whereby to take the case out of the operation of this chapter unless it be contained in some writing signed by the party to be charged thereby. But payment of any part of principal or interest is equivalent to a promise in writing." Under S.C. Code § 15-3-130, "All actions upon causes of action which would be barred by the statute of limitations but for part payment or a written acknowledgment shall be brought on the original cause of action and the part payment or written acknowledgment shall be evidence to prevent the bar of the statute of limitations." *See also Wolfe v. Brannon*, 211 S.C. 282, 286, 44 S.E.2d 833, 855 (1947).

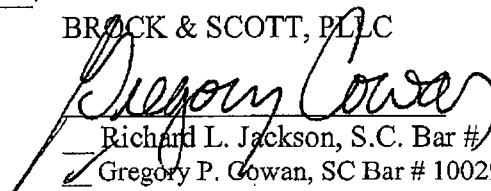
Defendant admits she made payment on the loan in November 2008. *See Ex. C*, no 1. Therefore, the filing of the present action in March 2014 was within the applicable statute of limitations. Thus, Defendant has not stated a defense under the statute of limitations and Defendant's motion for partial summary judgment should be denied.

V. REQUEST FOR RELIEF

For the foregoing reasons, Plaintiff respectfully requests an order from this Court denying Defendant's motion for partial summary judgment.

This the 08th day of April, 2015.

BROCK & SCOTT, PLLC



Richard L. Jackson, S.C. Bar #77669

Gregory P. Cowan, SC Bar # 100299

BROCK & SCOTT, PLLC

1315 Westbrook Plaza Drive

Winston-Salem, NC 27103

Telephone: (336) 354-1797

Telefax: (336) 354-1588

STATE OF SOUTH CAROLINA

RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS

5TH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-1484

AUTOVEST, L.L.C.,

Plaintiff,

vs.

PORTIA SMITH, A/K/A PORTIA SENTENNIAL

SMITH,

Defendant.

CERTIFICATE OF SERVICE

The undersigned does hereby certify: I have served a copy of the Memorandum of Law upon all parties required to be served by this date, mailing same enclosed in a first-class, postage paid, properly addressed envelope, in an official depository under the exclusive care and custody of the United States Postal Service, or hand-delivered same, to the parties whose name and last address known to me are as follows:

Thomas E. Lydon, Esq

PO Box 12519

Columbia, SC 29211

This the 9 day of April, 2015.

BROCK & SCOTT, PLLC

Heather Duncan
Paralegal

eHSG00453

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Autovest, L.L.C.,)
Plaintiff,)

Civil Action No. 2014-CP-40-1484

vs.)

Portia Smith a/k/a Portia)
Sentennial Smith, for herself and)
on behalf of all other similarly)
situated individuals,)
Defendant.)

**DEFENDANT'S RESPONSES TO PLAINTIFF'S FIRST SET OF
REQUESTS FOR ADMISSION**

1. Admit that you are a Defendant in this civil action.

ANSWER: Admitted.

2. Admit that you were issued a credit account denominated by number as *****9001 by Wells Fargo Auto Finance, Inc.

ANSWER: Denied, in that Defendant entered into a retail installment contract, not a credit account.

3. Admit that Plaintiff's exhibit attached hereto is a true and complete copy of the retail installment contract, the terms of which govern the account forming the basis of this civil action.

ANSWER: Denied, in that the exhibits attached to the Requests for Admissions include substantially more than the retail installment contract. Exhibit D to the Requests for Admissions appears to be a copy of the retail installment contract.

4. Admit that you agreed to be bound by the aforesaid retail installment contract when the aforesaid account was opened by and/or used by you to purchase a 2005 Honda Civic of the Defendant, VIN#1HGES16355L009663 (hereinafter "the vehicle").

ANSWER: Defendant admits that she is bound by the terms and conditions of the retail installment contract that are legally enforceable under applicable state and federal law.

EXHIBIT

A

5. Admit that you used the aforesaid credit account to purchase the vehicle.

ANSWER: Denied, in that Defendant entered into a retail installment contract, not a credit account.

6. Admit that you received the benefit of the use of the aforesaid credit account.

ANSWER: Denied, in that Defendant entered into a retail installment contract, not a credit account.

7. Admit that you knew of the use of the aforesaid credit account in your name, at the time of such use.

ANSWER: Denied, in that Defendant entered into a retail installment contract, not a credit account.

8. Admit that you received regular statements from Wells Fargo Auto Finance, Inc. reflecting all charges and credits upon the aforesaid account.

ANSWER: Denied, in that there were no charges on the account. Defendant received a monthly invoice for the payment due on the retail installment contract.

9. Admit that you did not dispute in writing charges made or the amount owed on the aforesaid account at the time you received the account statements or within 60 days of their receipt.

ANSWER: Denied, in that Defendant did not receive account statements.

10. Admit that the principal balance of \$8,989.56 remains unpaid.

ANSWER: Denied.

11. Admit you made a payment on the account on February 25, 2009.

ANSWER: Denied.

12. Admit you signed the original credit application, a copy of which is attached hereto as Exhibit C.

ANSWER: Admitted.

13. Admit that you are in default upon the aforesaid account.

ANSWER: Denied, in that Defendant entered into a retail installment contract, not a credit account. However, Defendant admits that she did not make all of the payments when due on the retail installment contract.

14. Admit you signed the original retail installment contract, a copy of which is attached hereto as Exhibit D.

ANSWER: Admitted.

15. Admit that each of the following documents attached hereto is genuine:

- A. Certificate of Title
- B. Auction Bill of Sale for the vehicle
- C. Credit Application
- D. Retail Installment Contract
- E. Notice of Deficiency
- F. Notice of Right to Cure Default
- G. Notice of Plan to Sell Property

ANSWER: A. Certificate of Title - admitted
B. Auction Bill of Sale for the vehicle - Defendant has never seen this document and cannot admit or deny whether it is genuine
C. Credit Application - admitted
D. Retail Installment Contract - admitted
E. Notice of Deficiency - denied
F. Notice of Right to Cure - admitted
G. Notice of Plan to Sell Property - admitted

16. Admit that you now or formerly received your mail at the following address: 80 Brighton Hill Rd, Apt 6231, Columbia, SC 29223-8626.

ANSWER: Admitted.

MCANGUS GOUDELOCK & COURIE, L.L.C.



Thomas E. Lydon

Post Office Box 12519, Capitol Station
1320 Main Street, 10th Floor (29201)
Columbia, South Carolina 29211-2519
(803) 779-2300

Attorney for Defendant Portia S. Dantzler (formerly known as Portia Smith), for herself and on behalf of all other similarly situated individuals

August 8, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Autovest, L.L.C.,)
Plaintiff,)

Civil Action No. 2014-CP-40-1484

vs.)

Portia Smith a/k/a Portia)
Sentennial Smith, for herself and)
on behalf of all other similarly)
situated individuals,)
Defendant.)

**DEFENDANT'S RESPONSES TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND FIRST SET OF REQUEST FOR
PRODUCTION OF DOCUMENTS**

Defendant hereby responds to Plaintiff's First Set of Interrogatories and First Set of Requests for Production of Documents as follows:

In setting forth these responses, Defendant does not waive the attorney-client, work/product, or other privilege or immunity from disclosure which may attach to information called for herein, or responsive to, the discovery request. Defendant does not concede the relevance or materiality of any request, or the subject matter for which the request refers. These answers are submitted by Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving:

A. All objections as to competency, relevancy, materiality, privilege, and admissibility as evidence, for any purpose, of any of the documents referred to or answers given, or the subject thereof, in any subsequent proceeding or in the trial of this action or any other action or proceeding;

EXHIBIT B

- B. The right to object to other discovery procedures involving or relating to the subject matter of the Interrogatories herein and responded to; and
- C. The right at any time to revise, correct, supplement, or clarify any of the responses set forth herein, or documents referred to herein.
- D. Defendant objects to these Interrogatories to the extent that they ask for information protected by the attorney-client or the work product privileges or to the extent the interrogatories go beyond the scope of discovery allowed in the South Carolina Rules of Civil Procedure.

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of this case and indicate whether or not written or recorded statements have been taken from the witness and indicate who has possession of such statements.

REPLY: Portia S. Dantzer. No written or recorded statements have been taken for this witness.

Christina M. Stiles, Michigan – No written or recorded statements have been taken from this witness, other than the verifications attached to the complaints filed by Plaintiff.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

REPLY: a. Pleadings and discovery requests filed in Common Pleas and Magistrate's Court in South Carolina by Autovest, LLC
b. All documents attached to Plaintiff's First Set of Requests for Admissions
c. Flow Purchase Agreement between Autovest, LLC and Wells Fargo dated January 6, 2011

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all documents which you contend contain information relevant to this civil action.

REPLY: Attached is a copy of the Flow Purchase Agreement. Plaintiff already has copies of the pleadings and discovery requests filed in Common Pleas and Magistrate's

Courts in South Carolina by Autovest and the documents attached to Plaintiff's First Set of Requests for Admissions

2. Produce all documents mentioned by you in your responses to the foregoing Interrogatories.

REPLY: Attached is a copy of the Flow Purchase Agreement. Plaintiff already has copies of pleadings and discovery requests filed in Common Pleas and Magistrate's Courts in South Carolina by Autovest and the documents attached to Plaintiff's First Set of Requests for Admissions

3. Produce a copy of all bank accounts statements concerning any account over which you now or formerly have had withdrawal authority, which statements reflect any credits and/or debits between February 18, 2009 and February 26, 2009, inclusive.

REPLY: Defendant does not have the bank statement requested.

MCANGUS GOUDELOCK & COURIE, L.L.C.



Thomas E. Lyden
Post Office Box 12519, Capitol Station
1320 Main Street, 10th Floor (29201)
Columbia, South Carolina 29211-2519
(803) 779-2300

Attorney for Defendant Portia S. Dantzer (formerly known as Portia Smith), for herself and on behalf of all other similarly situated individuals

August 8, 2014

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
5TH JUDICIAL CIRCUIT
DOCKET NO. 2014-CP-40-1484

AUTOVEST, L.L.C.,

Plaintiff,

vs.

PORTIA SMITH, A/K/A PORTIA SENTENNIAL
SMITH,

Defendant.

PLAINTIFF'S SECOND SET OF
REQUEST FOR ADMISSIONS

COMES NOW the Plaintiff, by and through counsel, and pursuant to the South Carolina Rules of Civil Procedure, Rules 26-37 inclusive, propounds the following Requests for Admissions to each Defendant.

You are required to answer the Requests for Admissions not later than thirty-five (35) days after they are served upon you by mail. You must answer fully and completely each Request, including all sub-parts. You must answer in writing, and under oath or affirmation administered by a Notary-Public or other official authorized by law to administer an oath or affirmation. You must send your answers to the Plaintiff's attorney at the address set forth below.

REQUESTS FOR ADMISSIONS

1. Admit you made a payment on the account on November 17, 2008.

ANSWER:

This the 11th day of September, 2014.

BROCK & SCOTT, PLLC

Gregory P. Cowan, S.C. Bar #100299

— Richard L. Jackson, S.C. Bar #77669

— Brook D. Dangerfield, S.C. Bar #77912

BROCK & SCOTT, PLLC

1315 Westbrook Plaza Drive

Winston-Salem, NC 27103

Telephone: (336) 354-1797

Telefax: (336) 354-1588

CHSG000453

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
5TH JUDICIAL CIRCUIT
DOCKET NO. 2014-CP-40-1484

AUTOVEST, L.L.C.,
Plaintiff,

vs.

PORTIA SMITH, A/K/A PORTIA SENTENNIAL
SMITH,
Defendant.

)
) PLAINTIFF'S CERTIFICATE OF SERVICE OF
) SECOND SET OF REQUEST FOR ADMISSIONS

COMES NOW the undersigned, and pursuant to Rule 5 of the South Carolina Rules of Civil Procedure, avers and says that s/he has served the Plaintiff's Second Set of Requests for Admissions upon each Defendant herein by U.S. Mail addressed as follows:

Thomas E. Lydon, Esq.
PO Box 12519
Columbia, SC 29211

This the 11 day of September, 2014.

BROCK & SCOTT, PLLC

Heather Duncan
Paralegal

cHSC000453

CARmax®**Retail Installment Contract****Consumer Credit Sale**Contract Number 112Contract Date Oct 29, 2006Seller (Creditor) CarMax, 556 JAMIL ROAD, COLUMBIA, SC 29310Buyer PORTIA S SMITH, 207 GREY ST, LEXINGTON, SC 29072Co-Buyer Name Address Zip Code

In this Contract, the words "you" and "your" mean anyone signing this Contract as a Buyer or Co-Buyer. The words "we" and "our" mean the Seller or anyone to whom the Seller transfers its rights under this Contract. If there is more than one buyer, each will be obligated, separately and together, for all sums due and the performance of agreements as provided in this Contract to the extent not prohibited by applicable law.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of cash provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.	The total cost of your purchase on credit, including your downpayment of
<u>15.94 %</u>	<u>\$ 8,643.72</u>	<u>\$ 16,279.00</u>	<u>\$ 23,922.72</u>	<u>\$ 700.00</u>
				<u>\$ 24,622.72</u>

Your Payment Schedule will be:		* means an estimate
Number of Payments <u>72</u>	Amount of Payments <u>\$ 332.26</u>	When Payments are Due
		Monthly, beginning <u>Dec 13, 2006</u>

Security: You are giving a security interest in the motor vehicle being purchased. Late Charge: If a payment is received late, you will be assessed the following Late Charge: The lesser of \$14 or 5% of the unpaid installment if a payment is received after 10 days from the due date.	Prepayment: If you pay off the full amount owed under this Contract early, you will not have to pay a penalty. Additional Information: See the remainder of this Contract for additional information about nonpayment, default, any required repayment in full before the scheduled due date, and prepayment refunds. Filing Fees: <u>\$ N/A</u>
--	---

By executing this Contract, you agree that you are purchasing the following vehicle (the "Vehicle") from Seller:

Year 2005
 Make HONDA
 Model CIVIC
 VIN 1HGES183541006883
 New Used ☒

You will use the Vehicle as follows:

Personal ☒ Commercial ☐ Agricultural ☐

As part of this transaction, you sold the following vehicle(s) to Seller as a "Trade-In":

Year 1999
 Make HONDA
 Model ACCORD
 VIN 1HGC056521A006821

Year
 Make
 Model
 VIN

PROMISE TO PAY

You agree to pay the Amount Financed shown above, together with Finance Charges on the unpaid portion of the Amount Financed computed at the Annual Percentage Rate shown above, by monthly installments in the regular monthly payment amount shown above beginning on the date shown above, and continuing until the unpaid balance of the Amount Financed, together with accrued Finance Charges, is paid in full. (You understand that the number of regular monthly payments and the amount of the final payment shown above, as well as the Finance Charge, Total of Payments and Total Sale Price shown above are all estimates based on the assumption that you will make each payment in the required amount and on the exact due date shown above.) Your payments shall be made to Creditor at the address shown above. If this Contract is assigned, you agree to make payments to the subsequent holder of this Contract at the address provided by the subsequent holder of this Contract after you have received notice of the assignment. In the event that this Contract is assigned by Creditor to an Assignee, and in connection with such assignment the Assignee fails to pay to Creditor all amounts owed to Creditor to purchase this Contract, Creditor shall continue to retain all rights and remedies under this contract.

ITEMIZATION OF AMOUNT FINANCED	
A. CASH PRICE	
1. Cash Price of Vehicle	\$ 13,988.00
2. Cash Price of CarMax Accessories	\$.00
3. Sales / Excise Tax	\$ 300.00
4. Dealer Documentation / Processing Fee	\$ 149.00
5. Other, N/A	\$.00
6. Other, N/A	\$.00
7. Total Cash Sale Price	\$ 14,447.00
B. DOWN PAYMENT	
1. Cash Down Payment	\$.00
2. Manufacturer's Rebate	\$.00
3. Credit From "Trade-In" Sold to CarMax	
a. Value of "Trade-In"	\$ 700.00
b. Pay-Off of "Trade-In"	\$.00
c. Net Value of "Trade-In" is -- b, if a is greater than b	\$ 700.00
4. Other, N/A	\$.00
5. Other, N/A	\$.00
6. Total Down Payment (B(1) + B(2) + B(3)(c) + B(4) + B(5))	\$ 700.00
C. UNPAID BALANCE OF CASH PRICE	\$ 13,747.00
D. AMOUNTS PAID TO OTHERS ON YOUR BEHALF	
1. To Public Officials	
a. License, Title and Registration Fees	\$ 25.00
b. Filing Fees	\$.00
c. Other Official Fees, N/A	\$.00
d. Other Official Fees, N/A	\$.00
2. To Consumer Program Administrators, Inc. for Extended Service Agreement	\$ 1,499.00
3. To N/A	\$.00
for Pay-Off of the "Trade-In" where Pay-Off exceeds value of "Trade-In" (B(3)(b) - B(3)(c))	
4. To Dept. of Revenue, Tire Fee	\$ 8.00
5. To N/A	\$.00
6. To N/A	\$.00
7. Total of Amounts Paid to Others on Your Behalf	\$ 1,532.00
E. MISCELLANEOUS	
1. Other N/A	\$.00
F. AMOUNT FINANCED (C + D(1) - E(1))	\$ 16,279.00

*Seller may retain a portion of this amount.
 The amount of the Late Charge (Delinquency Charge) is, subject to biennial change.

You understand that this Contract consists of four (4) pages. This is page one (1). By initialing below you represent that you have read and agree to all provisions on all pages.

Buyer's Initials PS

Co-Buyer's Initials

Business ID PFF1000
 Order # 118779
 Revision Date 04/04

carmax.com

MIS ID 50000024
 Control Code JK

EXHIBIT D

DET 500 511

Retail Installment Contract

Additional Terms and Conditions

Late Charge: If a payment is received late, you will be assessed a late charge as noted in the Late Charge Section on Page 1 of this Contract.

NSF Fee: If you make a payment in the form of a check that is returned unpaid by your bank or other depository institution, to the extent not prohibited by law, you will be charged a NSF fee based on the following NSF Fee Schedule or as may be modified from time to time by state law.

State NSF Fee	
Alabama	\$30
Florida	\$25 if the face amount of the check is \$50 or less; \$30 if the face amount of the check exceeds \$50 but is less than or equal to \$300; \$40 if the face amount of the check exceeds \$300. If the face amount of the check exceeds \$500, 5% of the face amount of the check.
Georgia	\$30 or 5% of the face amount of the check, whichever is greater.
Indiana	\$20
Kansas	\$30
Kentucky	\$25
Maryland	\$15
North Carolina	\$25
South Carolina	\$30
Tennessee	\$20
Virginia	\$35

Care of Vehicle: Until the entire unpaid balance and all other amounts owed under this Contract are paid in full, you agree as follows: to keep the Vehicle in good condition and repair; not to remove the Vehicle from the address disclosed on the face of this Contract for more than 30 days without notifying Creditor in writing; not to sell or transfer the Vehicle or use the Vehicle as collateral in another transaction, not to use the Vehicle for hire or lease, or permit the Vehicle's use in any illegal manner, not to allow someone else to use the Vehicle or create a lien or other claim to or on the Vehicle; and to give Creditor written notice of any loss or damage to the Vehicle.

Insurance Requirements: You agree to maintain insurance on the Vehicle at all times, with comprehensive, collision, fire, and theft coverage in amounts acceptable to Creditor and with the minimum available deductible. Such insurance must be with a properly licensed insurer acceptable to Creditor and must name Creditor as an additional insured and loss-payee. You agree to provide Creditor with evidence of such insurance upon request. You agree that any insurance monies payable by reason of damage to or loss of the Vehicle shall be paid directly and solely to Creditor and may be used to pay all or part of the amounts you owe Creditor under this Contract. Creditor may also use the insurance proceeds (money) to replace or repair the Vehicle, at Creditor's sole discretion. You agree that Creditor can settle any insurance claim or sign any insurance checks on your behalf, as necessary, and to the extent not prohibited by applicable law. You understand and agree that any damage to the Vehicle (including, but not limited to, loss or destruction of the Vehicle) shall not affect your duty to pay all amounts owed under this Contract.

Failure to Maintain Insurance: If you fail to maintain insurance on the Vehicle, or fail to pay any loss, taxes or other costs necessary to keep the Vehicle in good condition and repair, Creditor may, at its sole discretion, obtain replacement insurance and/or advance any sums necessary to pay such fees, taxes or other costs. In the event Creditor obtains replacement insurance, the amount of such coverage may be limited to that which you owe under this Contract. Consequently, the insurance obtained may not cover the full value of the Vehicle nor any loss that you may sustain. To the extent not prohibited by law, any amount Creditor advances on your behalf (including for insurance) will accrue Finance Charges at the Annual Percentage Rate of this Contract. The amounts advanced shall be repayable: (i) immediately upon demand; (ii) along with your monthly payments; or (iii) at the end of the Contract, as Creditor may specify. Any payments made by Creditor on your behalf will not cure any default under this Contract.

Service Contracts: This Contract may contain charges for service contracts. If you are in default under this Contract or the Vehicle is repossessed, you agree that Creditor, to the extent not prohibited by applicable law, may claim benefits under these contracts and/or terminate them to obtain refunds for unearned charges. Any benefits and/or refunds received shall be applied toward your obligations under this Contract in accordance with applicable law. If you voluntarily cancel any such service contract, you authorize Creditor to receive any refunds due you, which shall be applied by Creditor towards your obligations under this Contract in accordance with applicable law.

"Trade-In" and Down Payment: You promise that you own and have valid title to the vehicle you sold to Creditor as a "trade-in." You further promise that except as disclosed to Creditor in writing, the Vehicle is free from any lien or security interest and has no such encumbrances on the certificate of title. You also promise that you have made the down payment disclosed on the face of this Contract and that you have not borrowed it. By signing this Contract, you warrant your solvency and agree that the return of any down payment check by the payor bank as NSF (insufficient funds) or Account Closed evidences your insolvency.

Creditor's Interest in Vehicle: The Vehicle is collateral that secures your financing for this Contract. You and we agreed that Creditor shall have a security interest in the Vehicle and that the security interest has attached. A security interest means that if you default, Creditor can repossess the Vehicle and under certain circumstances sell it to satisfy your payment obligations. "Vehicle" shall include the tires, parts, and equipment, any replaced parts, all accessories and additions to the Vehicle, and any vehicle insurance refunds or proceeds resulting from loss of or damage to the Vehicle.

Title and Security: You promise that you are, and will be, the registered owner of the Vehicle throughout the term of this Contract. You also promise

that unless you obtain prior written consent, Creditor will be the only party with a security interest in and to the Vehicle and that Creditor's security interest shall be the only security interest that appears on the certificate of title. You agree that Creditor can apply for a certificate of title that will reflect Creditor's security interest in the Vehicle, and you agree to assist Creditor in doing so. In the event the Vehicle is returned to Creditor for any reason, you agree to assist Creditor in obtaining an amended certificate of title to reflect any ownership change.

Events of Default and Right to Demand Payment in Full: Each of the following shall, to the extent not prohibited by applicable law, be an Event of Default. Upon the occurrence of an Event of Default, Creditor can require that the entire unpaid balance owed under this Contract, together with all accrued Finance Charges and other amounts owed under this Contract, be paid immediately and in full, without prior notice or demand, subject to any right you have to cure the default.

1. You break one of your promises set forth under this Contract; or
2. You pay any installment owing under this Contract late as noted in the Late Charge Section on Page 1 of this Contract, or you fail to pay any other amount you owe Creditor, now or in the future, the day it becomes due; or
3. You have made a false or misleading statement on the Contract and/or on the credit application; or
4. The Vehicle is lost or damaged without sufficient insurance coverage; sold, given away or seized, or is removed from the United States (except to Canada and only for a maximum period of 30 days); or
5. You file a petition in bankruptcy or one is filed against you or you file any proceeding seeking relief from your debts under applicable state or federal law, or one is instituted against you; or
6. You die or become legally unable to manage your affairs; or
7. The Vehicle is seized by a third party because of involvement in criminal activity or forfeiture proceedings have been instituted by a third party in any federal or state court, or through an administrative proceeding; or
8. Something else happens that Creditor reasonably believes affects your ability to pay the remaining amounts due under this Contract.

To the extent not prohibited by applicable law, if an Event of Default occurs and Creditor demands payment in full, you agree to pay collection costs incurred by the Creditor, including reasonable attorneys' fees if Creditor refers this Contract for collection to an attorney who is not Creditor's salaried employee, plus court costs. Until paid in full, and to the extent not prohibited by applicable law, the unpaid balance of the Amount Financed will continue to accrue Finance Charges at the Annual Percentage Rate disclosed on the face of this Contract.

NORTH CAROLINA TRANSACTIONS ONLY: You promise that you have not made any false or misleading statements on this Contract or on the credit application. You further promise that you will not take any action, or permit any event to occur, that materially impairs your ability to pay the amounts you owe under this Contract. By way of example, such event may include, but is not limited to, your death; you become legally unable to manage your affairs; you become insolvent; you file (or have filed against you) any other proceeding seeking relief from your debts; or you breach any other promise you have made in this Contract.

Right to Repossess: If one of the Events of Default occurs, Creditor can repossess the Vehicle. To the extent not prohibited by applicable law, Creditor may enter the premises where the Vehicle is kept and take it without giving you prior notice and without seeking a judicial remedy first. Creditor may immediately demand you to deliver the Vehicle to Creditor, and you agree to deliver the Vehicle as reasonably requested by Creditor. In the event of a default, Creditor has all of the rights and remedies of a secured party under the Uniform Commercial Code and other applicable state laws, including, to the extent not prohibited by applicable law, the right to sell the Vehicle and pursue a claim against you for any deficiency amount you still owe. You may have certain rights under applicable state laws to recover the personal property contained in the Vehicle at the time of repossession.

Application of Payments / Partial Prepayments: Your payments will be applied in accordance with any mandatory provisions of applicable law. In the absence of any such provisions, each payment will be applied according to the payment application protocol of the creditor or any assignee. In all other instances, your payments will be applied first to accrued Finance Charges, then to any other fees or charges for which you are responsible which are not included in the Amount Financed, then to the unpaid balance of the Amount Financed. Partial prepayments will not relieve you of the obligation to continue making the monthly payments as required under this Contract, and acceptance of partial or late payments does not waive Creditor's rights under this Contract, including but not limited to, the right to call a default, accelerate the debt or repossess the Vehicle.

Waivers and Release: To the extent not prohibited by applicable law, (i) Creditor can waive or delay enforcing any of Creditor's rights without losing them; (ii) Creditor can waive or delay enforcing a right as to one of you without waiving it as to the other; and (iii) Creditor need not give anyone notice of the waiver, delay or release. Creditor's failure to file a security interest, release of a security interest or granting extensions or deferrals of payment, shall not affect your obligations under this Contract.

Applicable Law: This Contract shall be governed by federal law and the law of the state where the CreditMax store selling the Vehicle is located. If the vehicle is sold in Kansas, the provisions of the Kansas Uniform Consumer Credit Code shall govern this Contract. If the Vehicle is sold in Maryland, this Contract shall be governed by Subtitle 10 of Title 12 of Maryland's Commercial Law Article. If any provision is found to be ineffective under any applicable law or regulation, the remainder of this Contract shall not be affected and shall continue to be binding and effective.

You understand that this Contract consists of four (4) pages. This is page two (2). By initialing below you represent that you have read and agree to all provisions on all pages.

Buyer's Initials

Co-Buyer's Initials

Retail Installment Contract
Additional Terms and Conditions

NO LIABILITY INSURANCE INCLUDED

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.

PROPERTY INSURANCE: YOU ARE REQUIRED TO OBTAIN AND MAINTAIN INSURANCE ON THE COLLATERAL, ENDORSED TO PROTECT CREDITOR AS LOSS-PAYEE. HOWEVER, YOU MAY OBTAIN THE INSURANCE FROM ANY AGENT OR INSURANCE COMPANY YOU CHOOSE.

YOUR INSURANCE INFORMATION

TITLE HOLDER OF COLLATERAL Wells Fargo Auto Finance, Inc. REGISTRANT PORTIA S SMITH
PHYSICAL DAMAGE DEDUCTIBLES - COMPREHENSIVE \$ 500.00 COLLISION \$ 500.00
INSURANCE COMPANY PROGRESSIVE
POLICY NUMBER EFFECTIVE DATE 07/09/2006 EXPIRATION DATE N/A
INSURANCE AGENT NAME PROGRESSIVE TELEPHONE NUMBER (800) 776-4737
INSURANCE AGENT ADDRESS

You warrant and affirm that you have or will obtain the required insurance coverage as shown above and you understand and agree that this is required by the Insurance Regulations section on page 2 of this Contract.

The following Buyers Guide notice applies in the case of a used motor vehicle purchase only and is required by law.

THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT FOR SALE. SPANISH TRANSLATION: QUIA PARA COMPRADORES DE VEHICULOS USADOS, LA INFORMACIÓN QUE VE EN EL FORMULARIO DE LA VENTANILLA PARA ESTE VEHICULO FORMA PARTE DEL PRESENTE CONTRATO. LA INFORMACIÓN DEL FORMULARIO DE LA VENTANILLA DEJA SIN EFECTO TODA DISPOSICIÓN EN CONTRARIO CONTENIDA EN EL CONTRATO DE VENTA.

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

FINANCING CONTINGENT ON YOUR REPRESENTATIONS

By signing below you represent and warrant that you have provided accurate and complete disclosures on your credit application. You also represent and warrant that any down payment you have provided by way of an instrument will be honored. You understand and agree that any misrepresentation or nondisclosure in the completion of your credit application or any failure by you to provide the down payment may result in the loss of your financing through a third-party finance company or CarMax Auto Finance ("CAF"). If a third-party finance company or CAF rejects your financing, this Contract may not be funded and/or the Contract may be reassigned back to CarMax.

If this Contract is not funded by a third-party finance company or CAF, or if this Contract is reassigned back to CarMax from a third-party finance company or CAF, CarMax may, in its sole discretion, cancel this Contract and/or your Buyer's Order.

In the event CarMax cancels this Contract and/or your Buyer's Order, you have the right to return the Vehicle within 24 hours following written or oral notice from CarMax. If you fail to return the Vehicle within 24 hours, you agree that CarMax may, solely at its option, (1) hold you immediately liable for the Balance Due at Settlement, as shown on the front of the Buyer's Order, or (2) cancel the Buyer's Order. In the event CarMax cancels the Buyer's Order within 60 days from the Date of Contract on Page 1, CarMax may immediately release possession of the Vehicle and collect from you all reasonable expenses incurred by CarMax in connection with retaking the Vehicle. Upon return or retaking of the Vehicle, you also agree to pay for any damages to the Vehicle that occur while the Vehicle is in your possession or under your control, and, to the extent not prohibited by applicable law, a Use Fee of \$20 per mile based on the number of miles the vehicle was driven.

VEHICLE RETURN POLICY

You may return the Vehicle to CarMax for a refund and rescind this Contract within 5 calendar days if the condition of the Vehicle does not change. This policy only applies to used vehicles.

ENTIRE AGREEMENT

Except where otherwise noted, this Contract contains the entire agreement between you and Creditor relating to this Contract. Any change to this Contract must be in writing and signed by both you and the Creditor, except that Creditor may, at its sole discretion, grant an extension or deferral of payment by providing you with a written confirmation of such extension. Oral modifications to this Contract are not binding.

You understand that this Contract consists of four (4) pages. This is page four (4). By signing below you represent that you have read and agree to all provisions on all pages. Further, you hereby acknowledge that you are agreeing to an arbitration provision as part of this transaction.

NOTICE TO THE BUYER:

1. Do not sign this Contract before you have read it or if it contains any blank spaces.
2. You are entitled to an exact copy of the Contract you sign. Keep it to protect your legal rights.
3. Under the law you have the right, among other things, to pay in advance the full amount due and to obtain under certain conditions a partial refund of the finance charge.

I HAVE RECEIVED A COMPLETED COPY OF THIS RETAIL INSTALLMENT CONTRACT SIGNED BY THE SELLER.

Seller CarMax Auto Superstores, Inc.
(Firm Name)

Buyer's Signature Portia Smith

By [Signature]

Co-Buyer's Signature

ASSIGNMENT

Seller hereby sells, assigns and transfers to Wells Fargo Auto Finance, Inc. ("Assignee") this Contract, all obligations of Buyer and Co-Buyer hereunder, all rights, powers, and privileges herein given to Seller and all right, title, and interest of Seller in and to the property securing this Contract. If on the date of this assignment there is in effect a Dealer Agreement between Seller and Assignee pertaining to the sale of contracts to Assignee by Seller, the sale and assignment of this Contract to Assignee is made subject to all the terms and conditions of that Dealer Agreement.

Seller/Assignee

Date Oct 28, 2006

Title ROA

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Autovest, L.L.C.

☐ Plaintiff

v.

PORTIA SMITH

☐ Defendant.

IN THE
COURT OF COMMON PLEAS

CASE NO.
2014-CP-40-1484

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Richard L. Jackson, S.C. Bar #77669

Gregory P. Cowan, S.C. Bar #100299

Brook D. Dangerfield, S.C. Bar #77912

1315 Westbrook Plaza Drive

Winston-Salem, NC 27103

phone: (336) 354-1797 fax: (336) 354-1588

Defendant's Attorney:

Bar No.

Address:

phone: fax:

e-mail: other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider

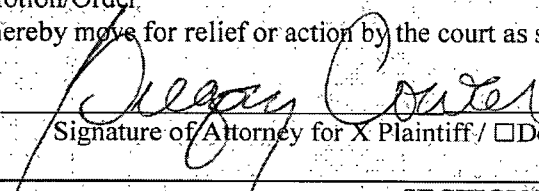
Estimated Time Needed: 1/2 hour Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☒ Plaintiff / ☐ Defendant

05-12-2015
Date submitted

SECTION III: Motion Fee

X PAID - AMOUNT: 25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

RICHLAND COUNTY

AUTOVEST, L.L.C.,

Plaintiff,

vs.

PORTIA SMITH, A/K/A PORTIA SENTENNIAL

SMITH,

Defendant.

IN THE COURT OF COMMON PLEAS

5TH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-1484

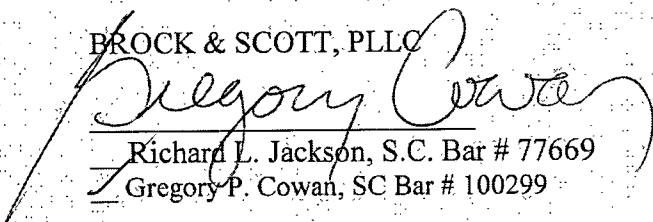
MOTION TO RECONSIDER

NOW COMES PLAINTIFF, by and through the undersigned counsel, pursuant to SCRCP, Rule 59(e), and hereby respectfully requests this Court to reconsider its Order of Partial Summary Judgment in the Above-captioned civil action. Plaintiff, through counsel, serves herewith a brief to support the application of a six-year statute of limitations under S.C. Code § 36-2-725.

WHEREFORE, Plaintiff respectfully requests that the Order of April 24, 2015, granting partial summary judgment against Defendant, be set aside upon review of additional precedent.

This the 12th day of May, 2015.

BROCK & SCOTT, PLLC


Richard L. Jackson, S.C. Bar # 77669

Gregory P. Cowan, SC Bar # 100299

BROCK & SCOTT, PLLC

1315 Westbrook Plaza Drive

Winston-Salem, NC 27103

Telephone: (336) 354-1797

Telefax: (336) 354-1588

STATE OF SOUTH CAROLINA

RICHLAND COUNTY

AUTOVEST, L.L.C.,

Plaintiff,

vs.

PORTIA SMITH, A/K/A PORTIA SENTENNIAL
SMITH,

Defendant.

IN THE COURT OF COMMON PLEAS

5TH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-1484

CERTIFICATE OF SERVICE

The undersigned does hereby certify: I have served a copy of the Motion to Reconsider upon all parties required to be served by this date, mailing same enclosed in a first-class, postage paid, properly addressed envelope, in an official depository under the exclusive care and custody of the United States Postal Service, or hand-delivered same, to the parties whose name and last address known to me are as follows:

Thomas E. Lydon, Esq
PO Box 12519
Columbia, SC 29211

This the 12 day of may, 20 15.

BROCK & SCOTT, PLLC

Heather Duncan
Paralegal

STATE OF SOUTH CAROLINA

RICHLAND COUNTY

AUTOVEST, L.L.C.,

Plaintiff,

vs.

PORTIA SMITH, A/K/A PORTIA SENTENNIAL

SMITH,

Defendant.

IN THE COURT OF COMMON PLEAS

5TH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-1484

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION TO RECONSIDER**

NOW COMES PLAINTIFF, by and through the undersigned counsel, and upon review of the Court's order granting partial summary judgment to Defendant, offers this memorandum of law to state precedent holding the statute of limitations for a deficiency on a motor vehicle is set forth under Article 2, section 725 of the Uniform Commercial Code. Plaintiff has set forth its principal argument in its brief in opposition to Defendant's motion for summary judgment. Plaintiff submits the following additional precedent.

I. SOUTH CAROLINA CIRCUIT COURT PRECEDENT

In the Orangeburg County case of Autovest v. Walker Martin, 2014-CP-38-00787, the Honorable Judge Dickson requested Plaintiff's Counsel to support the validity of the claim under the applicable statute of limitations. See Ex. A. Following Plaintiff's explanation of the relevant statutes, the Court entered an order granting judgment to Plaintiff on September 17, 2014. See Ex. B.

II. DECISIONS OF OTHER STATE COURTS

The courts in the following cases concluded that creditor's claims for deficiencies remaining upon resales of goods repossessed for non-payment of the purchase price were actions arising out of breach of contract for the sale of goods, and as such were governed by UCC § 2-725.

In Massey-Ferguson Credit Corp. v Casaulong, 62 Cal App 3d 1024, 133 Cal Rptr 497 (1976, 3rd Dist), an action to recover a deficiency arising out of the resale of farm equipment that the plaintiff sold and later repossessed from the defendant pursuant to a conditional sales contract and security agreement, the court

determined that the complaint was governed by the four-year UCC limitation period prescribed by California Com Code § 2725. Noting that the instrument sued upon was not only a security agreement, but a sales contract as well, the court maintained that an action to recover a deficiency must be considered to be more closely related to the sales aspect of the transaction than its security aspect, because such actions are meant to enforce an essential element of all sales, namely the obligation to pay the full sale price to the seller. Id. at 1028-1029, 133 Cal Rptr 497, 499-500. The court stated that, since the adoption of the UCC, actions involving the conditional sale of goods were subject to the UCC statute of limitations, rather than to the general limitations provisions of California Code of Civ Proc §§ 337, 339, for actions on written and oral contracts, because an action to recover a deficiency arising from resale of goods originally purchased under a conditional sale contract is founded upon the contract of sale.

Where an automobile dealer, after repossession and sale, brought an action to recover a deficiency on the balance due under a contract for the sale of an automobile, the Court in Jack Heskett Lincoln-Mercury, Inc. v Metcalf, 158 Cal App 3d 38, 204 Cal Rptr 355 (1984, 3rd Dist), held that the action, being ultimately founded upon a contract for the sale of goods, was subject to the four-year UCC limitation period contained in California Com Code § 2725, as opposed to a four-year provision applicable to written contracts, or a one-year provision applicable to penalties and forfeitures. Relying on prior authority that involved a nearly identical situation, the court reasoned that, since actions involving conditional sales of goods have been held to be subject to the UCC statute of limitations since the adoption of the provision, a deficiency judgment arising out of a default on a conditional sale agreement governed by the same limitation provision. Id. at 42.

In Worrel v Farmers Bank of Delaware, 430 A2d 469 (1981 Del Sup), the Court concluded that a suit to recover a deficiency remaining after repossession and resale of an automobile was governed by the UCC limitation period prescribed in 6 Del Code § 2-725, taking the position that the deficiency suit was simply an action on the part of the seller to enforce the buyer's obligation to pay full price on the contract of sale. The court characterized the buyer's obligation as one that was an essential element of all sales, and one that existed whether or not the sale was accompanied by a security arrangement. In the absence of a contrary indication anywhere in the UCC, the court stated that a deficiency action must be considered more closely related to the sales aspect of a combination sales-security agreement than to its security aspect. While agreeing with the trial court's determination that the case was governed by § 2-725 of the Code, the court found that the trial court erred in holding that the limitation period began to run on the date of the deficiency judgment, rather than on the date that the breach of contract occurred, because such a determination was inconsistent with the conclusion that the transaction fell within Article 2, as opposed to Article 9, of the Code.

In First Nat'l Bank v Chase, 118 NM 783, 887 P2d 1250 (1994), an appeal of a dismissal of an action

brought by a bank to collect upon a deficiency remaining after the repossession and resale of a truck that was subject to an installment contract which was assigned by the car dealer to the plaintiff bank, the court concluded that the action was governed by the four-year UCC statute of limitations contained in NM Stat Ann § 55-2-725 (Repl Pam 1993), rather than a general six-year statute of limitations applicable to non-sales contracts (NM Stat Ann §§ 37-1-1, 37-1-3A (Repl Pam 1990)). Identifying the primary issue as whether Article 2 or Article 9 of the UCC governs an action to recover a deficiency after a default on a motor vehicle installment contract, the court viewed the contract in question as a hybrid agreement that constituted both a sale of goods and a security transaction, then examined the nature of the deficiency suit, and ultimately concluded that such an action is but a simple in personam action for that part of the sales price which remained unpaid after the seller had exhausted its rights under Article 9 by selling the collateral, or stated another way, it is an action to enforce the obligation of the buyer to pay the full sale price to the seller, an obligation which is an essential element of all sales and which exists whether or not the sale is accompanied by a security arrangement. Thus, the court concluded that a deficiency action is more closely related to the sales aspect of a combination sales-security agreement than to its security aspect, and must be controlled by the UCC statute of limitations.

While holding that the UCC statute of limitations contained in Or Rev Stat § 72.7250 did not apply to a debtor's action for surplus proceeds remaining after the foreclosure sale of an automobile because the debtor's right to a surplus was created by UCC § 9-504(2) of the Code which is part of Article 9 of the Code which relates to secured transactions, the court in Chaney v Fields Chevrolet Co. 264 Or 21, 503 P2d 1239 (1972) appeared to agree with the view that the UCC statute of limitations would apply to an action by a creditor against a debtor for a deficiency remaining following sale of the collateral on the reasoning that an action for part of the purchase price is more closely related to the sale portion of the contract than it is to the security portion.

In an action brought to recover a deficiency seven years after repossession of the defendant's automobile, the court in Associates Discount Corp. v Palmer 47 NJ 183, 219 A2d 858, (1966) (applying Pennsylvania law), held that the agreement to finance the purchase of the vehicle involved a transaction in goods, and as such the action was barred by the four-year UCC statute of limitations contained in Pa Stat Ann 12A § 2-725. Rejecting a contention that the UCC did not apply to contracts subject to regulation under a state motor vehicle sales financing act (Pa Stat Ann tit 69 §§ 601-637), the Court pointed out that applicable authorities had applied the provisions of the financing act and UCC together when deciding cases involving motor vehicle sales, and that the contract for sale of the vehicle in question expressly recited that it was subject to the provisions of the UCC. The court explained that a deficiency suit is nothing but a simple in personam action for that part of the sales price which remains unpaid after the seller has exhausted his rights under Article 9 by selling the collateral, and as such it is an action to enforce the obligation of the buyer to pay the full sale price to the seller, which is an essential element of all sales that exists whether or not the sale has been accompanied by a security arrangement.

Noting that transactions intended to operate only as security transactions were excluded from coverage under Article 2, the court reasoned that actual sales are subject to the UCC, although a security interest has been retained by the seller.

In Industrial Valley Bank & Trust Co. v Sharpe 15 Pa D & C3d 506 (1980) an action to recover a deficiency due following repossession and sale of an automobile that had been purchased under an installment sales contract, the court concluded that, even if it assumed that a motor vehicle installment sales contract which contained a warrant of attorney to confess judgment was a secured transaction, the assignee of the contract was barred from recovering the deficiency balance due after the debtor had defaulted on the contract and a confession of judgment authorized by the contract had been filed, under the UCC statute of limitations contained in 13 Pa Con Stat Ann § 2725.

III. DISCUSSION

The present case concerns a deficiency following the sale of a motor vehicle. As noted in Plaintiff's memorandum opposing summary judgment, Defendant has admitted the purchase of the motor vehicle, and her final payment within the statute of limitations under South Carolina's enactment of the Uniform Commercial Code.

The contract for sale concerned the sales aspect of the transaction, as held by multiple jurisdictions. The present case concerns a simple in personam judgment for the balance owed on the sale of the vehicle, following the deficiency. Nothing under the consumer protection code states a separate statute of limitations would apply, or would operate to apply the general statute of limitations found in S.C. Code 15-3-530 over the specific statute of limitations found in S.C. Code 36-2-725.

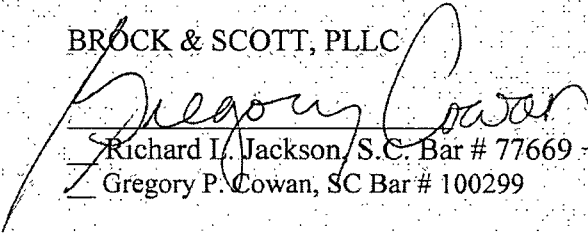
Thus, Defendant's purchase of a motor vehicle was governed by the uniform commercial code, and the applicable statute of limitations for a contract for sale is six years, as supplied by S.C. Code 36-2-725.

III. CONCLUSION

Having set forth additional precedent concluding the Uniform Commercial Code statute of limitations set forth under Article 2, section 725 governs actions to collect a deficiency, Plaintiff hereby requests the court to reconsider its grant of summary judgment to Defendant on this basis, and to enter an order denying the motion for summary judgment and holding that Plaintiff's claim is within the applicable statute of limitations.

This the 12th day of May, 2015.

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

Case No. 2014-CP-40-1484

Autovest, LLC Appellant

v.

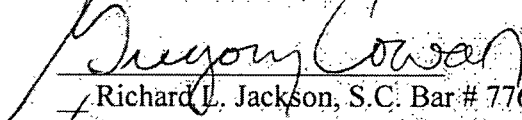
Portia Smith a/k/a Portia Sentennial Smith, ... Respondent

NOTICE OF APPEAL

Autovest, LLC appeals the Order of the Honorable Tanya A. Gee dated April 20, 2015 and filed April 23, 2015. Appellant received written notice of the entry of this Order on May 1, 2015. Plaintiff served a motion to reconsider on May 1, 2015 pursuant to Rule 59, SCRCP. The Honorable Tanya A. Gee denied Plaintiff's motion to reconsider by order dated May 14, 2015 and filed May 14, 2015. Plaintiff received written notice of the denial of its motion to reconsider on May 27, 2015. Autovest, LLC appeals the Order granting partial summary judgment to Respondent and denial of its motion to reconsider.

This the 28th day of May, 2015.

BROCK & SCOTT, PLLC



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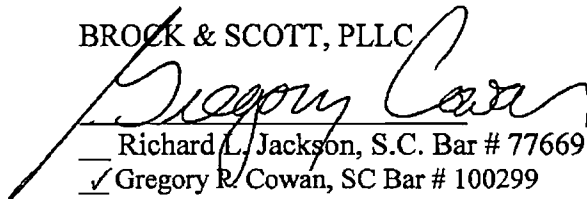
Portia Smith a/k/a Portia Sentennial Smith, ... Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent upon Respondent Portia Smith a/k/a Portia Sentennial Smith by Fedex, postage paid, on the date stated below, addressed to her attorney of record, Thomas Lydon, Esq., 1320 Main St, 10th Floor, Columbia SC 29211.

This the 28th day of May, 2015.

BROCK & SCOTT, PLLC



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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

Case No. 2014-CP-40-1484
Appellate Case No. 2015-001187

Autovest, LLC Appellant

v.

Portia Smith a/k/a Portia Sentennial Smith, ... Respondent

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

This the 19th day of February, 2016.


Gregory P. Cowan

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