

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

22321

APPEAL FROM ALLENDALE COUNTY
Court of Common Pleas
Civil Action No.: 2013-CP-03-00147
Honorable Perry M. Buckner

RECEIVED

FEB 01 2016

SC Court of Appeals

Appellate Case No.: 2015-001401

JOYCE MYERS.....Respondent,

-vs-

TITLEMAX OF SOUTH CAROLINA, INC. AND AFFORDABLE RECOVERY
SOLUTIONS, A/K/A ARS.....Defendants,

Of which AFFORDABLE RECOVERY SOLUTIONS A/K/A ARS is.....Appellant.

RECORD ON APPEAL

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Howell, Gibson & Hughes, P.A.
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Attorney for Respondent

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STATE OF SOUTH CAROLINA)
COUNTY OF ALLENDALE)

IN THE COURT OF COMMON PLEAS
C/A: 13-CP-03-147

JOYCE MYERS,)
Plaintiff,)

vs.)

TITLEMAX OF SOUTH CAROLINA,)
INC. and AFFORDABLE RECOVERY)
SOLUTIONS a/k/a ARS,)
Defendants.)

**ORDER DENYING
DEFENDANT AFFORDABLE
RECOVERY SOLUTIONS'
MOTION TO COMPEL
ARBITRATION**

FILED FOR RECORD
2015 MAY -5 PM 1:02
J.S.C.

This matter came before the Court on April 20, 2015, upon Defendant Affordable Recovery Solutions' Motion to Compel Arbitration. Defendant Affordable Recovery Solutions will hereinafter be referred to as ARS. The Plaintiff Joyce Myers was represented at the hearing by Mark Tinsley, and the Defendant ARS was represented by Patrick Higgins. The attorney for the Defendant Titlemax, Adam Yount, was present, but did not argue or take a position at the hearing. After a thorough review of the pleadings, evidence, arguments, memoranda, affidavits, and case law presented by the parties, the Court denies Defendant ARS' Motion to Compel Arbitration on the following grounds.

#1
PMB
"Arbitration is a matter of contract, and a party cannot be required to arbitrate any dispute which he has not agreed to arbitrate." Zabinski v. Bright Acres Assoc., 346 S.C. 580, 596 (2001). Courts generally hold that broadly-worded arbitration agreements apply to disputes in which a "significant relationship" exists between the asserted claims and the contract in which

the arbitration clause is contained. Id. at 598 (quoting Long v. Silver, 248 F.3d 309 (4th Cir. 2001)). "Because even the most broadly-worded arbitration agreements still have limits founded in general contract law, this Court will refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings." Aiken v. World Finance Corporation of South Carolina, 373 S.C. 144, 151 (2007).

Therefore, the Court must analyze whether there is a "significant relationship" between the Loan Agreement and the allegations made in the Complaint. The Loan Agreement, attached as Exhibit A to the Defendant ARS' Memorandum in Support of its Motion to Compel Arbitration, has a broadly-worded provision that covers "all federal and state law claims" and "all common law claims, based upon contract, tort, fraud, or other intentional torts." The Defendant ARS argues that this provision should have put the Plaintiff on notice that their claims would be subject to arbitration.

#2
PnB
However, in Paragraph 2 of the Repossession Agreement, attached as Exhibit 1 to the Affidavit of Adam Yount, ARS warranted and agreed that repossessions would be accomplished "without (1) the use of trick, fraud or other deceptive practices, including but not limited to impersonating a law enforcement or court official or other deceptive practices; 2) breach of the peace; 3) force, threat or intimidation; or, 4) any other unlawful means."

The Complaint alleges abusive behavior and conduct, including intentional infliction of emotional distress, battery, assault, and trespass, which, if true, would not have been allowed under the Repossession Agreement. Even though repossession was included as a possible remedy under the Loan Agreement, the Plaintiff would not expect the alleged conduct from reading the

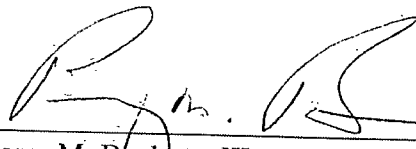
Repossession Agreement between Defendants Titlemax and ARS, which governs the conduct in which the Defendant ARS was supposed to use in performing its duties.

The Court finds that the Loan Agreement, which contains the arbitration provision, does not have a "significant relationship" to the alleged claims. Following Aiken and Chassereau, the Court additionally finds that the conduct alleged, if true, was unforeseeable at the time the parties executed the agreement to arbitrate. Therefore, there was no meeting of the minds between the parties and the arbitration provision does not apply to the facts currently before the Court.

For the reasons set forth above, the Court denies Defendant ARS' Motion to Compel Arbitration.

IT IS SO ORDERED this 30th day of April, 2015.

Walterboro, SC



Perry M. Buckner, III
Chief Administrative Judge of the Fourteenth Judicial Circuit

#3

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-03-00147

FILED FOR RECORD

Joyce Myers

Titlemax of South Carolina, Inc.

2015 JUN 19 AM 11:42

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY, S.C.

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 :

Motion to Reconsider filed 5/15/2015 is respectfully denied. Mark Tinsley appeared for the Plaintiff and Patrick Higgins appeared for Defendant Affordable Recovery Solutions. Adam Yant represents Defendant Titlemax but did not appear.

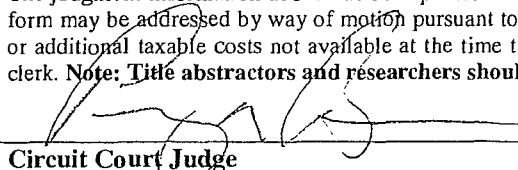
INFORMATION FOR THE JUDGMENT INDEX

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

2122

Judge Code

6/19/2015

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:

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.

SCRCP Form 4C (03/2013)

Page 200005

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

JOYCE MYERS,

Plaintiff,

vs.

TITLEMAX OF SOUTH CAROLINA,
INC. and AFFORDABLE RECOVERY
SOLUTIONS a/k/a ARS,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A: 13-CP-03- 147

SUMMONS
(Jury Trial Demanded)
(Personal Injury/Assault)

FILED FOR RECORD
2013 AUG 16 AM 11:01
CLERK OF COURT
ALLENDALE COUNTY, S.C.

TO THE DEFENDANTS 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 said Complaint upon the subscriber at his office at 265 Barnwell Highway, Allendale, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

GOODING AND GOODING, P.A.

BY:

H. Woodrow Gooding
Mark B. Tinsley
P.O. Box 1000
Allendale, SC 29810
(803) 584-7676
ATTORNEYS FOR PLAINTIFF

Date: 8/16/13

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

JOYCE MYERS,

Plaintiff,

vs.

TITLEMAX OF SOUTH CAROLINA,
INC. and AFFORDABLE RECOVERY
SOLUTIONS a/k/a ARS,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A: 13-CP-03-147

COMPLAINT
(Jury Trial Demanded)
(Personal Injury/Assault)

FILED FOR RECORD
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CLERK OF COURT
ALLENDALE COUNTY, S.C.

FOR A FIRST CAUSE OF ACTION
(Negligence)

The Plaintiff alleges as follows:

1. Plaintiff is a citizen and resident of Allendale County, South Carolina.
2. Defendant TitleMax of South Carolina, Inc. is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in South Carolina; upon information and belief, Defendant TitleMax owns and operates TitleMax of Barnwell, South Carolina.
3. Defendant Affordable Recovery Solutions a/k/a ARS (hereinafter Defendant ARS) is a business organized and existing in the State of South Carolina.
4. The most substantial part of the acts or omissions giving rise to the causes of action described herein occurred in Allendale County, South Carolina.
5. At all times relevant herein, any employees referred to herein were agents, servants, and/or employees of Defendant TitleMax and Defendant ARS and were acting

within the scope and course of said agency, service, or employment thereby making Defendants liable for their actions or omissions under the theory of *respondeat superior*. Moreover, at all times relevant herein, Defendant ARS was an agent, servant and/or employee of Defendant TitleMax and was acting within the scope and course of said agency, service, or employment thereby making Defendant TitleMax liable for their actions or omissions under the theory of *respondeat superior*.

6. On or about January 11, 2013, Defendants' employees entered onto Plaintiff's premises and into Plaintiff's yard located at 306 Unity Drive, Allendale, South Carolina, without Plaintiff's permission to repossess Plaintiff's vehicle; as one the employees sped away with Plaintiff's vehicle, the other employee struck Plaintiff with his hand and shouted profanity at her. The employee then left the scene.

7. The Defendants owed the Plaintiff a duty to act reasonably in communicating with her.

8. Defendants, by and through the acts and/or omissions of their agents, servants, and/or employees, were negligent, careless, reckless, grossly negligent, willful, and wanton in the following manner:

- a) In striking the Plaintiff;
- b) In shouting profanity at the Plaintiff in a loud, abusive, rude, offensive, outrageous and/or threatening manner;
- c) In threatening the Plaintiff;
- d) In harassing the Plaintiff;
- e) In failing to adopt reasonable policies to prevent the intimidation of property owners or in failing to follow such policies;
- f) In failing to supervise or control their employees or agents;

- g) In failing to exercise the degree of care and caution a reasonable business establishment would have exercised under the same or similar circumstances; and
- h) In such other and further particulars as the evidence in trial may show.

9. As a direct and proximate result of the Defendants' negligence, Plaintiff suffered injuries to her hand, finger and other parts of her body which have caused and will in the future cause her to endure great physical pain, suffering, mental anguish, emotional distress, and impairment of health and bodily efficiency; and have caused a permanent disability.

FOR A SECOND CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

10. The Plaintiff incorporates the allegations above as fully and completely as if repeated verbatim herein.

11. The Defendants' actions were reckless, willful, wanton, and oppressive, constituted extreme and outrageous conduct and exceeded all bounds of decency and were atrocious and utterly intolerable in a civilized society; moreover, no reasonable person could be expected to endure such distress.

12. As a direct and proximate result of the outrageous conduct of the Defendants, the Plaintiff has suffered extreme emotional distress, nervousness, worry, loss of sleep and other damages as set forth above.

FOR A THIRD CAUSE OF ACTION
(Assault)

13. The Plaintiff incorporates the allegations above as fully and completely as if repeated verbatim herein.

14. Defendants' conduct placed the Plaintiff in reasonable fear of bodily harm.

15. As a direct and proximate result of this assault, the Plaintiff suffered fear of serious bodily injury, mental stress and anxiety and other damages and injuries as set forth above. Moreover, Plaintiff is entitled to punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Battery)

16. The Plaintiff incorporates the allegations above as fully and completely as if repeated verbatim herein.

17. Defendants' employees inflicted forcible contact on Plaintiff's person.

18. As a direct and proximate result of Defendants' battery, Plaintiff suffered actual damages as set forth above. Moreover, Plaintiff is informed and believes that she is entitled to punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Trespass)

19. The Plaintiff incorporates the allegations above as fully and completely as if repeated verbatim herein.

20. Plaintiff was in legal and peaceable possession of the home and lot located at 306 Unity Drive, Allendale, South Carolina, on or about January 11, 2013.

21. Defendants' employees voluntarily and intentionally entered onto the property without Plaintiff's permission.

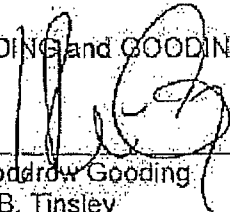
22. Defendants thereby interfered with Plaintiff's right to exclusive, peaceable possession of her property.

23. As a direct and proximate result of Defendants' trespass, Plaintiff suffered

a violation of her peaceable possession of her home and is entitled to punitive damages as a result of Defendants' wanton, wilful and reckless disregard of the rights of Plaintiff.

WHEREFORE, Plaintiff prays for judgment against the Defendants in a sum sufficient to adequately compensate for actual damages, for such punitive damages as a jury may reasonably award, for the costs of this action, and for such other and further relief as this Court may deem just and proper.

GOODING and GOODING, P.A.

BY: 

H. Woodrow Gooding
Mark B. Tinsley
P. O. Box 1000
Allendale, SC 29810
(803) 584-7676

Attorneys for Plaintiff

DATE: 8/16/13

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ALLENDALE) CIVIL ACTION NO: 13-CP-03-147

JOYCE MYERS,
Plaintiff,

vs.

TITLEMAX OF SOUTH CAROLINA,
INC. AND AFFORDABLE
RECOVERY SOLUTIONS a/k/a ARS,
Defendants.

ANSWER TO PLAINTIFF'S
COMPLAINT

ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY, S.C.

2014 MAR -4 AM 11:57

FILED FOR RECORD

The Defendant, Affordable Recovery Solutions, a/k/a ARS, answering the Complaint of the Plaintiff would allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

1. That each and every allegation contained in the Plaintiff's Complaint not specifically admitted hereinafter is denied and strict proof demanded thereof.

2. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph 1 of the Plaintiff's Complaint, and accordingly, denies each and every allegation, and demands strict proof thereof.

3. The Defendant admits the allegations contained in Paragraph 2 and 3 of the Plaintiff's Complaint.

4. The Defendant lacks sufficient information to form a belief as to the allegations contained in Paragraph 4 of the Plaintiff's Complaint, and accordingly, denies each and every allegation, and demands strict proof thereof.

5. The Defendant denies the allegations contained in Paragraphs 5 through 9 of the Plaintiff's Complaint, and demands strict proof thereof.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

6. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

7. The Defendant denies the allegations contained in Paragraphs 11 and 12 of the Plaintiff's Complaint, and demands strict proof thereof.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

8. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

9. The Defendant denies the allegations contained in Paragraphs 14 and 15 of the Plaintiff's Complaint, and demands strict proof thereof.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION

10. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

11. The Defendant denies the allegations contained in Paragraphs 17 and 18 of the Plaintiff's Complaint, and demands strict proof thereof.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION

12. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

13. The Defendant denies the allegations contained in Paragraphs 20 through 23 of the Plaintiff's Complaint, and demands strict proof thereof.

FOR A SECOND DEFENSE

14. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

15. That this Defendant would show that there has been insufficient service of process upon the person of this Defendant, and the Complaint should therefore be dismissed.

FOR A THIRD DEFENSE

16. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

17. That the Plaintiff fails to set forth sufficient facts to state a claim for which relief can be granted.

FOR A FOURTH DEFENSE

18. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

19. That the Plaintiff's claims are barred by the doctrine of self-defense, defense of others, and/or defense of property.

FOR A FIFTH DEFENSE

20. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

21. That the Plaintiff's intentional tort claims are barred due to Plaintiff's provocation as a matter of law.

FOR A SIXTH DEFENSE

22. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

23. That the Plaintiff's intentional tort claims fail due to the doctrine of privilege and/or legal authorization.

FOR A SEVENTH DEFENSE

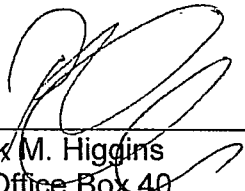
24. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

25. At all times relevant hereto, the Defendant acted in a reasonable manner and in good faith, by reason of which Plaintiff's claims are barred. The Plaintiff is barred from recovery by the doctrine of comparative negligence in that Plaintiff's negligence in causing the claimed damages, if any, was greater than

fifty percent (50%). In the alternative, Plaintiff's recovery, if any, should be reduced by virtue of her own negligence.

WHEREFORE, the Defendant prays this Honorable Court inquire into the matters set forth herein, and enter its Order dismissing this matter, with an award of attorneys fees and costs to the Defendant.

HOWELL, GIBSON & HUGHES, P.A.

By: 
Patrick M. Higgins
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Affordable Recovery
Solutions

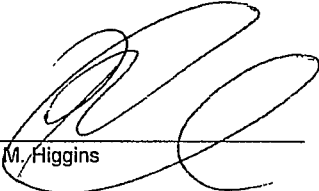
Beaufort, South Carolina

February 27, 2014

FILED FOR RECORD
2014 MAR -4 AM 11:57
CLERK OF COURT
ALLENDALE COUNTY, S.C.

CERTIFICATE OF SERVICE

I certify that I served the foregoing Answer upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on the 27th day of February, 2014.

By: 
Patrick M. Higgins

W

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ALLENDALE	)	
JOYCE MYERS,	)	CIVIL ACTION NO.: 2013-CP-03-147
	)	
PLAINTIFF,	)	
	)	
v.	)	
	)	ANSWER OF TITLEMAX
TITLEMAX OF SOUTH CAROLINA,	)	OF SOUTH CAROLINA, INC.
INC. AND AFFORDABLE RECOVERY	)	
SOLUTIONS a/k/a ARS,	)	
	)	
DEFENDANTS.	)	

Defendant Titlemax of South Carolina, Inc. answers the Complaint of Plaintiff as follows, stating that each and every allegation of the Complaint not admitted, explained, or qualified is denied;

FOR A FIRST DEFENSE

1. Defendant lacks knowledge or information sufficient to form a belief regarding the allegations of Paragraph 1 of the Complaint.
2. Defendant admits the allegations of Paragraphs 2 and 3 of the Complaint, upon information and belief.
3. Defendant lacks knowledge or information sufficient to form a belief regarding the allegations of Paragraph 4 of the Complaint.
4. The allegations of Paragraph 5 of the Complaint state legal conclusions to which no response is required. To the extent the allegations of Paragraph 5 could be construed to allege negligence or wrongdoing on the part of Defendant, the allegations are denied.
5. Defendant denies the allegations of Paragraph 6 of the Complaint.

6. Paragraph 7 of the Complaint states a legal conclusion to which a response is not required. To the extent the allegations of Paragraph 7 could be construed to allege negligence or wrongdoing on the part of Defendant, the allegations are denied.

7. Defendant denies the allegations of Paragraphs 8 and 9 of the Complaint.

8. Answering Paragraph 10 of the Complaint, the Defendant repeats and realleges its previous responses as if set forth fully herein.

9. Defendant denies the allegations of Paragraphs 11 and 12 of the Complaint.

10. Answering Paragraph 13 of the Complaint, the Defendant repeats and realleges its previous responses as if set forth fully herein.

11. Defendant denies the allegations of Paragraphs 14 and 15 of the Complaint.

12. Answering Paragraph 16 of the Complaint, the Defendant repeats and realleges its previous responses as if set forth fully herein.

13. Defendant denies the allegations of Paragraphs 17 and 18 of the Complaint.

14. Answering Paragraph 19 of the Complaint, the Defendant repeats and realleges its previous responses as if set forth fully herein.

15. Defendant denies the allegations of Paragraphs 20 through 23 of the Complaint, and denies the allegations of the WHEREFORE paragraph.

FOR A SECOND DEFENSE

16. Plaintiff fails to set forth sufficient facts to state a claim for which relief can be granted against Defendant.

FOR A THIRD DEFENSE

17. Plaintiff's claims are barred by the doctrine of self-defense, defense of others, and/or defense of property.

FOR A FOURTH DEFENSE

18. Plaintiff's intentional tort claims are barred due to Plaintiff's provocation as a matter of law.

FOR A FIFTH DEFENSE

19. Plaintiff's intentional tort claims fail due to the doctrine of privilege and / or legal authorization.

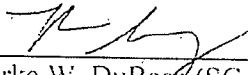
FOR A SIXTH DEFENSE

20. At all times relevant hereto Defendant acted in a reasonable manner and in good faith, by reason of which Plaintiff's claims are barred. Plaintiff is barred from recovery by the doctrine of comparative negligence in that Plaintiff's negligence in causing the claimed damages, if any, was greater than fifty percent (50%). In the alternative, Plaintiff's recovery, if any, should be reduced by virtue of her own negligence.

FOR A SEVENTH DEFENSE

21. Plaintiff's damages, if any, were caused in whole or in part by the actions or omissions of other persons or entities other than these Defendants.

HAYNSWORTH SINKLER BOYD, P.A.

By: 
For Clarke W. DuBose (SC Bar No. 1761)
John H. Tiller (SC Bar. No. 10174)
1201 Main Street, 22nd Floor
PO Box 11889 (29211-1889)
Columbia, SC 29201
(803) 779.3080 - telephone
(803) 765.1243 - fax
rshealy@hsblawfirm.com

September 30, 2013
Columbia, South Carolina

*Attorneys for Defendant Titlemax of South
Carolina Inc.*

DNE 1520197 V.1

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

Joyce Myers,)

Plaintiff,)

v.)

TitleMax of South Carolina, Inc. and)

Affordable Recovery Solutions, a/k/a ARS,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Case Number: 2013-CP-03-0147

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 30th day of September, 2013, caused the foregoing Answer of Defendant TitleMax of South Carolina, Inc. to be served via U.S. mail, postage prepaid, on all counsel of record at the address shown below:

H. Woodrow Gooding, Esquire
Gooding and Gooding
PO Box 1000
Allendale, SC 29810
Attorneys for Plaintiff

Louisa H. Gantt
Louisa H. Gantt

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

JOYCE MYERS,

Plaintiff,

v.

TITLEMAX OF SOUTH CAROLINA, INC.,
AND AFFORDABLE RECOVERY
SOLUTIONS a/k/a ARS,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-03-147

AMENDED ANSWER
AND
CROSS CLAIM
OF
TITLEMAX OF SOUTH
CAROLINA, INC.

Defendant Titlemax of South Carolina, Inc. ("Titlemax") amends its Answer to the Complaint of Plaintiff as follows, stating that each and every allegation of the Complaint not admitted, explained, or qualified is denied:

FOR A FIRST DEFENSE

1. Titlemax lacks knowledge or information sufficient to form a belief regarding the allegations of Paragraph 1 of the Complaint.
2. Titlemax admits the allegations of Paragraphs 2 and 3 of the Complaint, upon information and belief.
3. Titlemax lacks knowledge or information sufficient to form a belief regarding the allegations of Paragraph 4 of the Complaint.
4. The allegations of Paragraph 5 of the Complaint state legal conclusions to which no response is required. To the extent the allegations of Paragraph 5 could be construed to allege negligence or wrongdoing on the part of Titlemax, the allegations are denied.
5. Titlemax denies the allegations of Paragraph 6 of the Complaint.

6. Paragraph 7 of the Complaint states a legal conclusion to which a response is not required. To the extent the allegations of Paragraph 7 could be construed to allege negligence or wrongdoing on the part of Titlemax, the allegations are denied.

7. Titlemax denies the allegations of Paragraphs 8 and 9 of the Complaint.

8. Answering Paragraph 10 of the Complaint, Titlemax repeats and realleges its previous responses as if set forth fully herein.

9. Titlemax denies the allegations of Paragraphs 11 and 12 of the Complaint.

10. Answering Paragraph 13 of the Complaint, Titlemax repeats and realleges its previous responses as if set forth fully herein.

11. Titlemax denies the allegations of Paragraphs 14 and 15 of the Complaint.

12. Answering Paragraph 16 of the Complaint, Titlemax repeats and realleges its previous responses as if set forth fully herein.

13. Titlemax denies the allegations of Paragraphs 17 and 18 of the Complaint.

14. Answering Paragraph 19 of the Complaint, Titlemax repeats and realleges its previous responses as if set forth fully herein.

15. Titlemax denies the allegations of Paragraphs 20 through 23 of the Complaint, and denies the allegations of the WHEREFORE paragraph.

FOR A SECOND DEFENSE

16. Plaintiff fails to set forth sufficient facts to state a claim for which relief can be granted against Titlemax.

FOR A THIRD DEFENSE

17. Plaintiff's claims are barred by the doctrine of self-defense, defense of others, and/or defense of property.

FOR A FOURTH DEFENSE

18. Plaintiff's intentional tort claims are barred due to Plaintiff's provocation as a matter of law.

FOR A FIFTH DEFENSE

19. Plaintiff's intentional tort claims fail due to the doctrine of privilege and / or legal authorization.

FOR A SIXTH DEFENSE

20. At all times relevant hereto Titlemax acted in a reasonable manner and in good faith, by reason of which Plaintiff's claims are barred. Plaintiff is barred from recovery by the doctrine of comparative negligence in that Plaintiff's negligence in causing the claimed damages, if any, was greater than fifty percent (50%). In the alternative, Plaintiff's recovery, if any, should be reduced by virtue of her own negligence.

FOR A SEVENTH DEFENSE

21. Plaintiff's damages, if any, were caused in whole or in part by the actions or omissions of other persons or entities other than Titlemax.

**FOR AN EIGHTH DEFENSE AND BY WAY OF CROSS CLAIM
AGAINST AFFORDABLE RECOVERY SOLUTIONS A/K/A ARS**

22. Titlemax complaining of Defendant Affordable Recovery Solutions a/k/a ARS ("ARS") alleges as follows:

23. Upon information and belief, Plaintiff in this action is a citizen and resident of the County of Allendale, South Carolina.

24. ARS is a for-profit corporation doing business in Allendale County, South Carolina.

25. Plaintiff has instituted an action arising out of damages allegedly incurred as a result of an incident involving the repossession of her vehicle on January 11, 2013.

26. Prior to January 11, 2013, the date of the incident alleged in Plaintiff's Complaint, Titlemax had entered into a Repossession Agreement (hereinafter "Agreement") with ARS for the purpose of employing the services of ARS to repossess the vehicles of individuals in default of their loan agreements with Titlemax. See attached Exhibit A., incorporated by reference herein.

27. Under Paragraph 2 of the Agreement, ARS [warranted] and [agreed] that the repossession "[would] be accomplished without (1) the use of trick, fraud, or other deceptive practices; (2) a breach of peace; (3) force threat or intimidation; or (4) any other unlawful means".

28. Under Paragraph 10 of the Agreement, ARS agreed to defend, indemnify and hold harmless [Titlemax] . . . from any and all claims demands, suits, or civil actions brought by anyone regarding any aspect of the performance of, or failure to perform the repossession . . . including but not limited to, the manner in which the repossession was accomplished . . . as well as all claims of whatever nature including, but not limited to, bodily injury . . ."

29. The Plaintiff's Complaint alleges that Titlemax is liable for her injuries.

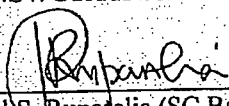
30. Titlemax believes the allegations of Plaintiff's Complaint are covered by the aforementioned Agreement and thus Titlemax is entitled to recover contractual indemnity under the Agreement as well as equitable indemnity from ARS for any settlement and/or judgment awarded to Plaintiff as well as attorney's fees and costs.

WHEREFORE, having fully answered the Complaint of Plaintiff, Titlemax prays that the Complaint be dismissed with costs assessed to Plaintiff. Titlemax further demands judgment

against Defendant Affordable Recovery Solutions a/k/s ARS in the event it is found liable to Plaintiff, with costs, and such other and further relief as the Court may deem proper.

HAYNSWORTH SINKLER BOYD, P.A.

October 30, 2013
Columbia, South Carolina


Roopal S. Ruparelia (SC Bar No. 16003)
Clarke W. DuBose (SC Bar No. 1761)
1201 Main Street, 22nd Floor
PO Box 11889 (29211-1889)
Columbia, SC 29201
(803) 779.3080 - telephone
(803) 765.1243 - fax
rruparelia@hsblawfirm.com
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John H. Tiller (SC Bar No. 10174)
134 Meeting Street
P.O. Box 340 (29402-0340)
Charleston, SC 29401
(843) 722-3366 -telephone
(843) 722-2266 - fax
jtiller@hsblawfirm.com

*Attorneys for Defendant Tillemax of South
Carolina, Inc.*

SAMS & SAMS, P.A.

ATTORNEYS AT LAW

POST OFFICE BOX 849

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BEAUFORT, S. C. 29901-0849

TEL. (843) 524-4189 • FAX (868) 846-5552

wtsams@hargray.com

W. TOLAND SAMS*

*CERTIFIED CIRCUIT COURT MEDIATOR

TALBIRD REEVE SAMS

(1924-2013)

August 20, 2014

Mark B. Tinsley, Esquire
Gooding & Gooding, P.A.
P.O. Box 1000
Allendale, SC 29810

Patrick M. Higgins, Esquire
Howell, Gibson & Hughes, P.A.
P.O. Box 40
Beaufort, SC 29901-0040

Re: Joyce Myers vs. Titlemax of South Carolina, Inc.
and Affordable Recovery Solutions a/k/a ARS
Civil Action No. 13-CP-03-147

Dear Mark and Pat:

Enclosed you will find Answers to Interrogatories and a Response to Request for Production on behalf of the Defendant, Titlemax of South Carolina, Inc. Also enclosed is a CD containing the documents referred to in those discovery responses.

Best regards,

Sincerely,



Toland Sams

WTS/

Enclosures

cc: Roopal S. Ruparelia, Esquire

000026

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ALLENDALE	)	CIVIL ACTION NO. 13-CP-03-147
JOYCE MYERS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWERS TO INTERROGATORIES
	)	
TITLEMAX OF SOUTH	)	
CAROLINA, INC. and	)	
AFFORDABLE RECOVERY	)	
SOLUTIONS a/k/a ARS,	)	
	)	
Defendants.	)	

TO: MARK B. TINSLEY, ESQUIRE, ATTORNEY FOR THE PLAINTIFF

The Defendant, Titlemax of South Carolina, Inc., answering the Plaintiff's Interrogatories, states as follows:

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

Joyce B. Myers
915 College Street
Allendale, SC 29810

No statements. Ms. Myers will testify regarding her knowledge of the allegations in the Complaint.

Jason Ryan Larussa
2040 Commercial Drive
North Augusta, SC 29841

No statements. Mr. Larussa is a representative of Affordable Recovery Solutions will testify regarding the knowledge of the facts and circumstances surrounding the allegations of the Plaintiff's Complaint.

Jeffrey Carter
2040 Commercial Drive
North Augusta, SC 29841

No statements. Mr. Carter is an employee of Affordable Recovery Solutions a/k/a ARS. Mr. Carter was present during the incident and can testify to the facts and circumstances surrounding the incident in question. No written or recorded statements have been obtained.

Ty Tison
Allendale Police Department
217 Flat Street East
Allendale, SC 29810

No statements. Tison is listed as the reporting officer on the Incident Report and can testify to the facts and circumstances surrounding the incident in question.

Gwen Bulington
2513 Galleria Pointe Circle
Rock Hill, SC 29730

No statements. Gwen Bulington is an employee of Titlemax and can testify regarding the terms of the repossession agreement between Titlemax of South Carolina, Inc. and Affordable Recovery Solutions and Plaintiff's account at Titlemax.

Cheryl Priester
162 Hemlock Road
Barnwell, SC 29812

No statements. Cheryl Priester is an employee of Titlemax and can testify regarding the terms of the repossession agreement between Titlemax of South Carolina, Inc. and Affordable Recovery Solutions and Plaintiff's account at Titlemax.

Roderick Liggins
1003 Ossabaw Ct, 38 A
Augusta, GA 30906

No statements. Roderick Liggins is an employee of Titlemax and can testify regarding the terms of the repossession agreement between Titlemax of South Carolina, Inc. and Affordable Recovery Solutions and Plaintiff's account at Titlemax.

Taylor Reid
8 Queen Street
Barnwell, SC 29812

No statements. Taylor Reid is an employee of Titlemax and can testify regarding the terms of the repossession agreement between Titlemax of South Carolina, Inc. and Affordable Recovery Solutions and Plaintiff's account at Titlemax.

Any witness identified by the Plaintiff or the Defendant Affordable Recovery Solutions in response to discovery.

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

Titlemax of South Carolina, Inc. loan file of Joyce B. Myers (Account No. 21451359)

3. **Set forth names and addresses of all insurance companies which have liability, excess liability and/or underinsured insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability, excess liability and/or underinsured coverage provided in each policy.**

Garage Services and Equipment Dealers Liability Association of America, Inc.
8722 South Harrison St.
Sandy, UT 84070
Policy Number: PRO4099
Policy Limits: \$1,000,000 Occurrence Limit
\$2,000,000.00 Aggregate Limit

Wausau Underwriters Insurance Company
P.O. Box 8017
Wausau, WI 54402
Policy Number: TBJ-Z91-455037-032
\$1,000,000 each occurrence limit

4. **List the names and addresses of any expert witnesses who the party proposes to use as a witness at the trial of the case.**

None at this time. This Defendant reserves the right to retain an expert and will supplement its response to this interrogatory accordingly.

5. **For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.**

See Answer to Interrogatory #1 above.

6. **Set forth any other excess liability coverage that may be applicable to this claim.**

None.

7. **Provide the name and address of the towing company Defendants hired to repossess Plaintiff's vehicle on or around January 11, 2013.**

Affordable Recovery Solutions a/k/a ARS

SAMS & SAMS, P.A.

BY: W. Toland Sams

W. Toland Sams

P.O. Box 849

Beaufort, SC 29901

(843) 524-4189

Attorneys for the Defendant

Titlemax of South Carolina, Inc.

Beaufort, South Carolina

August 20, 2014

Certificate of Mailing

The undersigned hereby certifies that a true copy of the foregoing document has been served upon all counsel of record by mailing a copy thereof properly addressed and with sufficient postage affixed thereto this 20th day of August, 2014.

W. Toland Sams
W. Toland Sams

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ALLENDALE	)	CIVIL ACTION NO. 13-CP-03-147
JOYCE MYERS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	RESPONSE TO
	)	REQUEST FOR PRODUCTION
	)	
TITLEMAX OF SOUTH	)	
CAROLINA, INC. and	)	
AFFORDABLE RECOVERY	)	
SOLUTIONS a/k/a ARS,	)	
	)	
Defendants.	)	

TO: MARK B. TINSLEY, ESQUIRE, ATTORNEY FOR THE PLAINTIFF

The Defendant, Titlemax of South Carolina, Inc., responding to the Plaintiff's Request for Production, states as follows:

1. **Any and all photographs, plats, sketches or other prepared documents that relate to the claim of the Plaintiff as set forth in the Complaint.**

See attached Titlemax of South Carolina, Inc. loan file of Joyce B. Myers (Account No. 21451359)

2. **All statements taken by or on behalf of the Defendants and/or their insurance carrier in the investigation of this incident.**

None.

3. **All statements or recordings of witnesses or persons who have knowledge of any facts, incident report, or other documents, writings or recordings pertaining to the claims in this case as set forth in the Complaint.**

None in the possession of this Defendant.

4. **A copy of the declaration page on any policy of liability insurance, including excess liability insurance that may apply to this matter.**

See attached Policy Declarations for Wausau Insurance Companies policy number TBJ-Z91-455037-032.

5. **Any documents received pursuant to a Subpoena served in this matter or received pursuant to a Subpoena served in another matter which, will relate in any manner to the claim or defense in this case.**

None

6. **Any documents (as defined in S.C.R.C.P. 34(a), and tangible things of whatever nature and description which you intend to introduce into evidence or to use as impeachment or evidence at trial.**

This Defendant has not made a determination as to the information sought in this request.

7. **Any and all documents identified or relied upon by Defendants in answering Plaintiff's Interrogatories to Defendants.**

Defendant objects to this request on the grounds it seeks information that is protected by attorney-client and/or work product privileges. Without waiving the objection, please refer to the documents identified and produced in response to Request for Production #1 and #4.

8. **Please identify any and all communications (whether written or oral) between Defendants and the towing company hired to repossess Plaintiffs vehicle prior to the commencement of this lawsuit.**

See attached Titlemax of South Carolina, Inc. loan file of Joyce B. Myers (Account No. 21451359)

SAMS & SAMS, P.A.

BY: W. Toland Sams

W. Toland Sams

P.O. Box 849

Beaufort, SC 29901

(843) 524-4189

Attorneys for the Defendant

Titlemax of South Carolina, Inc.

Beaufort, South Carolina

August 20, 2014

Certificate of Mailing

The undersigned hereby certifies that a true copy of the foregoing document has been served upon all counsel of record by mailing a copy thereof properly addressed and with sufficient postage affixed thereto this 20th day of August, 2014.

W. Toland Sams
W. Toland Sams

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ALLENDALE) CIVIL ACTION NO: 13-CP-03-147

JOYCE MYERS,)
Plaintiff,)
vs.) INTERROGATORIES TO PLAINTIFF
TITLEMAX OF SOUTH CAROLINA,)
INC. AND AFFORDABLE)
RECOVERY SOLUTIONS a/k/a ARS,)
Defendants.)

TO: H. WOODROW GOODING AND MARK B. TINSLEY, ESQUIRE,
ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant, above named,
hereby requires the Plaintiff, to answer under oath the Interrogatories hereinafter
set forth within thirty (30) days after the serving thereof in accordance with Rule
33(b) of the South Carolina Rules of Civil Procedure.

1. Give the names and addresses of all persons known to the Plaintiff or her counsel to be a witness concerning any facts of the case and indicate whether or not written or recorded statements have been taken from these witnesses and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches, videotapes or other prepared documents in the possession of the Plaintiff or her counsel that relates to the prosecution of this action.
3. Set forth the names and addresses of all physicians who have treated the Plaintiff, and all the hospitals to which the Plaintiff has been committed as a result of the injuries complained of and also set forth a statement of all medical costs.
4. Set forth here a statement of all other damages claimed to have been sustained by the Plaintiff.

5. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case, state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

6. For each and every person known to the Plaintiff or her counsel to be a witness concerning the facts of the case, set forth a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

7. Pursuant to the Mandatory Insurer Reporting Law (Section 111 of Public Law 110-173), you are required to provide the following information if you are pursuing a claim for bodily injury, medical payments, workers' compensation or no-fault benefits:

(a) First and Last name;

(b) Gender;

(c) Date of Birth;

(d) Social Security Number; and

(e) Medicare Health Insurance Claim Number (if you have one).

8. State if the Plaintiff has lost any time from her business or occupation since the incident referred to in the Complaint, and if so, state:

(a) Cause of such loss of time;

(b) The number of days lost and dates;

(c) The amount of lost wages or income lost.

9. If employed at the time of this incident referred to in the Complaint, state:

(a) The name and address of the employer;

(b) The position held and the nature of the work performed;

(c) Average weekly wages for preceding year.

10. State whether or not a claim for worker's compensation benefits has been asserted in connection with any injury and/or condition allegedly sustained on January 11, 2013. If employed since the incident referred to in the Complaint, state:

- (a) The name and address of the present employer;
- (b) The position held and nature of work being performed;
- (c) The hours worked per week;
- (d) Present weekly wages, earnings, income or profit;
- (e) The name of your immediate boss, foreman or other superior to whom you are responsible.

11. With respect to the injuries allegedly suffered, state:

- (a) The extent and nature of any disability;
- (b) Describe in detail the location of any pain suffered and the duration and intensity of such pain;
- (c) Whether or not the Plaintiff suffered any restraint from normal activities due to the injuries allegedly suffered, and describe in detail the nature of such restraint and the dates the pain was suffered.

12. Describe in detail and with complete specificity each and every accidental injury and/or condition the Plaintiff sustained and/or suffered from before the incident in question which at any time required medical care and attention. As part of this description, give dates, time and the names and addresses of the attending physicians.

13. Describe in detail and with complete specificity each and every accidental injury the Plaintiff has sustained since the incident in question that has required medical care and attention. As part of this description, give dates, times and names and addresses of attending physicians.

14. State whether or not the Plaintiff has ever made a claim for injuries prior to the incident in question, and if so, the nature of the claim, what attorney represented the Plaintiff, and state whether or not a lawsuit was filed and whether or not such lawsuit was settled.

15. State whether or not the Plaintiff has had a claim for injuries sustained since the incident in question, and if so, what attorney represented the Plaintiff, and state whether or not a lawsuit was filed and

whether or not such lawsuit was settled.

16. Had the Plaintiff had anything to drink which had any alcoholic content within five (5) hours preceding the incident? If so, set forth in detail what type of liquid and the alcoholic content thereof, and the quantity ingested over what period.

17. Set forth in detail any statement made in the Plaintiff's presence by the Defendant within one (1) hour or later after the incident which is the subject of this action.

18. Set forth in detail any written or oral statements which the Plaintiff made to the Defendant, investigating police officer, or other persons at the scene of the incident following the same, and to whom such statements were given.

19. Give the names and addresses of all physicians who have treated the plaintiff and all hospitals to which the plaintiff has been committed or received treatment within the last ten (10) years.

20. Please set forth the names and addresses of all physicians or other health care practitioners who have treated the Plaintiff, and hospitals and other health care facilities to which the Plaintiff has been committed for any length of time as a result of injuries sustained by the Plaintiff prior to the incident which is the subject of this litigation.

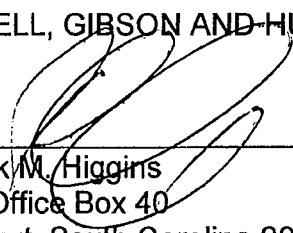
21. Has the Plaintiff ever been arrested? If so, give:

- (a) the date of the arrest;
- (b) the name of the jurisdiction conducting the arrest;
- (c) the nature of the charges, and
- (d) the disposition of the charges.

These Interrogatories shall be deemed to continue from the time of service until the time of trial.

SIGNATURE PAGE FOLLOWS

HOWELL, GIBSON AND HUGHES, P.A

BY: 

Patrick M. Higgins

Post Office Box 40

Beaufort, South Carolina 29901

(843) 522-2400

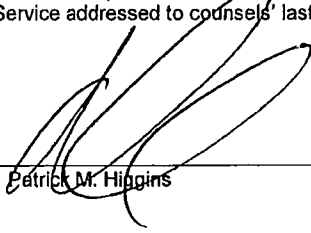
Attorney for Affordable Recovery Solutions

Beaufort, South Carolina

February 27, 2014

CERTIFICATE OF MAILING

I certify that I served the foregoing Interrogatories to Plaintiff upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on the 27th day of February, 2014.

By: 

Patrick M. Higgins

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ALLENDALE) CIVIL ACTION NO: 13-CP-03-147

JOYCE MYERS,

Plaintiff,

vs.

REQUEST FOR PRODUCTION TO
PLAINTIFF

TITLEMAX OF SOUTH CAROLINA,
INC. AND AFFORDABLE
RECOVERY SOLUTIONS a/k/a ARS,

Defendants.

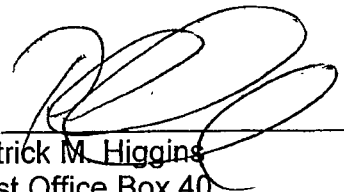
TO: H. WOODROW GOODING AND MARK B. TINSLEY, ESQUIRE,
ATTORNEY FOR JOYCE MYERS:

The Defendant above named, hereby requires the Plaintiff, Joyce Myers, to produce documents hereinafter set forth within thirty (30) days after the serving thereof, in accordance with Rule 34 of the South Carolina Rules of Civil Procedure.

1. Copies of any medical records, medical reports and/or medical bills in connection with the incident which is the subject matter of this litigation.
2. Copies of any and all medical bills, medical reports, progress notes, etc., and any and all other documentation concerning the treatment, condition, diagnosis, prognosis for the Plaintiff, relating to the injuries presently complained of and/or pre-existing conditions or injuries of the Plaintiff. This should include the records, reports, bill, etc. of any and all physicians, nurses, physical therapists, chiropractors, etc., who may have been involved or are presently involved in the treatment, diagnosis, etc. for injuries and/or conditions of the Plaintiff pre-existing the incident which is the subject matter of this litigation, as well as all injuries and/or conditions resulting from and/or subsequent to the incident which is the subject of this litigation.
3. Any and all documentation other than the above requested as relates to any special damages that the Plaintiff in this action may claim.

4. Copies of any and all written or recorded statements made by any witness, party of other person having relevant information or knowledge of any fact or circumstances in this action.
5. Copies of any and all documents and/or other materials relating to or referring to the matters complained of in this action.
6. Copies of any and all photographs, sketches, transparencies, and/or other drawings of any person, party or any other object or thing relating to or referring to the incident which is the subject of this litigation.
7. Copies of any and all reports, whether written or otherwise recorded, made by any expert or experts whom the Plaintiff expects to call as an expert at trial.
8. Copies of statements or other documentation verifying lost wages, loss of income, etc., alleged by the Plaintiff.
9. All medical records, reports, office notes, nurse's notes, correspondence and memoranda pertaining to the treatment of the Plaintiff at any hospital or by any physician, therapist, chiropractor, psychiatrist or other medical practitioner for any injury or illness during the past ten (10) years, exclusive of those documents produced in response to Requests number 1 and 2.
10. Copies of the Plaintiff's Federal and State income tax returns for the past five (5) years if the Plaintiff claims to have suffered any loss of earnings or loss of earning capacity as a result of the incident which is the subject of this action.
11. Copies of any releases, agreements or covenants given or entered into by or on behalf of the Plaintiff which pertain to claims for injuries or damages of any kind sustained by the Plaintiff as a result of the incident which is the subject of this litigation.
12. Copies of each and every document, record or other tangible evidence the Plaintiff intends to introduce at trial and/or use to prove the allegations of her complaint.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Patrick M. Higgins
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400

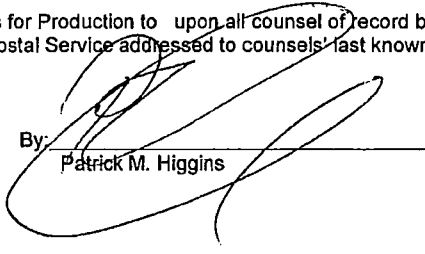
Attorney for Affordable Recovery
Solutions

Beaufort, South Carolina

February 26, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Requests for Production to upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on _____ day of February, 2014.

By: 

Patrick M. Higgins

000040

STATE OF SOUTH CAROLINA
COUNTY OF ALLENDALE

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 13-CP-03-147

JOYCE MYERS,
Plaintiff,

vs.

TITLEMAX OF SOUTH CAROLINA,
INC. AND AFFORDABLE
RECOVERY SOLUTIONS a/k/a ARS,
Defendants.

SUPPLEMENTAL
INTERROGATORIES TO PLAINTIFF

TO: H. WOODROW GOODING AND MARK B. TINSLEY, ESQUIRE,
ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant, Affordable Recovery Solutions a/k/a ARS, above named, hereby require the Plaintiff to answer under oath the Supplemental Interrogatories hereinafter set forth within thirty (30) days after the serving thereof in accordance with Rule 33(b) of the South Carolina Rules of Civil Procedure.

1. Please state, with specificity, what profanity the Defendant's employee allegedly shouted at the Plaintiff, as alleged in Paragraph 6 of the Plaintiff's Complaint.
2. Please state, with specificity, which employee of the Defendant allegedly struck the Plaintiff, as alleged in Paragraph 6 of the Plaintiff's Complaint.
3. Please state, with specificity, what area of the body the Defendant's employee allegedly struck the Plaintiff, as alleged in Paragraph 6 of the Plaintiff's Complaint.
4. Please state, with specificity, in what manner the Defendant's employee allegedly "threaten" the Plaintiff, as alleged in Paragraph 8 (c) of the Plaintiff's Complaint.

5. Please state, with specificity, in what manner the Defendant's employee allegedly "harassed" the Plaintiff, as alleged in Paragraph 8 (d) of the Plaintiff's Complaint.

6. Please state, with specificity, in what manner the Defendant's employee allegedly "inflicted forcible contact on the Plaintiff's person", as alleged in Paragraph 17 of the Plaintiff's Complaint.

7. Please state, with specificity, what evidence the Plaintiff has that the Defendant's employee allegedly trespassed upon the Plaintiff's property at the time of the alleged incident.

These Interrogatories shall be deemed to continue from the time of service until the time of trial.

HOWELL, GIBSON AND HUGHES, P.A

BY: 

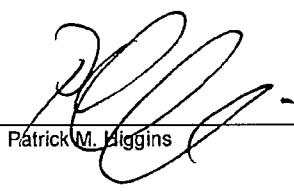
Patrick M. Higgins
Post Office Box 40
Beaufort, South Carolina 29901
(843) 522-2400
Attorney for Affordable Recovery Solutions

Beaufort, South Carolina

May 22, 2014

CERTIFICATE OF MAILING

I certify that I served the foregoing Interrogatories to Plaintiff upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on the 22nd day of May, 2014.

By: 

Patrick M. Higgins

STATE OF SOUTH CAROLINA
COUNTY OF ALLENDALE

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 13-CP-03-147

JOYCE MYERS,
Plaintiff,

vs.

TITLEMAX OF SOUTH CAROLINA,
INC. AND AFFORDABLE
RECOVERY SOLUTIONS a/k/a ARS,
Defendants.

SECOND SUPPLEMENTAL
INTERROGATORIES TO PLAINTIFF

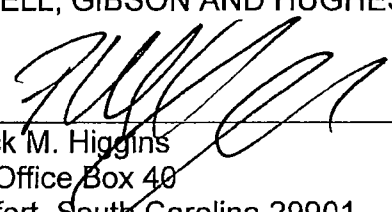
TO: H. WOODROW GOODING AND MARK B. TINSLEY, ESQUIRE,
ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant, Affordable Recovery Solutions a/k/a ARS, above named, hereby require the Plaintiff to answer under oath the Supplemental Interrogatories hereinafter set forth within thirty (30) days after the serving thereof in accordance with Rule 33(b) of the South Carolina Rules of Civil Procedure.

1. Please state what psychiatric care and/or counseling the Plaintiff has received for the injuries she is claiming in this case.

These Interrogatories shall be deemed to continue from the time of service until the time of trial.

HOWELL, GIBSON AND HUGHES, P.A

BY: 

Patrick M. Higgins
Post Office Box 40
Beaufort, South Carolina 29901
(843) 522-2400
Attorney for Affordable Recovery Solutions

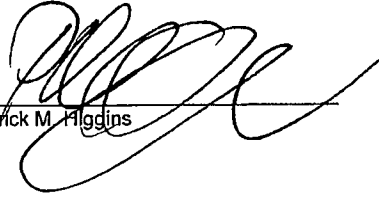
Beaufort, South Carolina
June 6, 2014

CERTIFICATE OF MAILING

I certify that I served the foregoing Supplemental Interrogatories to Plaintiff upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on the 6th day of June, 2014.

By: _____

Patrick M. Higgins

A handwritten signature in black ink, appearing to read 'P. Higgins', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

STATE OF SOUTH CAROLINA
COUNTY OF ALLENDALE

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 13-CP-03-147

JOYCE MYERS,

Plaintiff,

vs.

REQUESTS FOR ADMISSION
TO PLAINTIFF

TITLEMAX OF SOUTH CAROLINA,
INC. AND AFFORDABLE
RECOVERY SOLUTIONS a/k/a ARS,

Defendants.

**TO: H. WOODROW GOODING, ESQUIRE AND MARK B. TINSLEY,
ESQUIRE, ATTORNEY FOR PLAINTIFF:**

The Defendant, Affordable Recovery Solutions a/k/a ARS, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, hereby serves upon you its First Set of Requests for Admission. You are required to admit or deny the Requests set forth herein not later than thirty (30) days following the date of service hereof. Failure to admit or deny the truth of any Request contained herein within the time provided will constitute an admission.

1. Admit that the only medical treatment that the Plaintiff received for her alleged injuries in this case was at Laffitte and Warren Medical Center, and the bill was for a total of ten (\$10.00) dollars.
2. Admit that the Plaintiff has not received any psychiatric care or counseling for any of the injuries she is claiming in this case.

3. Admit that the Plaintiff was behind in her payment to Titlemax at the time of the incident in question.
4. Admit that the Defendant Affordable Recovery Solutions was legally on the Plaintiff's property at the time of the incident in question in order to repossess the Plaintiff's vehicle on behalf of Titlemax.

HOWELL, GIBSON & HUGHES, P.A.

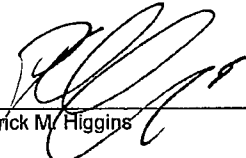
By: 
Patrick M. Higgins
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Affordable Recovery
Solutions

Beaufort, South Carolina

May 22, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Requests for Admission upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on May 22, 2014.

By: 
Patrick M. Higgins

IN THE COURT OF COMMON PLEAS

COUNTY OF ALLENDALE

FILED FOR RECORDS
2014 SEP -2 AM 9:44
CLERK OF COURT
ALLIANCE COUNTY, S.C.
Clerk

SCCA/233 (10/2004)

000047

STATE OF SOUTH CAROLINA
COUNTY OF ALLENDALE

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 13-CP-03-147

JOYCE MYERS,
Plaintiff,

vs.

TITLEMAX OF SOUTH CAROLINA,
INC. AND AFFORDABLE
RECOVERY SOLUTIONS a/k/a ARS,
Defendants.

MOTION TO COMPEL ARBITRATION

FILED FOR RECORD
2014 SEP -2 AM 9:44
CLERK OF COURT
ALLENDALE COUNTY, S.C.

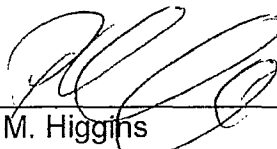
TO: H. WOODROW GOODING AND MARK B. TINSLEY, ESQUIRE,
ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, Affordable Recovery Solutions, a/k/a ARS, by and through its undersigned counsel, Howell, Gibson and Hughes, P.A., will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, before the presiding Circuit Court Judge, or such other person as may be designated to hear such motions, for an Order of this Court for orders in the following particulars:

- a. Dismissing the pending proceedings before the Court of Common Pleas;
- b. Compelling that the disputes between the parties be submitted to arbitration before the American Arbitration Association.

The within motion, made pursuant to the provisions of the South Carolina Rules of Civil Procedure, is grounded upon the fact that the parties have heretofore agreed upon submission of these disputes to mandatory arbitration [See Exhibits attached hereto].

HOWELL, GIBSON & HUGHES, P.A.

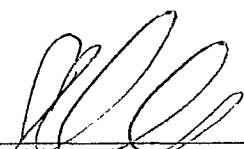
By: 
Patrick M. Higgins
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendant, Affordable
Recovery Solutions a/k/a ARS

Beaufort, South Carolina

August 27, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Notice of Motion and Motion to Compel Settlement upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on the 27th day of August, 2014.

By: 
Patrick M. Higgins

RULE 11 CERTIFICATION

I certify pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that

- ☒ I have consulted with opposing counsel and have been unable to resolve the matter.
- ☐ Consultation with opposing counsel would serve no useful purpose, or is not required.
- ☐ Consultation with opposing counsel could not be timely held
- ☐ I certify that there is no duty of consultation for the attached motion (to dismiss, for summary judgment, for new trial, for judgment NOV, in real estate foreclosures, or with pro se litigants.)

Record No.: 5435151

Supervised Loan Agreement

Date 08/15/2008

THIS AGREEMENT IS SUBJECT TO AN ARBITRATION PROVISION. BY ENTERING THIS AGREEMENT YOU WILL WAIVE CERTAIN RIGHTS. PLEASE READ THE WAIVER OF JURY TRIAL AND ARBITRATION PROVISION CAREFULLY TO ASSESS YOUR RIGHTS TO RESOLVE DISPUTES.

SUPERVISED LENDER TITLEMAX OF SOUTH CAROLINA, INC.		PHONE NUMBER (803) 541-3802	FAX NUMBER (803) 541-8051
STREET ADDRESS 10520 DUNEARTON BLVD		CITY BARNWELL	STATE SC
SUPERVISED LENDER HOURS OF OPERATION: Monday to Friday 9 A.M. to 7 P.M., Saturday 10 A.M. to 4 P.M., CLOSED ON SUNDAY		ZIP CODE 29812	PRIMARY CONTACT PERSON mike fraebel

BORROWER FIRST NAME JOYCE	MIDDLE NAME BUTTS	LAST NAME MYERS	SOCIAL SECURITY NO XXX-XX-2365	DRIVER'S LICENSE NO./STATE ID NO. 007840858
RESIDENCE STREET ADDRESS 915 COLLEGE ST		CITY ALLENDALE	STATE SC	ZIP CODE 29810
HOME PHONE (803) 684-3871	CELL PHONE (803) 397-4517	SEX FEMALE	HEIGHT 511	DATE OF BIRTH 09/11/1970

BORROWER FIRST NAME	MIDDLE NAME	LAST NAME	SOCIAL SECURITY NO	DRIVER'S LICENSE NO./STATE ID NO.
RESIDENCE STREET ADDRESS		CITY	STATE	ZIP CODE
HOME PHONE	CELL PHONE	SEX	HEIGHT	DATE OF BIRTH

MOTOR VEHICLE TITLE CERTIFICATE NUMBER 770030138054928		STATE SC	VEHICLE IDENTIFICATION NUMBER (VIN) JN1CA21D7VM627771	LICENSE PLATE NUMBER 332 TEM
YEAR 1997	MAKE NISSAN	MODEL MAXIMA SE	COLOR BURGANDY	Account No. NA
Name of Lienholder (if applicable) NA				Payoff Amount as of Today NA

In this Supervised Loan Agreement ("Loan Agreement") the words "you" and "your" mean the Borrower(s), identified above who have signed it. The words "Supervised Lender," "we," "us" and "our" mean TitleMax of South Carolina, Inc. d/b/a TitleMax. The words "collateral" and "Motor Vehicle" mean the Motor Vehicle identified above.

You promise to pay us the principal amount of this loan \$1,615.00, plus interest from the date of this Loan Agreement on the unpaid principal balance of the loan at the rate of 155.88% per annum (the "Contract Rate"), and other permitted charges. The face amount of the Loan Agreement and principal proceeds loaned to you by us is set forth in the Amount Financed disclosure. Interest is calculated according to the simple interest method. The finance charge is calculated on the assumption that all payments will be made when due. You promise to timely pay us the principal and interest due in monthly installments of \$221.83 as set forth below in the Payment Schedule. On each Payment Date you will pay us, at the address indicated above, or at such other address as we direct you in writing, the amount stated. If your payment is due on a date in which we are not open for business then you agree to pay us on the next business day, and we will credit any payment received on our next business day, as if it were received on the appropriate date. You grant us a security interest in the Motor Vehicle, and have delivered to us the Keys. In the event you payoff the first lien during the term of this Loan Agreement, you agree to deliver the Motor Vehicle Certificate of Title to us. We do not accept personal checks.

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate. 156.0646 %	The dollar amount the credit will cost you. \$ 3,708.98	The amount of credit provided to you or on your behalf. \$ 1,615.00	The amount you will have paid after you have made all payments as scheduled. \$ 5,323.98

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
23	221.83	Monthly Beginning On 8/15/2008.
1	221.89	8/15/2010

Security: You are giving a security interest in the Motor Vehicle.
Prepayment: If you pay off early, you will not have to pay a penalty.

See the terms below and on the other pages of this Loan Agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Itemization of Amount Financed of \$ 1,615.00
 \$ 1,600.00 Amount given to you directly
 \$ 0.00 Amount paid on account no. with us

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 804-5368.



FILED FOR RECORD
2014 SEP -2 AM 9:44

Additional Terms and Conditions of this Supervised Loan Agreement

Amount paid to others on your behalf

\$ 15.00 to public officials

\$ 0.00 to SC DMV

Prepayment. You may prepay your obligations under this Loan Agreement in full or in part at any time and you will not incur an additional fee, charge or penalty. In addition, if you prepay the Amount Financed prior to the close of business on the business day immediately following the date of this Loan Agreement, we will rebate and refund to you the interest we have earned.

Additional Charges. You agree to pay to us \$ 15.00 for official fees and taxes incurred for registering the Motor Vehicle Certificate of Title.

Default. You will be in default under this Loan Agreement if you fail to make a payment as required by this Loan Agreement or if the prospect of payment, performance, or realization of collateral is significantly impaired. Upon default, we may accelerate the balance owing hereunder, unless you timely cure such default. Upon your first default because of your failure to make a required payment, we will not accelerate maturity of the unpaid balance of the obligation, nor take possession of the Motor Vehicle or otherwise enforce a security interest in the Motor Vehicle until twenty days after giving you notice of your right to cure. Upon any subsequent default which you fail to cure, we may accelerate the full balance of your obligations to us. Upon default we may take possession of the Motor Vehicle without judicial process as allowed by South Carolina Code § 37-6-112. Notwithstanding the foregoing, under South Carolina Code § 37-5-111, you may voluntarily surrender possession of your Motor Vehicle to us any time after default by leaving the Motor Vehicle at our store during normal business hours. If you voluntarily surrender the Motor Vehicle to us, we may accelerate maturity of the obligation and enforce the obligation and our security interest in the Motor Vehicle at any time after default.

Governing Law and Assignment. This Loan Agreement shall be governed by the laws of the State of South Carolina, except that the Waiver of Jury Trial and Arbitration Provision is governed by the Federal Arbitration Act ("FAA"). We may assign or transfer this Loan Agreement or any of our rights hereunder. You shall pay us until you receive notification of assignment of rights to payment.

WAIVER OF JURY TRIAL AND ARBITRATION PROVISION. Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overrules an arbitrator's decision. **THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:**

1. For purposes of this Waiver of Jury Trial and Arbitration Provision (hereinafter the "Arbitration Provision"), the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement (including the Arbitration Provision); the information you gave us before entering into this Loan Agreement, any past agreement or agreements between you and us, and/or any renewal of this Loan Agreement; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (j) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

2. You acknowledge and agree that by entering into this Arbitration Provision:

- (a) YOU ARE WAIVING YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;
- (b) YOU ARE WAIVING YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and
- (c) YOU ARE WAIVING YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.

3. Except as provided in Paragraph 6 below, all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**

4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit

Any comments or questions may be directed to Customer Service at the following toll-free number: **(800) 804-5368**

TM-SC-Customer Agr-2nd Lien-V 1-07 20 2007

Page 2 of 3

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Additional Terms and Conditions of this Supervised Loan Agreement

has been filed. Regardless of who demands arbitration, you shall have the right to select either of the following arbitration organizations to administer the arbitration, the American Arbitration Association (1-800-778-7879) <http://www.adr.org> or National Arbitration Forum (1-800-474-2371) <http://www.arb-forum.com>. However, the parties may agree to select a local arbitrator who is an attorney, retired judge, or arbitrator registered and in good standing with an arbitration association and arbitrate pursuant to such arbitrator's rules. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization or your desire to select a local arbitrator. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Loan Agreement or the Arbitration Provision, including the limitations on the arbitrator below. You may obtain a copy of the rules and procedures by contacting the arbitration organization listed above.

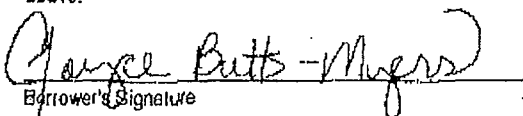
5. Regardless of who demands arbitration, we will advance your portion of the expenses associated with the arbitration, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the FAA, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitration hearing will be conducted in the county of your residence, or within 30 miles from such county, or in the county in which the transaction under this Loan Agreement occurred, or in such other place as shall be ordered by the arbitrator. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award may be filed with any court having jurisdiction.

6. All parties, including related third parties, shall retain the right to seek adjudication in a small claims tribunal for disputes within the scope of such tribunal's jurisdiction. Any dispute, which cannot be adjudicated within the jurisdiction of a small claims tribunal, shall be resolved by binding arbitration. Any appeal of a judgment from a small claims tribunal shall be resolved by binding arbitration. Furthermore, nothing in this Arbitration Provision shall limit the right of you or us (a) to foreclose against the Motor Vehicle by the exercise of any power under the Loan Agreement or under applicable law, (b) to exercise self-help remedies such as set off or repossession, or (c) to obtain provisional or ancillary remedies such as pre-judgment seizure of property, delinquent, replevin, or injunctive relief, or to seek or obtain any other traditional equitable relief which does not claim money damages from a court having jurisdiction. The institution and maintenance by you or us of any action set forth in this Paragraph 6 shall not constitute a waiver of the right to submit any dispute to arbitration, including any counterclaim asserted.

7. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA. If a final non-appealable judgment of a court having jurisdiction over this transaction finds, for any reason, that the FAA does not apply to this transaction, then our agreement to arbitrate shall be governed by the arbitration law of the State of South Carolina.

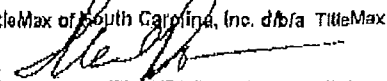
8. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if your obligations have been renewed, prepaid, paid or discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing.

By signing this Loan Agreement you acknowledge that it was filed in before you did so and that you have received an exact copy of it. You also warrant and represent that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code. You verify that you are the rightful owner of the Motor Vehicle. You verify that you are 18 years of age or older. You further acknowledge that you have read, understand, and agree to all of the terms of this Loan Agreement, including the "Waiver of Jury Trial and Arbitration Provision" above.


Borrower's Signature

Borrower's Signature

TitleMax of South Carolina, Inc. d/b/a TitleMax

By 

its employee

Account Number: 5435151

THIS DOCUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF, AND PLEDGED AS COLLATERAL TO, MERRILL LYNCH MORTGAGE CAPITAL INC., AS AGENT FOR ITS OWN BENEFIT AND THE BENEFIT OF THE LENDERS

SAMS & SAMS, P.A.

ATTORNEYS AT LAW

POST OFFICE BOX 849

811 CRAVEN STREET

BEAUFORT, S. C. 29901-0849

TEL. (843) 524-4189 • FAX (888) 846-5552

wsams@hargray.com

W. TOLAND SAMS*

*CERTIFIED CIRCUIT COURT MEDIATOR

TALBIRD REEVE SAMS

(1924-2013)

February 19, 2015

The Honorable Elaine Sabb
Allendale County Clerk of Court
P.O. Box 126
Allendale, SC 29810-0126

Re: Joyce Myers vs. Titlemax of South Carolina, Inc.
and Affordable Recovery Solutions a/k/a ARS
Civil Action No. 13-CP-03-147

Dear Ms. Sabb:

Enclosed you will find the original and a copy of a Motion to Amend and Compel Arbitration in connection with the above-referenced case. Also enclosed is our firm's check in the amount of \$25.00 in payment of the filing fee. Please file the original and return the copy to me with the filing information noted thereon. I have enclosed a postage-paid, return envelope for your convenience.

By copy of this letter, I am also serving the other counsel of record with a copy of the enclosed Motion to Amend and Compel Arbitration.

Best regards,

Sincerely,

Toland Sams

WTS/

Enclosures

cc: Mark B. Tinsley, Esquire
Patrick M. Higgins, Esquire
Roopal S. Ruparelia, Esquire

000053

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

Joyce Myers,
☐ Plaintiff

v.

Titlemax Of S.C., Inc., Et Al.,
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
13-CP-03-147

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Mark B. Tinsley, Bar No.
Address:
P.O. Box 1000, Allendale, SC 29810
phone: 803-584-7676 fax: 803-584-3614
e-mail: mark@goodingandgodding.com other:

Defendant's Attorney:
W. Toland Sams, Bar No. 4919
Address:
P.O. Box 849, Beaufort, SC 29901
phone: 843-524-4189 fax: 888-846-5552
e-mail: wtsams@hargray.com 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

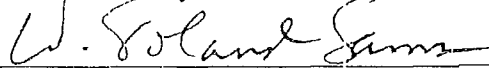
Nature of Motion: Motion to Amend Answer and Compel Arbitration

Estimated Time Needed: 20 minutes 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

February 19, 2015
Date submitted

SECTION III: Motion Fee

- ☒ **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	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ALLENDALE	)	CIVIL ACTION NO. 13-CP-03-147
	)	
JOYCE MYERS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION TO AMEND AMENDED
	)	ANSWER AND TO COMPEL
	)	ARBITRATION
TITLEMAX OF SOUTH	)	
CAROLINA, INC. and	)	
AFFORDABLE RECOVERY	)	
SOLUTIONS a/k/a ARS,	)	
	)	
Defendants.	)	

TO: MARK B. TINSLEY, ESQUIRE, ATTORNEY FOR THE PLAINTIFF

PLEASE TAKE NOTICE that the undersigned will make application to the Court on the tenth (10th) day after service hereof, or as soon thereafter as this matter may be heard, for an Order allowing the Defendant Titlemax of South Carolina, Inc. to amend its Amended Answer and Cross-claim to assert the affirmative defense of arbitration. A copy of the proposed Second Amended Answer and Cross-claim is attached hereto as an exhibit. Further, the undersigned seeks an Order compelling the Plaintiff to submit all claims in this action to mandatory arbitration as provided for in the contract (Supervised Loan Agreement) entered into between the Plaintiff and Titlemax of South Carolina, Inc. and dismissing or staying this action pending mandatory arbitration. A copy of the Supervised Loan Agreement is attached to the proposed Second Amended Answer and Cross-claim and made a part hereof. This motion is made pursuant to Rule 15(a), SCRCF upon the grounds that justice so requires the amendment and no party will be prejudiced by the amendment. The undersigned hereby affirms that prior to filing this motion he communicated with opposing counsel and attempted in good faith to resolve the matter contained herein.

SAMS & SAMS, P.A.

BY: W. Toland Sams

W. Toland Sams

P.O. Box 849

Beaufort, SC 29901

(843) 524-4189

Attorneys for the Defendant

Titlemax of South Carolina, Inc.

Beaufort, South Carolina

February 19, 2015

Certificate of Mailing

The undersigned hereby certifies that a true copy of the foregoing document has been served upon all counsel of record by mailing a copy thereof properly addressed and with sufficient postage affixed thereto this 19th day of February, 2015.

W. Toland Sams

W. Toland Sams

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ALLENDALE	)	CIVIL ACTION NO. 13-CP-03-147
	)	
JOYCE MYERS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	SECOND AMENDED ANSWER AND
	)	CROSS-CLAIM OF TITLEMAX OF
TITLEMAX OF SOUTH	)	SOUTH CAROLINA, INC.
CAROLINA, INC. and	)	
AFFORDABLE RECOVERY	)	
SOLUTIONS a/k/a ARS,	)	
	)	
Defendants.	)	

Defendant Titlemax of South Carolina, Inc. ("Titlemax") amends its Answer to the Complaint of Plaintiff as follows, stating that each and every allegation of the Complaint not admitted, explained, or qualified is denied:

FOR A FIRST DEFENSE

- 1) Titlemax lacks knowledge or information sufficient to form a belief regarding the allegations of Paragraph 1 of the Complaint.
- 2) Titlemax admits the allegations of Paragraphs 2 and 3 of the Complaint, upon information and belief.
3. Titlemax lacks knowledge or information sufficient to form a belief regarding the allegations of Paragraph 4 of the Complaint.
4. The allegations of Paragraph 5 of the Complaint state legal conclusions to which no response is required. To the extent the allegations of Paragraph 5 could be construed to allege negligence or wrongdoing on the part of Titlemax, the allegations are denied.
5. Titlemax denies the allegations of Paragraph 6 of the Complaint.

6. Paragraph 7 of the Complaint states a legal conclusion to which a response is not required. To the extent the allegations of Paragraph 7 could be construed to allege negligence or wrongdoing on the part of Titlemax, the allegations are denied.
7. Titlemax denies the allegations of Paragraphs 8 and 9 of the Complaint.
8. Answering Paragraph 10 of the Complaint, Titlemax repeats and realleges its previous responses as if set forth fully herein.
9. Titlemax denies the allegations of Paragraphs 11 through 12 of the Complaint.
10. Answering Paragraph 13 of the Complaint, Titlemax repeats and realleges its previous responses as if set forth fully herein.
11. Titlemax denies the allegations of Paragraphs 14 and 15 of the Complaint.
12. Answering Paragraph 16 of the Complaint, Titlemax repeats and realleges its previous responses as if set forth fully herein.
13. Titlemax denies the allegations of Paragraphs 17 and 18 of the Complaint.
14. Answering Paragraph 19 of the Complaint, Titlemax repeats and realleges its previous responses as if set forth fully herein.
15. Titlemax denies the allegations of Paragraphs 20 through 23 of the Complaint and denies the allegations of the WHEREFORE paragraph.

FOR A SECOND DEFENSE

16. Plaintiff fails to set forth sufficient facts to state a claim for which relief can be granted against Titlemax.

FOR A THIRD DEFENSE

17. Plaintiffs claims are barred by the doctrine of self-defense, defense of others, and/or defense of property.

FOR A FOURTH DEFENSE

18. Plaintiff's intentional tort claims are barred due to Plaintiff's provocation as a matter of law.

FOR A FIFTH DEFENSE

19. Plaintiff's intentional tort claims fail due to the doctrine of privilege and/or legal authorization.

FOR A SIXTH DEFENSE

20. At all times relevant hereto Titlemax acted in a reasonable manner and in good faith, by reason of which Plaintiff's claims are barred. Plaintiff is barred from recovery by the doctrine of comparative negligence in that Plaintiff's negligence in causing the claimed damages, if any, was greater than fifty percent (50%). In the alternative, Plaintiff's recovery, if any, should be reduced by virtue of her own negligence.

FOR A SEVENTH DEFENSE

21. Plaintiff's damages, if any, were caused in whole or in part by the actions or omissions of other persons or entities other than Titlemax.

FOR AN EIGHTH DEFENSE

22. Plaintiff's claims should be dismissed because they are subject to mandatory arbitration pursuant to the terms of the Supervised Loan Agreement (Account No. 21451359) entered into between the Plaintiff and Titlemax on May 4, 2012. (See attached Exhibit B incorporated by reference herein.)

**FOR AN NINTH DEFENSE AND BY WAY OF CROSS CLAIM
AGAINST AFFORDABLE RECOVERY SOLUTIONS A/K/A ARS**

23. Titlemax complaining of Defendant Affordable Recovery Solutions a/k/a ARS ("ARS") alleges as follows:

23. Upon information and belief, Plaintiff in this action is a citizen and resident of the County of Allendale, South Carolina.
24. ARS is a for-profit corporation doing business in Allendale County, South Carolina.
25. Plaintiff has instituted an action arising out of damages allegedly incurred as a result of an incident involving the repossession of her vehicle on January 11, 2013.
26. Prior to January 11, 2013, the date of the incident alleged in Plaintiff's Complaint, Titlemax had entered into a Repossession Agreement (hereinafter "Agreement") with ARS for the purpose of employing the services of ARS to repossess the vehicles of individuals in default of their loan agreements with Titlemax. (See attached Exhibit A incorporated by reference herein.)
27. Under Paragraph 2 of the Agreement, ARS [warranted] and [agreed] that the repossession "[would] be accomplished without (1) the use of trick, fraud, or other deceptive practices; (2) a breach of peace; (3) force threat or intimidation; or (4) any other unlawful means."
28. Under Paragraph 10 of the Agreement, ARS agreed to defend, indemnify and hold harmless [Titlemax] . . . from any and all claims demands, suits, or civil actions brought by anyone regarding any aspect of the performance of, or failure to perform the repossession . . . including but not limited to, the manner in which the repossession was accomplished . . . as well as all claims of whatever nature including, but not limited to, bodily injury ..."
29. The Plaintiff's Complaint alleges that Titlemax is liable for her injuries.
30. Titlemax believes the allegations of Plaintiff's Complaint are covered by the aforementioned Agreement and thus Titlemax is entitled to recover contractual indemnity under the Agreement as well as equitable indemnity from ARS for any settlement and/or judgment awarded to Plaintiff well as attorney's fees and costs.

WHEREFORE, having fully answered the Complaint of Plaintiff, Titlemax prays that the Complaint be dismissed with costs assessed to Plaintiff. Titlemax further demands judgment against Defendant Affordable Recovery Solutions a/k/s ARS in the event it is found liable to Plaintiff, with costs, and such other and further relief as the Court may deem proper.

SAMS & SAMS, P.A.

BY: W. Toland Sams

W. Toland Sams

P.O. Box 849

Beaufort, SC 29901

(843) 524-4189

Attorneys for the Defendant

Titlemax of South Carolina, Inc.

Beaufort, South Carolina

February 19, 2015

Certificate of Mailing

The undersigned hereby certifies that a true copy of the foregoing document has been served upon all counsel of record by mailing a copy thereof properly addressed and with sufficient postage affixed thereto this 19th day of February, 2015.

W. Toland Sams
W. Toland Sams

REPOSSESSION AGREEMENT

THIS REPOSSESSION AGREEMENT ("Agreement") is entered into this 10th day of Sept, 2010 by and between TMX FINANCE LLC, a Delaware limited liability company, and its subsidiaries and affiliates ("Company") whose corporate office is located at 15 Bull Street, Suite 200, Savannah, GA 31401, and ARS (AFFORDABLE RECOVERY SOLUTIONS), a(n) SOUTH CAROLINA ☒ sole proprietor, ☐ corporation, ☐ limited liability company, whose principal office is located at 2040 Commercial Drive, North Augusta, SC 29841 ("Repossession Vendor").

WHEREAS, Repossession Vendor is duly licensed to provide towing & repossession services in the State of SOUTH CAROLINA;

WHEREAS, Repossession Vendor is a repossession agent duly licensed and operating within the State of SOUTH CAROLINA;

NOW THEREFORE, in consideration of the representations, agreements and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do mutually agree as follows:

1. **Term.** This Agreement shall begin on the date set forth in the first paragraph above and shall continue until terminated in accordance with the terms of this Agreement or upon a material breach by Repossession Vendor. Either party may terminate this Agreement by providing thirty (30) days advance written notice to the other party. Upon termination of this Agreement, Repossession Vendor shall discontinue all efforts to repossess property as assigned by Company and shall return any and all documents relating to Company's accounts to Company.

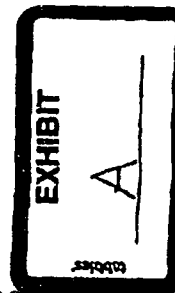
2. **Services-Repossessions.** The Repossession Vendor agrees to repossess vehicles upon a verbal or written request by Company within Repossession Vendor's sole discretion. Repossession Vendor agrees that all repossessions conducted for Company shall not be sub-contracted to another vendor. Repossession Vendor is the only firm authorized to conduct repossessions on behalf of Company. Company shall provide Repossession Vendor with 1) a description of the vehicle, including the color, year, make and model; 2) the VIN number ("Information"); and 3) a key to the vehicle, if available. Repossession Vendor will use Information provided by Company to identify the vehicle(s) to be repossessed and Repossession Vendor will use its best efforts to locate the vehicle. For each vehicle to be repossessed, Repossession Vendor warrants and agrees that the repossession will be accomplished without 1) the use of trick, fraud or other deceptive practices, including but not limited to impersonating a law enforcement or court official or other deceptive practices; 2) a breach of the peace; 3) force, threat or intimidation; or, 4) any other unlawful means. Repossession Vendor will comply with all applicable local, state and federal laws for each repossession.

3. **Services - Inventory of Items in Vehicle.** Immediately upon repossession, Repossession Vendor shall secure the vehicle by locking it and storing it in a secure location, and then contact the Company's Store Manager. Repossession Vendor shall inform Company's Store Manager of any issues arising during the repossession and note any physical damage to the vehicle or its contents between the time of repossession and delivery to the Company representative. A Company representative shall perform a complete inventory of all personal property located within or on the vehicle as soon as practicable. All personal property shall be itemized on an inventory list by the Company representative who shall store the personal property at the store location.

4. **Confidentiality.** Repossession Vendor agrees to maintain any and all Information provided by Company to Repossession Vendor confidential, and further agrees to return any and all Company documents to Company immediately when 1) the vehicle is repossessed, 2) the request to repossess is cancelled, or 3) the request is terminated for any other reason. Repossession Vendor agrees not to use any Information for any other purpose other than to provide services to Company, and agrees that it will not divulge Information to a third party unless required to do so by law.

5. **No Obligation.** Nothing herein obligates Company to use Repossession Vendor for every repossession nor does anything herein obligate Repossession Vendor to accept any particular assignment for repossession from Company.

6. **Compliance with Laws.** Repossession Vendor shall, in compliance with Section 1, retain complete discretion as to the time, place, manner and form of the repossession. Company shall exercise no control over any aspect of the transaction. Repossession Vendor is an independent contractor.



7. **Payment.** Company agrees to pay Repossession Vendor in accordance with the Fee Schedule (Exhibit C) attached hereto and made a part hereof.

8. **Insurance.** Repossession Vendor warrants that it maintains insurance covering premises, operations, product, completed operations and other liabilities as set forth in Exhibit A attached hereto and made a part hereof (endorsed to whatever extent is necessary to protect both Repossession Vendor and Company in the event of a claim, loss expense or damage as set forth in Section 5 Indemnification above) of at least \$1,000,000.00 per occurrence, providing coverage against claims for wrongful repossession and trespass. Repossession Vendor further warrants that it maintains insurance providing coverage for damage to the vehicle during 1) repossession, 2) delivery to Company or to a storage location designated by Company, or 3) storage on Repossession Vendor's premises, if applicable. Repossession Vendor will have Company named as an additional insured on Repossession Vendor's policies of insurance and will provide Company a certificate of coverage establishing such coverage for the current period and for subsequent periods throughout the term of this Agreement, all in accordance with Exhibit A (Insurance Specifications). Insurance is to be evidenced in a form satisfactory to Company, and Repossession Vendor shall, upon Company's request, provide complete copies of the required policies (whether current or expired), including all endorsements thereto.

9. **Trademark.** Repossession Vendor shall not use the name, trademark or logo of Company, or any of its subsidiaries or affiliates without the prior written consent of Company.

10. **Indemnification.** Repossession Vendor, its executors, administrators, successors and assigns agree to defend, indemnify and hold harmless Company, its agents, officers, employees and shareholders from any and all claims, demands, suits or civil actions brought by anyone regarding any aspect of the performance of, or failure to perform the repossession, including storage, if applicable (whether by Repossession Vendor, or any sub-contractor or vendor on its behalf) including, but not limited to, the manner in which the repossession was accomplished, the place at which the repossession was accomplished, or the time at which the repossession was accomplished, as well as all claims of whatever nature including, but not limited to, bodily injury, property damage (including the loss of use thereof), economic damage, personal injury, or any personal property alleged to have been present within or on the vehicle at the time of the repossession. This obligation includes personal injury (including death) of Repossession Vendor, its employees or sub-contractors. Any provision of this paragraph that is or has been judicially determined to be invalid or void under the laws of the state in which the contract is to be performed shall be deemed modified to the extent necessary, or deleted if absolutely necessary, so as to render the paragraph valid; and so that this provision shall apply to the maximum extent permitted under the state's laws and shall carry out the intentions of the parties, as expressed herein, to the maximum extent possible.

Company shall notify Repossession Vendor of any claims, demands or actions filed against Company which are subject to this Indemnification provision, and Repossession Vendor agrees to undertake the defense thereof, keeping Company fully informed regarding the status of any negotiations, offers of settlement, or litigation. Should the Repossession Vendor fail, neglect or refuse to undertake the defense of any claim or action, Company will select counsel and Repossession Vendor agrees to pay all reasonable costs associated with said defense or reimburse Company for all reasonable costs and attorney's fees incurred by Company in the defense of such action.

11. **Waiver and Enforceability.** The failure to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of such terms, covenants or conditions. The invalidity or unenforceability of any provision or clause of this Agreement in whole or in part, shall in no way impair or affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect.

12. **Entire Agreement.** The parties stipulate and agree that this Repossession Agreement constitutes the entire Agreement between them regarding repossession of vehicles. No other such Agreement exists. This Agreement may be amended from time-to-time by Company by providing thirty (30) days advanced written notice to Repossession Vendor. Repossession Vendor may not modify the terms of this Agreement without the express written consent of Company. No oral modification of this Agreement is allowed. This Agreement shall be governed by and construed in accordance with the state laws in which this business is being conducted. This Agreement may not be assigned by either party without the prior written consent of the other party in writing.

IN WITNESS WHEREOF, the parties hereby have caused their duly authorized representatives to enter into this Agreement effective as of the date first stated above.

COMPANY:

TMX Finance LLC

By: _____

Name: Tracy Young

Title: Member

REPOSSESSION VENDOR:

ARS (AFFORDABLE RECOVERY SOLUTIONS)

By: _____

Name: Jason Larussa

Title: OWNER

EXHIBIT B

Record No.: 21451369

Supervised Loan Agreement

Date: 05/04/2012

THIS AGREEMENT IS SUBJECT TO AN ARBITRATION PROVISION. BY ENTERING THIS AGREEMENT, YOU WILL WAIVE CERTAIN RIGHTS. PLEASE READ THE WAIVER OF JURY TRIAL AND ARBITRATION PROVISION CAREFULLY TO ASSESS YOUR RIGHTS TO RESOLVE DISPUTES.

SUPERVISED LENDER: TITLEMAX OF SOUTH CAROLINA, INC.		PHONE NUMBER (803) 541-3802		FAX NUMBER (803) 541-8051	
STREET ADDRESS 10820 DUNBARTON BLVD		CITY BARNWELL		STATE SC	ZIP CODE 29812
SUPERVISED LENDER HOURS OF OPERATION: Monday to Friday 9 A.M. to 7 P.M., Saturday 10 A.M. to 4 P.M., CLOSED ON SUNDAY.				PRIMARY CONTACT PERSON Cheryl Priester	

BORROWER: FIRST NAME JOYCE	MIDDLE NAME BUTTS	LAST NAME MYERS	SOCIAL SECURITY NO. XXX-XX-2365	DRIVER'S LICENSE NO./STATE ID NO. 007840858	
RESIDENCE STREET ADDRESS 916 COLLEGE ST			CITY ALLENDALE	STATE SC	ZIP CODE 29810
HOME PHONE (803) 684-3871		CELL PHONE		DATE OF BIRTH 09/11/1970	
BORROWER: FIRST NAME	MIDDLE NAME	LAST NAME	SOCIAL SECURITY NO.	DRIVER'S LICENSE NO./STATE ID NO.	
RESIDENCE STREET ADDRESS			CITY	STATE	ZIP CODE
HOME PHONE		CELL PHONE		DATE OF BIRTH	

MOTOR VEHICLE: TITLE CERTIFICATE NUMBER 770030186020345		STATE SC	VEHICLE IDENTIFICATION NUMBER (VIN) JN1CA21D7VM527771	LICENSE PLATE NUMBER DQN 445	
YEAR 1997	MAKE NISSAN	MODEL MAXIMA	TYPE	COLOR BURGANDY	

In this Supervised Loan Agreement ("Loan Agreement") the words "you" and "your" mean the Borrower(s), identified above who have signed it. The words "Supervised Lender," "we," "us" and "our" mean TitleMax of South Carolina, Inc. d/b/a TitleMax. The words "collateral" and "Motor Vehicle" mean the Motor Vehicle identified above. This transaction is not a short-term vehicle secured loan as defined by SC Code §37-3-413.

You promise to pay us the principal amount of this loan \$2,015.00, plus interest from the date of this Loan Agreement on the unpaid principal balance of the loan at the rate of 131.88% per annum (the "Contract Rate"), and other permitted charges. The face amount of the Loan Agreement and principal proceeds loaned to you by us is set forth in the Amount Financed disclosure. Interest is calculated according to the simple interest method. The finance charge is calculated on the assumption that all payments will be made when due. You promise to timely pay us the principal and interest due in monthly installments of \$241.88 as set forth below in the Payment Schedule. On each Payment Date you will pay us, at the address indicated above, or at such other address as we direct you in writing, the amount stated. If your payment is due on a date in which we are not open for business then you agree to pay us on the next business day, and we will credit any payment received on our next business day, as if it were received on the appropriate date. You grant us a security interest in the Motor Vehicle, and have delivered to us the Keys. In the event you payoff the first lien during the term of this Loan Agreement, you agree to deliver the Motor Vehicle Certificate of Title to us. We do not accept personal checks.

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. <u>132.3499 %</u>	FINANCE CHARGE The dollar amount the credit will cost you. <u>\$ 3,789.69</u>	Amount Financed The amount of credit provided to you or on your behalf. <u>\$ 2,015.00</u>	Total of Payments The amount you will have paid after you have made all payments as scheduled. <u>\$ 5,804.69</u>
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Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
23	241.88	Monthly Beginning On 6/4/2012
1	241.45	5/4/2012

Security: You are giving a security interest in the Motor Vehicle.

Prepayment: If you pay off early, you will not have to pay a penalty.

See the terms below and on the other pages of this Loan Agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Itemization of Amount Financed of \$ 2,015.00

\$ 585.95 Amount given to you directly.

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 804-5368

TM-SC-Supervised Loan Agreement-V.1.0-04.07.2011

Page 1 of 4

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Additional Terms and Conditions of this Supervised Loan Agreement

\$ 1,429.05 Amount paid on account no. 10822731 with us.
Amount paid to others on your behalf
\$ 0.00 to public officials
\$ 0.00 to _____

Prepayment and Right to Rescind. You may prepay your obligations under this Loan Agreement in full or in part at any time and you will not incur an additional fee, charge or penalty. In addition, we agree you may rescind your payment obligations hereunder if you return the loan proceeds given to you or paid on your account with us prior to the close of business on the business day immediately following the date of this Loan Agreement. If you rescind by returning the loan proceeds, then your loan will be considered as paid in full, and we will rebate and refund to you the interest we have earned and credit your account with any amounts paid to public officials to perfect our security interest.

Additional Charges. You agree to pay to us \$ 0.00 for official fees and taxes incurred for registering the Motor Vehicle Certificate of Title.

Default and Limited Recourse. You will be in default under this Loan Agreement if you fail to make a payment as required by this Loan Agreement or if the prospect of payment, performance, or realization of collateral is significantly impaired. Upon default, we may accelerate the balance owing hereunder, unless you timely cure such default. Upon your first default because of your failure to make a required payment, we will not accelerate maturity of the unpaid balance of the obligation, nor take possession of the Motor Vehicle or otherwise enforce a security interest in the Motor Vehicle until twenty days after giving you notice of your right to cure. Upon any subsequent default which you fail to cure, we may accelerate the full balance of your obligations to us. Upon default we may take possession of the Motor Vehicle without judicial process as allowed by South Carolina Code § 37-5-112. Notwithstanding the foregoing, under South Carolina Code § 37-5-111, you may voluntarily surrender possession of your Motor Vehicle to us any time after default by leaving the Motor Vehicle at our store during normal business hours. If you voluntarily surrender the Motor Vehicle to us, we may accelerate maturity of the obligation and enforce the obligation and our security interest in the Motor Vehicle at any time after default. Furthermore, upon default we limit our recourse against you to taking possession of the collateral and selling it pursuant to the Uniform Commercial Code. Except in the event of fraud by you, if you default in the repayment of the loan, our sole remedy is to seek possession and sale of the motor vehicle securing the loan, and we will not pursue you personally in an action for repayment of the loan or for any deficiency after sale. In addition, we will return to you any surplus obtained after sale in excess of the amount owed on the loan and reasonable expenses of repossession and sale in accordance with Title 36, Chapter 9 of the South Carolina Code of Laws.

Governing Law and Assignment. This Loan Agreement shall be governed by the laws of the State of South Carolina, except that the Waiver of Jury Trial and Arbitration Provision is governed by the Federal Arbitration Act ("FAA"). We may assign or transfer this Loan Agreement or any of our rights hereunder. You shall pay us until you receive notification of assignment of rights to payment.

WAIVER OF JURY TRIAL AND ARBITRATION PROVISION. Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. **THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:**

1. For purposes of this Waiver of Jury Trial and Arbitration Provision (hereinafter the "Arbitration Provision"), the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement (including the Arbitration Provision), the information you gave us before entering into this Loan Agreement, any past agreement or agreements between you and us, and/or any renewal of this Loan Agreement; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"); including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (j) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

2. You acknowledge and agree that by entering into this Arbitration Provision:

- (a) YOU ARE WAIVING YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;
- (b) YOU ARE WAIVING YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and
- (c) YOU ARE WAIVING YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.

3. Except as provided in Paragraph 4 below, all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**

4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Regardless of who demands arbitration, you shall have the right to select either of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7879) <http://www.adr.org>, or JAMS (1-800-352-5267) <http://www.jamsadr.com>. However, the parties may agree to select a local arbitrator who is an attorney, retired judge, or arbitrator.

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 804-5368

Additional Terms and Conditions of this Supervised Loan Agreement

registered and in good standing with an arbitration association and arbitrate pursuant to such arbitrator's rules. If the arbitration associations listed above are not available and the parties cannot otherwise agree on a substitute, then any party may petition a court pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. sections 1-16 to select an arbitration organization, provided such arbitration organization shall enforce the terms of this Loan Agreement and the Arbitration Provision, including the prohibition on class arbitration. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization or your desire to select a local arbitrator. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Loan Agreement or the Arbitration Provision, including the limitations on the arbitrator below. You may obtain a copy of the rules and procedures by contacting the arbitration organization listed above.

5. Regardless of who demands arbitration, we will advance your portion of the expenses associated with the arbitration, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the FAA, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitration hearing will be conducted in the county of your residence, or within 30 miles from such county, or in the county in which the transaction under this Loan Agreement occurred, or in such other place as shall be ordered by the arbitrator. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award may be filed with any court having jurisdiction.

6. All parties, including related third parties, shall retain the right to seek adjudication in a small claims tribunal for disputes within the scope of such tribunal's jurisdiction. Any dispute, which cannot be adjudicated within the jurisdiction of a small claims tribunal, shall be resolved by binding arbitration. Any appeal of a judgment from a small claims tribunal shall be resolved by binding arbitration. Furthermore, nothing in this Arbitration Provision shall limit the right of you or us (a) to foreclose against the Motor Vehicle by the exercise of any power under the Loan Agreement or under applicable law, (b) to exercise self-help remedies such as set off or repossession, or (c) to obtain provisional or ancillary remedies such as pre-judgment seizure of property, detinue, replevin, or injunctive relief, or to seek or obtain any other traditional equitable relief which does not claim money damages from a court having jurisdiction. The institution and maintenance by you or us of any action set forth in this Paragraph 6 shall not constitute a waiver of the right to submit any dispute to arbitration, including any counterclaim asserted.

7. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA. If a final non-appealable judgment of a court having jurisdiction over this transaction finds, for any reason, that the FAA does not apply to this transaction, then our agreement to arbitrate shall be governed by the arbitration law of the State of South Carolina.

8. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if (i) you exercise your right to rescind hereunder, (ii) your obligations have been renewed, prepaid, or paid; or your obligations have been discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing.

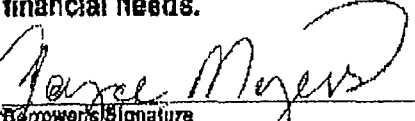
9. **OPT-OUT PROCESS.** You may choose to opt-out of this Arbitration Provision but only by following the process set forth below. If you do not wish to be subject to this Arbitration Provision, then you must notify us in writing within sixty (60) calendar days of the date of this Loan Agreement at the following address: Attn: Legal Dept, P.O. Box 8323, Savannah, GA 31412. Your written notice must include your name, address, Account number, the date of this Loan Agreement, and a statement that you wish to opt out of the Arbitration Provision. If you choose to opt out, then your choice will apply only to this Loan Agreement.

(A) This is a high-cost loan. You should consider what other lower-cost loans are available to you.

(B) If you fail to pay this loan as agreed this lender has the right to take possession of your motor vehicle and sell it to repay the loan.

(C) You should use this loan only to meet short-term cash needs, not for long term financial needs.

Account Number: 21451359

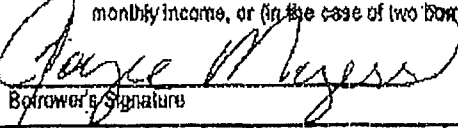

Borrower's Signature

Borrower's Signature

Additional Terms and Conditions of this Supervised Loan Agreement

Representations and Warranties. You represent and warrant that the following statements are true and accurate:

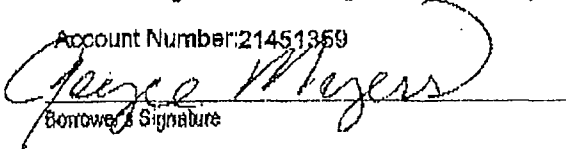
1. You have provided us with accurate monthly income information.
2. You believe that you have the ability to repay the loan.
3. The monthly payment amount for the loan (in the case of one borrower) does not exceed fifty percent (50%) of your gross monthly income, or (in the case of two borrowers) fifty percent (50%) of your combined gross monthly income.


Borrower's Signature

Borrower's Signature

By signing this Loan Agreement you acknowledge that it was filled in before you did so and that you have received an exact copy of it. You also warrant and represent that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code. You verify that you are the rightful owner of the Motor Vehicle. You verify that you are 18 years of age or older. You further acknowledge that you have read, understand, and agree to all of the terms of this Loan Agreement, including the "Waiver of Jury Trial and Arbitration Provision" above.

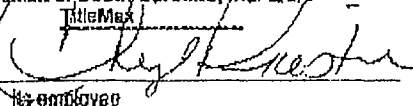
Account Number: 21451359


Borrower's Signature

TitleMax of South Carolina, Inc. d/b/a

TitleMax

By


its employee

Borrower's Signature

THIS DOCUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF, AND PLEDGED AS COLLATERAL TO, WELLS FARGO BANK, NATIONAL ASSOCIATION, AS COLLATERAL AGENT.

IN THE COURT OF COMMON PLEAS

COUNTY OF ALLENDALE

Joyce Myers ☐ Plaintiff, vs. Affordable Recovery Solutions, a/k/a ARS ☒ Defendant Check box above indicating submitting party.	Civil Action No: 2013-CP-03-00147 MOTION INFORMATION FORM AND COVER SHEET
Name, SC Bar No. and address of Plaintiff's/Opposing attorney: H. Woodrow Gooding Mark B. Tinsley Post Office Box 1000 Allendale, SC 29810 (803) 584-7676	Name, SC Bar No. and address of Defendant's attorney: Patrick M. Higgins SC Bar No: P.O. Box 40, Beaufort, SC 29901 phiggins@hgpha.com 843-522-2400 843-522-2429 fax
FILED FOR RECORD 2015 MAY 15 AM 10:30 CLERK OF COURT ALLENDALE COUNTY, S.C. ☒ MOTION HEARING REQUESTED (attach written motion and complete Sections I and III) ☐ FORM MOTION, NO HEARING REQUESTED (completed 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: 15 minutes Court Reporter Needed: NO	
SECTION II: Motion Type ☒ Written Motion attached ☐ Form Motion - I hereby move for relief or action by the court as set forth in the attached motion and/or proposed order. <u>May 13, 2015</u> Signature of Attorney for Plaintiff/Defendant	
SECTION III: Motion Fee ☒ PAID – AMOUNT: \$25.00 ☐ EXEMPT: ☐ 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, SCRCP) ☐ Proposed order submitted at request of Court; or, reduced in 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:	CODE: _____ DATE: _____
CLERK'S VERIFICATION Collected by: _____ (print name) DATE FILED: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____	

SCCA/233 (10/2004)

000069

STATE OF SOUTH CAROLINA
COUNTY OF ALLENDALE

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2013-CP-03-00147

JOYCE MYERS,
Plaintiff,

vs.

TITLEMAX OF SOUTH CAROLINA,
INC. AND AFFORDABLE
RECOVERY SOLUTIONS a/k/a ARS,

Defendants.

FILED FOR RECORD
2015 MAY 15 AM 10
CLERK OF COURT
ALLENDALE COUNTY
DEFENDANT AFFORDABLE
RECOVERY SOLUTIONS A/K/A
ARS' MOTION TO RECONSIDER
ORDER DENYING
ARBITRATION

TO: H. WOODROW GOODING AND MARK B. TINSLEY, ESQUIRE,
ATTORNEYS FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that Defendant Affordable Recovery Solutions a/k/a ARS (ARS), by and through its undersigned counsel, Howell Gibson and Hughes, P.A., will appear before the Presiding Judge, Allendale County Court of Common Pleas, on the tenth (10th) day after service hereof, or at such other time and place as may be directed by the Court, and then and there move for reconsideration and/or alteration or amendment of the Court's order dated April 30, 2015, which denied ARS' motion to compel arbitration.

This motion is made pursuant to Rule 59, SCRCP and upon the following grounds:

1. The Trial Court misconstrued the applicable law, failed to rule on and/or failed to consider South Carolina's strong presumption in favor of the validity of arbitration agreements. See The Housing Auth. of City of Columbia v. Cornerstone Housing, LLC, 356 S.C. 328, 334, 588 S.E.2d 617, 620 (Ct. App.

2003) ("There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration.").

2. The Trial Court misconstrued the applicable law, failed to rule on and/or failed to consider that any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. See Pearson v. Hilton Head Hosp., 400 S.C. 281, 287, 733 S.E.2d 597, 600 (Ct. App. 2012) ("Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration."); id. ("A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute.").

3. The Trial Court misconstrued the applicable law, failed to rule on and/or failed to consider ARS' argument that Plaintiff's allegations are within the scope of the arbitration agreement. The Trial Court found there was no "significant relationship" between the arbitration agreement and Plaintiff's allegations. However, a "significant relationship" is required to compel arbitration only when a party seeks to compel arbitration for causes of action that are not expressly covered by the arbitration agreement. In this case, Plaintiff's allegations are expressly covered by the arbitration agreement, and thus, no "significant relationship" is needed. See Aiken v. World Fin. Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007) ("[C]ourts generally hold that *broadly-worded arbitration agreements* apply to disputes in which a 'significant relationship' exists between the asserted claims and the contract in which the arbitration clause is contained." (emphasis added)).

4. The Trial Court misconstrued the applicable law, failed to rule on and/or failed to consider ARS' argument that even if a "significant relationship" between the arbitration agreement and Plaintiff's allegations is required, such a relationship exists in this case. Plaintiff's allegations relate to and are the direct result of the actual loan agreement between Plaintiff and TitleMax of South Carolina, Inc. (TitleMax), which contained the arbitration agreement. The torts alleged by Plaintiff were foreseeable to a reasonable consumer, and thus, a "significant relationship" exists. See id. at 151, 644 S.E.2d at 709 (finding arbitration agreements apply to torts that are foreseeable to a reasonable consumer).

5. The Trial Court misconstrued the applicable law, failed to rule on and/or failed to consider ARS' argument that the Court should not consider the affidavit of Adam Yount, which included the Repossession Agreement, because the arbitration agreement is unambiguous and extrinsic evidence is not needed. See Bluffton Towne Ctr., LLC v. Gilleland-Prince, Op. No. 5309 (S.C. Ct. App. filed April 1, 2015) (Shearouse Adv.Sh. No. 13 at 67) ("If [a contract's] language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect. Moreover, if a contract is unambiguous, extrinsic evidence cannot be used to give the contract a meaning different from that indicated by its plain terms."); York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 81, 749 S.E.2d 139, 146 (Ct. App. 2013) ("Where an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover

the intention of the parties *as found within the agreement*, and give effect to it.” (emphasis added)).

6. The Trial Court misconstrued the applicable law, failed to rule on and/or failed to consider that even if the Trial Court could properly consider the affidavit of Adam Yount, which contained the Repossession Agreement, Plaintiff had no knowledge of the Repossession Agreement between TitleMax and ARS. There is no evidence that Plaintiff was aware of the Repossession Agreement between TitleMax and ARS. Thus, Plaintiff cannot rely on the Repossession Agreement as a basis for arguing she did not foresee the conduct she alleges took place because she was not aware of the Repossession Agreement.

7. The Trial Court misconstrued the applicable law, failed to rule on and/or failed to consider that even if Plaintiff was aware of the Repossession Agreement prior to entering into the arbitration agreement, the conduct alleged by Plaintiff was foreseeable based on the plain language of the arbitration agreement and any doubt concerning the scope of an arbitration agreement should be resolved in favor of arbitration. See Pearson, 400 S.C. at 287, 733 S.E.2d at 600 (“Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.”); id. (“A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute.”).

8. The Trial Court misconstrued the applicable law, failed to rule on and/or failed to consider that if Plaintiff was aware of the Repossession Agreement prior to entering into the arbitration agreement, Plaintiff’s knowledge of the

Repossession Agreement results in ARS' alleged conduct being foreseeable to Plaintiff. If Plaintiff was aware of the Repossession Agreement, it was foreseeable to Plaintiff that that type of conduct could occur during a repossession; otherwise, TitleMax would not require ARS to sign a contract agreeing not to engage in that type of conduct.

HOWELL, GIBSON & HUGHES, P.A.

By: 
Patrick M. Higgins
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendant Affordable
Recovery Solutions a/k/a ARS

Beaufort, South Carolina

May 13, 2015

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion to Reconsider upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on the 13th day of May, 2015.

By: _____

Patrick M. Higgins

RULE 11 CERTIFICATION

I certify pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that

- ☐ I have consulted with opposing counsel and have been unable to resolve the matter.
- ☒ Consultation with opposing counsel would serve no useful purpose, or is not required.
- ☐ Consultation with opposing counsel could not be timely held

☐ I certify that there is no duty of consultation for the attached motion (to dismiss, for summary judgment, for new trial, for judgment NOV, in real estate foreclosures, or with pro se litigants.)

FILED FOR RECORD
2015 MAY 15 AM 10:30
CLARKE SABB
CLERK OF COURT
ANDERSON COUNTY, S.C.

Common Pleas

Clerk : Elaine Sabb
292 Barnwell Hwy
Allendale, SC 29810
(803) 584-2737

Received From: DuBose, Clarke W.
PO Box 11889
Columbia, SC 29211

Date: 5/18/2015
Receipt #: 13773
Clerk: c03esabb

Paying for: Affordable Recovery Solutions,

Transaction Type: Payment

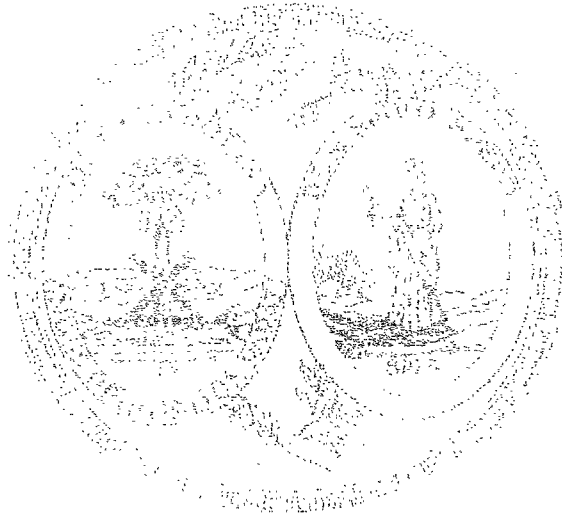
Reference #: 75902

Payment Type: Check \$25.00

Comment:
Non-Refundable

Total Paid: \$25.00

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2013CP0300147	Joyce Myers VS Titlemax of South Carolina, Inc	\$25.00	\$25.00	\$0.00



Total Cases: 1	\$25.00	\$25.00	\$0.00
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ALLENDALE) CIVIL ACTION NO: 2013-CP-03-00147

JOYCE MYERS,

Plaintiff,

vs.

TITLEMAX OF SOUTH CAROLINA,
INC. AND AFFORDABLE
RECOVERY SOLUTIONS a/k/a ARS,

Defendants.

DEFENDANT AFFORDABLE
RECOVERY SOLUTIONS A/K/A ARS'
MEMORANDUM IN SUPPORT OF ITS
MOTION TO COMPEL ARBITRATION

Defendant Affordable Recovery Solutions (ARS) respectfully submits this Memorandum in Support of its Motion to Compel Arbitration. For the reasons set forth herein, ARS respectfully requests this Court grant its Motion to Compel.

BACKGROUND

Joyce Myers' (Plaintiff) causes of action arise out of events related to the repossession of her automobile. In 2008, Plaintiff obtained a loan from Defendant TitleMax of South Carolina (TitleMax) using her automobile as collateral. During the period of the loan term, Plaintiff refinanced the loan multiple times. In the original loan agreement and in the refinancing agreements, Plaintiff signed a Supervised Loan Agreement, which provided, in conspicuous font, that the agreement was subject to an arbitration agreement. The terms of the arbitration agreement were clearly delineated within the Supervised Loan Agreement [see Supervised Loan Agreement attached hereto as Exhibit A]. During her deposition, Plaintiff admitted she signed these agreements. Plaintiff

also admitted she read and understood the terms of the agreements [see p. 21 and 22 of the deposition transcript of Joyce Myers attached hereto as Exhibit B].

In November 2012, Plaintiff ceased making payments on the loan. TitleMax hired ARS to repossess Plaintiff's automobile due to Plaintiff's breach of the loan agreement. During the day, on January 11, 2013, ARS repossessed the automobile. Subsequently, Plaintiff filed this action alleging the defendants trespassed on her property while repossessing the automobile and an employee of the defendants "struck" her and shouted profanity at her. Plaintiff claims she suffered a minor cut on her finger and emotional distress as a result of the repossession.

ARS filed a Motion to Compel Arbitration pursuant to the arbitration agreement within the loan documents signed by Plaintiff. ARS respectfully submits this memorandum in support of its motion.

STANDARD

"Whether a valid arbitration agreement exists is a matter for judicial determination." York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 78, 749 S.E.2d 139, 144 (Ct. App. 2013). "In making this determination, trial courts consider general contract defenses to ensure a meeting of the minds to arbitrate existed, and that such an agreement was not the result of fraud, duress, or unconscionability." Id. at 78, 749 S.E.2d at 145; see id. (finding a valid arbitration agreement existed because the agreement complied with the Federal Arbitration Agreement (FAA), evidenced the parties' intent to arbitrate, was not unconscionable and was not void as against public policy).

DISCUSSION

"There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration." The Housing Auth. of City of Columbia v. Cornerstone Housing, LLC, 356 S.C. 328, 334, 588 S.E.2d 617, 620 (Ct. App. 2003). "The initial inquiry to be made by the trial court is whether an arbitration agreement exists between the parties." Id. "The determination of whether an arbitration agreement exists is a matter to be forthwith and summarily tried by the Court." Id. at 335, 588 S.E.2d at 620 (internal quotation marks omitted).

"The second issue for the trial court to determine [is] whether the specific dispute falls within the substantive scope of the arbitration agreement." Id. at 336, 588 S.E.2d at 621 (internal quotation marks omitted) (brackets removed). "To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause." Id. at 337, 588 S.E.2d at 621. "Even when the dispute does not arise under the governing contract, the dispute is subject to arbitration when the contract contains a broadly worded arbitration clause and a significant relationship exists between the asserted claims and the contract in which the arbitration clause is contained." Id.

"To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claims are within the scope of the broad arbitration clause, regardless of the label assigned to the claim." Pearson v. Hilton Head Hosp., 400 S.C. 281, 287, 733 S.E.2d

597, 600 (Ct. App. 2012). "Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Id.

[U]nless the [trial] court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered. A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute.

Id. (citation and internal quotation marks omitted).

"[U]nconscionability is the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." York, 406 S.C. at 85, 749 S.E.2d at 148. "Thus, unconscionability is due to *both* an absence of meaningful choice and oppressive, one-sided terms." Id.

Additionally, a party does not have to be a signatory to the arbitration agreement to enforce it. Pearson, 400 S.C. at 288, 733 S.E.2d at 600. "Well-established common law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties." Id. Our Court of Appeals has recognized five theories, which "could provide a basis for binding nonsignatories to arbitration agreements: (1) incorporation by references; (2) assumption; (3) agency; (4) veil piercing/alter ego; and (5) estoppel." Id. at 289, 733 S.E.2d at 601.

"Courts have allowed a nonsignatory to an arbitration agreement to force one of the signatories to that agreement to arbitrate claims against it pursuant to a so-called 'intertwined claims' test." Goer v. Jasco Indus., Inc., 395 F. Supp. 2d 308, 313 (D.S.C. 2005). "Under the intertwined claims test, the circuits have been willing to estop a signatory from avoiding arbitration with a nonsignatory when the issues the nonsignatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed." Id.

In this case, an arbitration agreement existed between the parties. See Cornerstone Housing, 356 S.C. at 334, 588 S.E.2d at 620 ("The initial inquiry to be made by the trial court is whether an arbitration agreement exists between the parties."). Plaintiff signed multiple arbitration agreements with the defendants. The top of the first page of the agreement states, "**THIS AGREEMENT IS SUBJECT TO AN ARBITRATION PROVISION. BY ENTERING THIS AGREEMENT, YOU WILL WAIVE CERTAIN RIGHTS. PLEASE READ THE WAIVER OF JURY TRIAL AND ARBITRATION PROVISION CAREFULLY TO ASSESS YOUR RIGHTS TO RESOLVE DISPUTES.**" The agreement goes on to require arbitration, rather than a jury trial, for certain kinds of disputes. Numerous sections and provisions of the arbitration agreement are in bold print, underlined, or are all-capitalized. Plaintiff clearly signed these agreements. Moreover, Plaintiff admitted she signed the agreements and understood the terms contained within the agreements. Thus, an arbitration agreement existed between the parties.

Additionally, Plaintiff's claims in this action easily fall within the scope of the arbitration agreement. See id. at 336, 588 S.E.2d at 621 ("The second issue for the trial court to determine [is] whether the specific dispute falls within the substantive scope of the arbitration agreement."). The arbitration agreement explicitly states that it covers "all federal or state law claims" and "all common law claims, based upon contract, tort, fraud, or other intentional torts." The agreement is to be construed in "the broadest possible meaning." The agreement also states that it covers "all claims asserted by [Plaintiff] against [the defendants] and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities."

Plaintiff's causes of action include negligence, intentional infliction of emotional distress (IIED), assault, battery, and trespass. All of Plaintiff's causes of action are state law tort claims, which, as noted above, are explicitly included in the arbitration agreement. Thus, Plaintiff's causes of action clearly fall within the scope of the arbitration agreement. Furthermore, even if there was a doubt as to whether Plaintiff's claims are within the arbitration agreement's scope, all doubts should be resolved in favor of arbitration. See Pearson, 400 S.C. at 287, 733 S.E.2d at 600 ("Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration."). Accordingly, Plaintiff's claims are within the scope of the arbitration agreement.

Although, ARS was not a party to the arbitration agreements, ARS is still entitled to enforce the agreements against Plaintiff. See Pearson, 400 S.C. at

288, 733 S.E.2d at 600 ("Well-established common law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties."). First, ARS is incorporated by reference into the arbitration agreements. See id. at 289, 733 S.E.2d at 601 (noting a basis for binding nonsignatories to arbitration agreements is incorporation by reference). It is undisputed ARS was acting as TitleMax's agent or employee when it repossessed Plaintiff's automobile. Plaintiff alleged in her complaint that "ARS was an agent, servant and/or employee of Defendant TitleMax" [see Complaint attached hereto as Exhibit C]. The arbitration agreements explicitly provide that the agreements cover "all claims by [Plaintiff] against [TitleMax] and/or any of our employees [or] agents." Thus, the arbitration agreement specifically incorporates all of TitleMax's employees and agents into the agreement. Because, as Plaintiff alleged, ARS was acting as TitleMax's agent or employee when it repossessed Plaintiff's automobile and the arbitration agreements incorporate TitleMax's agents and employees into the agreements, ARS is entitled to compel arbitration for Plaintiff's claims.

Second, ARS can compel arbitration for Plaintiff's claims because, as discussed above, ARS was acting in an agency capacity when it repossessed Plaintiff's automobile. See id. at 289, 733 S.E.2d at 601 (noting a basis for binding nonsignatories to arbitration agreements is agency).

Third, ARS can enforce the arbitration agreements for Plaintiff's claims under the intertwined claims test. Plaintiff's claims against TitleMax and ARS are intertwined with the loan agreements between TitleMax and ARS. The

agreements form the basis for Plaintiff receiving the loan, for TitleMax's ability to repossess Plaintiff's automobile and for ARS' authority to repossess the automobile. Also, some of the defenses ARS would assert would be based on the agreements. Thus, the issues in this action are intertwined with the agreements, and therefore, there is a basis for ARS to enforce the arbitration agreement for Plaintiff's claims. See Goer, 395 F. Supp. 2d at 313 ("Under the intertwined claims test, the circuits have been willing to estop a signatory from avoiding arbitration with a nonsignatory when the issues the nonsignatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed."). As a result, ARS can enforce the arbitration agreements for Plaintiff's claims even though ARS did not sign the arbitration agreements.

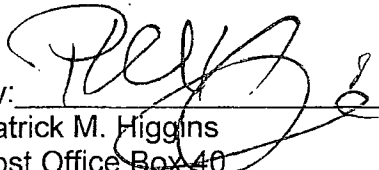
Additionally, any allegation by Plaintiff that the arbitration agreements were unconscionable would be futile. The arbitration agreement includes an "OPT-OUT PROCESS," which allowed Plaintiff to effectively cancel the arbitration agreement. The opt-out clause provided Plaintiff could cancel the arbitration agreement by merely sending written notice to TitleMax within sixty days of signing the arbitration agreement. Importantly, Plaintiff's overall loan agreement would not have been cancelled if she chose to opt-out of the arbitration agreement. Thus, the decision of whether Plaintiff's loan agreement would be subject to the arbitration agreement belonged solely to Plaintiff because she had sixty days to unilaterally cancel the arbitration agreement by merely writing a letter stating her intent to opt-out of the arbitration agreement. Because

Plaintiff had a meaningful choice of whether to be subject to the arbitration agreement, the agreement could not have been unconscionable. See York, 406 S.C. at 85, 749 S.E.2d at 148 ("[U]nconscionability is due to *both* an absence of meaningful choice and oppressive, one-sided terms.").

CONCLUSION

Because an arbitration agreement exists between Plaintiff and the defendants, which encompasses Plaintiff's causes of action, and the arbitration agreement was not unconscionable, this action is subject to arbitration. Accordingly, ARS respectfully requests this Court grant its motion to compel arbitration.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Patrick M. Higgins

Post Office Box 40

Beaufort, SC 29901

(843) 522-2400

Attorney for Defendant, Affordable
Recovery Solutions a/k/a ARS

Beaufort, South Carolina

April 15, 2015

CERTIFICATE OF SERVICE

I certify that I served the foregoing Memorandum in Support of Motion to Compel Arbitration upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on the 15th day of April, 2015.

By: _____

Patrick M. Higgins

FILED FOR FICOP
2015 APR 17 AM 10:29
U.S. DISTRICT COURT
S.D. CALIF. S.D. 11

Record No.: 5435151

Supervised Loan Agreement

Date 08/15/2008

THIS AGREEMENT IS SUBJECT TO AN ARBITRATION PROVISION. BY ENTERING THIS AGREEMENT, YOU WILL WAIVE CERTAIN RIGHTS. PLEASE READ THE WAIVER OF JURY TRIAL AND ARBITRATION PROVISION CAREFULLY TO ASSESS YOUR RIGHTS TO RESOLVE DISPUTES.

SUPERVISED LENDER: TITLEMAX OF SOUTH CAROLINA, INC.		PHONE NUMBER (803) 541-3602	FAX NUMBER (803) 541-8051
STREET ADDRESS 10520 DUNBARTON BLVD		CITY BARNWELL	STATE SC
		ZIP CODE 29812	
SUPERVISED LENDER HOURS OF OPERATION: Monday to Friday 9 A.M. to 7 P.M., Saturday 10 A.M. to 4 P.M., CLOSED ON SUNDAY		PRIMARY CONTACT PERSON mike fraebel	

BORROWER: FIRST NAME JOYCE	MIDDLE NAME BUTTS	LAST NAME MYERS	SOCIAL SECURITY NO. XXX-XX-2365	DRIVER'S LICENSE NO./STATE ID NO. 007840858
RESIDENCE STREET ADDRESS 915 COLLEGE ST			CITY ALLENDALE	STATE SC
			ZIP CODE 29810	
HOME PHONE (803) 584-3871	CELL PHONE (803) 397-4617	SEX FEMALE	HEIGHT 511	DATE OF BIRTH 09/11/1970

BORROWER: FIRST NAME	MIDDLE NAME	LAST NAME	SOCIAL SECURITY NO.	DRIVER'S LICENSE NO./STATE ID NO.
RESIDENCE STREET ADDRESS			CITY	STATE
			ZIP CODE	
HOME PHONE	CELL PHONE	SEX	HEIGHT	DATE OF BIRTH

MOTOR VEHICLE TITLE CERTIFICATE NUMBER 770030138054928	STATE SC	VEHICLE IDENTIFICATION NUMBER (VIN) JN1CA21D7VM627771	LICENSE/PLATE NUMBER 332 TEM
YEAR 1997	MAKE NISSAN	MODEL MAXIMA SE	COLOR BURGANDY
Name of Lienholder (if applicable) NA			Account No. NA
Lienholder Address: NA			Payoff Amount as of Today: NA

In this Supervised Loan Agreement ("Loan Agreement") the words "you" and "your" mean the Borrower(s), identified above who have signed it. The words "Supervised Lender," "we," "us" and "our" mean TitleMax of South Carolina, Inc. db/a TitleMax. The words "collateral" and "Motor Vehicle" mean the Motor Vehicle identified above.

You promise to pay us the principal amount of this loan \$1,615.00, plus interest from the date of this Loan Agreement on the unpaid principal balance of the loan at the rate of 155.88% per annum (the "Contract Rate"), and other permitted charges. The face amount of the Loan Agreement and principal proceeds loaned to you by us is set forth in the Amount Financed disclosure. Interest is calculated according to the simple interest method. The finance charge is calculated on the assumption that all payments will be made when due. You promise to timely pay us the principal and interest due in monthly installments of \$221.83 as set forth below in the Payment Schedule. On each Payment Date you will pay us, at the address indicated above, or at such other address as we direct you in writing, the amount stated. If your payment is due on a date in which we are not open for business then you agree to pay us on the next business day, and we will credit any payment received on our next business day, as if it were received on the appropriate date. You grant us a security interest in the Motor Vehicle, and have delivered to us the Keys. In the event you payoff the first lien during the term of this Loan Agreement, you agree to deliver the Motor Vehicle Certificate of Title to us. We do not accept personal checks.

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. 155.0646 %	FINANCE CHARGE The dollar amount the credit will cost you. \$ 3,708.98	Amount Financed The amount of credit provided to you or on your behalf. \$ 1,615.00	Total of Payments The amount you will have paid after you have made all payments as scheduled. \$ 5,323.98
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Your payment schedule will be:

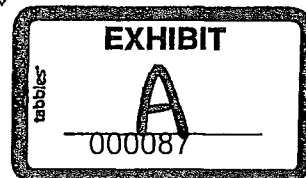
Number of Payments	Amount of Payments	When Payments Are Due
23	221.83	Monthly Beginning On 9/15/2008.
1	221.89	8/15/2010

Security: You are giving a security interest in the Motor Vehicle.
Prepayment: If you pay off early, you will not have to pay a penalty.

See the terms below and on the other pages of this Loan Agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Itemization of Amount Financed of \$ 1,615.00
 \$ 1,600.00 Amount given to you directly
 \$ 0.00 Amount paid on account no. with us

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 804-5368.



Additional Terms and Conditions of this Supervised Loan Agreement

Amount paid to others on your behalf:

\$ 15.00 to public officials
\$ 0.00 to SC DMV

Prepayment. You may prepay your obligations under this Loan Agreement in full or in part at any time and you will not incur an additional fee, charge or penalty. In addition, if you prepay the Amount Financed prior to the close of business on the business day immediately following the date of this Loan Agreement, we will rebate and refund to you the interest we have earned.

Additional Charges. You agree to pay to us \$ 15.00 for official fees and taxes incurred for registering the Motor Vehicle Certificate of Title.

Default. You will be in default under this Loan Agreement if you fail to make a payment as required by this Loan Agreement or if the prospect of payment, performance, or realization of collateral is significantly impaired. Upon default, we may accelerate the balance owing hereunder, unless you timely cure such default. Upon your first default because of your failure to make a required payment, we will not accelerate maturity of the unpaid balance of the obligation, nor take possession of the Motor Vehicle or otherwise enforce a security interest in the Motor Vehicle until twenty days after giving you notice of your right to cure. Upon any subsequent default which you fail to cure, we may accelerate the full balance of your obligations to us. Upon default we may take possession of the Motor Vehicle without judicial process as allowed by South Carolina Code § 37-6-112. Notwithstanding the foregoing, under South Carolina Code § 37-6-111, you may voluntarily surrender possession of your Motor Vehicle to us any time after default by leaving the Motor Vehicle at our store during normal business hours. If you voluntarily surrender the Motor Vehicle to us, we may accelerate maturity of the obligation and enforce the obligation and our security interest in the Motor Vehicle at any time after default.

Governing Law and Assignment. This Loan Agreement shall be governed by the laws of the State of South Carolina, except that the Waiver of Jury Trial and Arbitration Provision is governed by the Federal Arbitration Act ("FAA"). We may assign or transfer this Loan Agreement or any of our rights hereunder. You shall pay us until you receive notification of assignment of rights to payment.

WAIVER OF JURY TRIAL AND ARBITRATION PROVISION. Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:

1. For purposes of this Waiver of Jury Trial and Arbitration Provision (hereinafter the "Arbitration Provision"), the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision, (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement (including the Arbitration Provision), the information you gave us before entering into this Loan Agreement, any past agreement or agreements between you and us, and/or any renewal of this Loan Agreement, (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person, (i) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"), and/or (j) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

2. You acknowledge and agree that by entering into this Arbitration Provision:

- (a) YOU ARE WAIVING YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;
- (b) YOU ARE WAIVING YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and
- (c) YOU ARE WAIVING YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.

3. Except as provided in Paragraph 6 below, all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.

4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit

Any comments or questions may be directed to Customer Service at the following toll-free number. (800) 804-5368

Additional Terms and Conditions of this Supervised Loan Agreement

has been filed. Regardless of who demands arbitration, you shall have the right to select either of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7879) <http://www.adr.org> or National Arbitration Forum (1-800-474-2371) <http://www.arb-forum.com>. However, the parties may agree to select a local arbitrator who is an attorney, retired judge, or arbitrator registered and in good standing with an arbitration association and arbitrate pursuant to such arbitrator's rules. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization or your desire to select a local arbitrator. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Loan Agreement or the Arbitration Provision, including the limitations on the arbitrator below. You may obtain a copy of the rules and procedures by contacting the arbitration organization listed above.

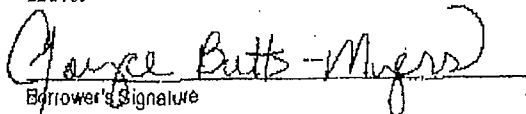
5. Regardless of who demands arbitration, we will advance your portion of the expenses associated with the arbitration, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the FAA, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitration hearing will be conducted in the county of your residence, or within 30 miles from such county, or in the county in which the transaction under this Loan Agreement occurred, or in such other place as shall be ordered by the arbitrator. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award may be filed with any court having jurisdiction.

6. All parties, including related third parties, shall retain the right to seek adjudication in a small claims tribunal for disputes within the scope of such tribunal's jurisdiction. Any dispute, which cannot be adjudicated within the jurisdiction of a small claims tribunal, shall be resolved by binding arbitration. Any appeal of a judgment from a small claims tribunal shall be resolved by binding arbitration. Furthermore, nothing in this Arbitration Provision shall limit the right of you or us (a) to foreclose against the Motor Vehicle by the exercise of any power under the Loan Agreement or under applicable law, (b) to exercise self-help remedies such as set off or repossession, or (c) to obtain provisional or ancillary remedies such as pre-judgment seizure of property, detinue, replevin, or injunctive relief, or to seek or obtain any other traditional equitable relief which does not claim money damages from a court having jurisdiction. The institution and maintenance by you or us of any action set forth in this Paragraph 6 shall not constitute a waiver of the right to submit any dispute to arbitration, including any counterclaim asserted.

7. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA. If a final non-appealable judgment of a court having jurisdiction over this transaction finds, for any reason, that the FAA does not apply to this transaction, then our agreement to arbitrate shall be governed by the arbitration law of the State of South Carolina.

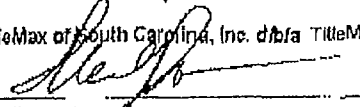
8. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if your obligations have been renewed, prepaid, paid or discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing.

By signing this Loan Agreement you acknowledge that it was filed in before you did so and that you have received an exact copy of it. You also warrant and represent that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code. You verify that you are the rightful owner of the Motor Vehicle. You verify that you are 18 years of age or older. You further acknowledge that you have read, understand, and agree to all of the terms of this Loan Agreement, including the "Waiver of Jury Trial and Arbitration Provision" above.


Borrower's Signature

Borrower's Signature

TitleMax of South Carolina, Inc. d/b/a TitleMax

By 
Its employee

Account Number: 5435151

THIS DOCUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF, AND PLEDGED AS COLLATERAL TO, MERRILL LYNCH MORTGAGE CAPITAL INC., AS AGENT FOR ITS OWN BENEFIT AND THE BENEFIT OF THE LENDERS

1 And then at that point you said I would
2 like to do that loan and then filled out the loan
3 agreement?

4 A. Yes, but I -- yes.

5 Q. Okay. That was the sequence -- yeah.
6 Okay. And then they said we can get you \$1,600,
7 then you filled out this?

8 A. Yes.

9 Q. And do you get your cash the same day?
10 Is that the way it worked?

11 A. Yes.

12 Q. Okay. All right. Or they give you a
13 check, I guess?

14 A. Yes.

15 Q. Okay. All right. Do you actually give
16 them the title of the vehicle or how does that
17 work?

18 A. Yes.

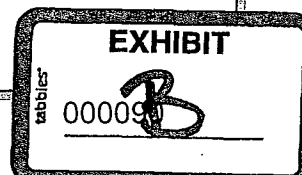
19 Q. Okay. All right. And these two
20 documents, you -- these are both signed by you,
21 correct?

22 A. Yes.

23 Q. And you read through both of these?

24 A. Yes.

25 Q. All right. And you read through, first



1 of all, the customer application, right?

2 A. Yes.

3 Q. And you understood that?

4 A. Yes.

5 Q. And you read through the terms of
6 the -- well, what is it called? Supervised loan
7 agreement, you read that as well?

8 A. Yes.

9 Q. Okay. And you understood the terms of
10 that?

11 A. Yes.

12 Q. Okay. These are basically the same
13 thing, so I won't go through all the detail. But
14 Number 2 looks like -- I don't have the
15 application, but I have the loan agreement.

16 For some reason, I don't -- this --
17 could you identify that? That looks to be a year
18 later, '09; is that right?

19 A. Yes.

20 Q. Okay. You did file another application
21 though; is that right? Is that your recollection?
22 Because I didn't see it in the file. I maybe
23 just -- maybe didn't get a copy of it. But do you
24 remember filling out another application?

25 A. Again, I don't want to lie.

STATE OF SOUTH CAROLINA
COUNTY OF ALLENDALE

JOYCE MYERS,

Plaintiff,

vs.

TITLEMAX OF SOUTH CAROLINA,
INC. and AFFORDABLE RECOVERY
SOLUTIONS a/k/a ARS,

Defendants,

IN THE COURT OF COMMON PLEAS
C/A: 13-CP-03-147

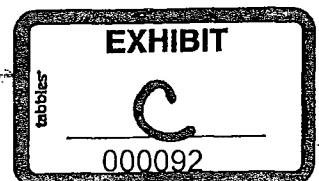
COMPLAINT
(Jury Trial Demanded)
(Personal Injury/Assault)

FILED FOR RECORD
2013 AUG 16 AM 11:01
CLERK SADB
CLERK OF COURT
ALLENDALE COUNTY, S.C.

FOR A FIRST CAUSE OF ACTION
(Negligence)

The Plaintiff alleges as follows:

1. Plaintiff is a citizen and resident of Allendale County, South Carolina.
2. Defendant TitleMax of South Carolina, Inc. is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in South Carolina; upon information and belief, Defendant TitleMax owns and operates TitleMax of Barnwell, South Carolina.
3. Defendant Affordable Recovery Solutions a/k/a ARS (hereinafter Defendant ARS) is a business organized and existing in the State of South Carolina.
4. The most substantial part of the acts or omissions giving rise to the causes of action described herein occurred in Allendale County, South Carolina.
5. At all times relevant herein, any employees referred to herein were agents, servants, and/or employees of Defendant TitleMax and Defendant ARS and were acting



within the scope and course of said agency, service, or employment thereby making Defendants liable for their actions or omissions under the theory of *respondeat superior*. Moreover, at all times relevant herein, Defendant ARS was an agent, servant and/or employee of Defendant TitleMax and was acting within the scope and course of said agency, service, or employment thereby making Defendant TitleMax liable for their actions or omissions under the theory of *respondeat superior*.

6. On or about January 11, 2013, Defendants' employees entered onto Plaintiff's premises and into Plaintiff's yard located at 306 Unity Drive, Allendale, South Carolina, without Plaintiff's permission to repossess Plaintiff's vehicle; as one the employees sped away with Plaintiff's vehicle, the other employee struck Plaintiff with his hand and shouted profanity at her. The employee then left the scene.

7. The Defendants owed the Plaintiff a duty to act reasonably in communicating with her.

8. Defendants, by and through the acts and/or omissions of their agents, servants, and/or employees, were negligent, careless, reckless, grossly negligent, willful, and wanton in the following manner:

- a) In striking the Plaintiff;
- b) In shouting profanity at the Plaintiff in a loud, abusive, rude, offensive, outrageous and/or threatening manner;
- c) In threatening the Plaintiff;
- d) In harassing the Plaintiff;
- e) In failing to adopt reasonable policies to prevent the intimidation of property owners or in failing to follow such policies;
- f) In failing to supervise or control their employees or agents;

- g) In failing to exercise the degree of care and caution a reasonable business establishment would have exercised under the same or similar circumstances; and
- h) In such other and further particulars as the evidence in trial may show.

9. As a direct and proximate result of the Defendants' negligence, Plaintiff suffered injuries to her hand, finger and other parts of her body which have caused and will in the future cause her to endure great physical pain, suffering, mental anguish, emotional distress, and impairment of health and bodily efficiency; and have caused a permanent disability.

FOR A SECOND CAUSE OF ACTION:
(Intentional Infliction of Emotional Distress)

10. The Plaintiff incorporates the allegations above as fully and completely as if repeated verbatim herein.

11. The Defendants' actions were reckless, willful, wanton, and oppressive, constituted extreme and outrageous conduct and exceeded all bounds of decency and were atrocious and utterly intolerable in a civilized society; moreover, no reasonable person could be expected to endure such distress.

12. As a direct and proximate result of the outrageous conduct of the Defendants, the Plaintiff has suffered extreme emotional distress, nervousness, worry, loss of sleep and other damages as set forth above.

FOR A THIRD CAUSE OF ACTION
(Assault)

13. The Plaintiff incorporates the allegations above as fully and completely as if repeated verbatim herein.

14. Defendants' conduct placed the Plaintiff in reasonable fear of bodily harm.

15. As a direct and proximate result of this assault, the Plaintiff suffered fear of serious bodily injury, mental stress and anxiety and other damages and injuries as set forth above. Moreover, Plaintiff is entitled to punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Battery)

16. The Plaintiff incorporates the allegations above as fully and completely as if repeated verbatim herein.

17. Defendants' employees inflicted forcible contact on Plaintiff's person.

18. As a direct and proximate result of Defendants' battery, Plaintiff suffered actual damages as set forth above. Moreover, Plaintiff is informed and believes that she is entitled to punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Trespass)

19. The Plaintiff incorporates the allegations above as fully and completely as if repeated verbatim herein.

20. Plaintiff was in legal and peaceable possession of the home and lot located at 306 Unity Drive, Allendale, South Carolina, on or about January 11, 2013.

21. Defendants' employees voluntarily and intentionally entered onto the property without Plaintiff's permission.

22. Defendants thereby interfered with Plaintiff's right to exclusive, peaceable possession of her property.

23. As a direct and proximate result of Defendants' trespass, Plaintiff suffered

a violation of her peaceable possession of her home and is entitled to punitive damages as a result of Defendants' wanton, wilful and reckless disregard of the rights of Plaintiff.

WHEREFORE, Plaintiff prays for judgment against the Defendants in a sum sufficient to adequately compensate for actual damages, for such punitive damages as a jury may reasonably award, for the costs of this action, and for such other and further relief as this Court may deem just and proper.

GOODING and GOODING, P.A.

BY: 

H. Woodrow Gooding
Mark B. Tinsley
P. O. Box 1000
Allendale, SC 29810
(803) 584-7676

Attorneys for Plaintiff

DATE: 8/16/13

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C/A: 13-CP-03-147
COUNTY OF ALLENDALE	)	
JOYCE MYERS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER DENYING
	)	DEFENDANT AFFORDABLE
	)	RECOVERY SOLUTIONS'
TITLEMAX OF SOUTH CAROLINA,	)	MOTION TO COMPEL ARBITRATION
INC. and AFFORDABLE RECOVERY	)	
SOLUTIONS a/k/a ARS,	)	
	)	
Defendants.	)	
_____	)	

This matter came before the Court on April 20, 2015, upon Defendant Affordable Recovery Solutions' Motion to Compel Arbitration. Defendant Affordable Recovery Solutions will hereinafter be referred to as ARS. Plaintiff and Defendants were represented at the hearing by their respective counsel. After a thorough review of the pleadings, evidence, arguments, memoranda, affidavits, and case law presented by the parties and in the exercise of its discretion, the Court denies Defendant ARS' Motion to Compel Arbitration on the following grounds, any one of which is sufficient to support the Court's ruling.

I. THE CLAIMS ASSERTED BY PLAINTIFF ARE NOT COVERED BY THE ARBITRATION AGREEMENT.

As the Court held in Chassereau v. Global-Sun Pools, Inc., "arbitration is a matter of contract, and a party cannot be required to arbitrate any dispute which he has not agreed to arbitrate." 373 S.C. 168, 644 S.E.2d 718 (2007)(citations omitted).; see

also, Zabinski v. Bright Acres Assoc., 346 S.C. 580, 55 S.E.2d 110, 118 (2001). Moreover, “[a]lthough we are constrained to resolve all doubts in favor of arbitration, this is not an absolute truism intended to replace careful judicial analysis.” Id. The question then becomes whether the parties to the agreement, namely TitleMax and Plaintiff, agreed to submit to arbitration the issues asserted by Plaintiff in her Complaint. As the Affidavit of Adam Yount makes clear, TitleMax neither intended nor contemplated that the arbitration provision in its boilerplate financing agreement would cover allegations of negligence, assault, battery, trespass and other types of abusive behavior. In fact, the Repossession Agreement between TitleMax and ARS makes this abundantly clear. In Paragraph 2 of the Repossession Agreement, ARS warranted and agreed that repossessions would be accomplished “without (1) the use of trick, fraud or other deceptive practices, including but not limited to impersonating a law enforcement or court official or other deceptive practices; 2) breach of the peace; 3) force, threat or intimidation; or, 4) any other unlawful means.” Clearly, the abusive behavior and conduct alleged by Plaintiff was not allowed in repossessions pursuant to the Repossession Agreement and was not intended by TitleMax to be covered by the arbitration provision. See, Affidavit of Adam Yount and Repossession Agreement attached to Yount’s affidavit as Exhibit 1.

Likewise, Joyce Myers did not intend for such abusive behavior and conduct to be covered by the arbitration provision. See, Affidavit of Joyce Myers. As the Court in Chassereau recognized, “a reasonable person would not have foreseen and would not have expected (and ought not to expect)” the abusive acts and conduct alleged by

Plaintiff. 373 S.C. 168, 644 S.E.2d 718 (2007). Moreover, “although these types of uncivilized acts often arise in the course of performance of contracts containing arbitration clauses, South Carolina courts will not interpret arbitration clauses to apply to such acts which are outrageous and unforeseen.” Id.

Because TitleMax and Joyce Myers neither intended nor could have contemplated the abusive conduct alleged by Plaintiff to be covered by the arbitration provision, there was no meeting of the minds between the parties and the arbitration provision does not apply to the facts currently before the Court.

II. ARS, A NONSIGNATORY, CANNOT ENFORCE THE ARBITRATION PROVISION

It is undisputed that ARS is a nonsignatory to the arbitration agreement. In Brantley v. Republic Mortgage Insurance Co., the Fourth Circuit construed South Carolina law in determining whether a nonsignatory can enforce an arbitration provision. Brantley v. Republic Mortgage Ins. Co., 424 F.3d 392 (4th Cir. 2005). Pursuant to Brantley, ARS must either show that Joyce Myers, a signatory, should be equitably estopped from avoiding the arbitration provision or that ARS is a third-party beneficiary of the arbitration agreement. Id. ARS cannot show either.

A. Equitable Estoppel

To estop the Plaintiff from avoiding arbitration, ARS must meet the intertwined claims test. Under the intertwined claims test, the signatory may be estopped in two situations: (1) where the signatory is suing on the contract containing the agreement; or (2) where it is alleged that the non-signatory defendant engaged in substantially

interdependent and concerted misconduct with another signatory to the contract. Brantley v. Republic Mortgage Ins. Co., 424 F.3d 392 (4th Cir. 2005).

Here, Plaintiff's claims against ARS are not based on the contract that contains that arbitration provision; therefore, ARS cannot meet the first prong of the intertwined claims test. See, Pearson v. Hilton Head Hospital, 400 S.C. 281, 733 S.E.2d 597 (Ct.App. 2012). Moreover, Plaintiff has not alleged substantially interdependent, intertwined or concerted misconduct between ARS and TitleMax. Rather, the only liability alleged by Plaintiff against TitleMax is *respondeat superior* liability, i.e. that TitleMax is vicariously liable for the acts of ARS. An allegation that a signatory defendant is vicariously liable for its agent is not sufficient to show substantially interdependent and concerted conduct.

Moreover, even if *respondeat superior* liability was sufficient, the evidence shows that ARS was not an agent of TitleMax. See, Affidavit of Adam Yount and Affidavit of Mark B. Tinsley. In their Answers to Plaintiff's Complaint, both TitleMax and ARS deny that ARS was an agent, servant, or employee of TitleMax. Moreover, TitleMax never intended for ARS to be its agent, but only an independent contractor over which TitleMax had no right of control. Even ARS agrees that TitleMax had no right of control over ARS. See, Deposition Testimony of Jason LaRussa, p.7, ll. 20-22. Therefore, ARS cannot succeed under the second prong of the intertwined claims test.

B. Third-Party Beneficiary

Here, the language of the arbitration provision does not create protection for ARS as a third-party beneficiary "because the language of the [contract] does not

clearly indicate that, at the time of contracting, the parties intended to provide [ARS] with a direct benefit.” Brantley v. Republic Mortgage Ins. Co., 424 F.3d 392 (4th Cir. 2005). Counsel for ARS argued at the hearing that ARS is covered by the arbitration provision as a “related third party.” The arbitration provision defines “related third parties” as “any of [TitleMax] employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities.”¹ See, Agreement, attached to Affidavit of Adam Yount as Exhibit 2.

As in Brantley, the arbitration provision “makes no reference to [ARS].” Id.; see, Arbitration Agreement, attached to Affidavit of Adam Yount as Exhibit 2. Rather, the evidence shows that TitleMax never intended to make ARS a third-party beneficiary of the contract. See, Affidavit of Adam Yount. Instead, the agency language in the arbitration provision was only intended to protect TitleMax from *respondeat superior* liability for its agent’s misconduct. Moreover, even if the language was intended by TitleMax to protect its agents, ARS was not an agent of TitleMax but only an independent contractor as discussed above.

III. ARS WAIVED ANY RIGHT IT MAY HAVE HAD TO COMPEL ARBITRATION

Although South Carolina law favors arbitration, “[t]he right to enforce an arbitration clause, however, may be waived.” Rhodes v. Benson Chrysler-Plymouth Inc., 374 S.C. 122, 647 S.E.2d 249 (2007)(other citations omitted). To establish waiver, “a party must show prejudice through an undue burden caused by delay in demanding arbitration.” Id. “Generally the factors our courts consider to determine if

¹ In fact, both counsel for ARS and counsel for Plaintiff agreed at the hearing that the

a party waived its right to compel arbitration are: (1) whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay in seeking arbitration.” Id. Moreover, “[t]o ascertain whether the non-moving party was prejudiced, our courts often examine whether the party requesting arbitration took ‘advantage of the judicial system by engaging in discovery.’” Id. (other citations omitted). Here, more than a year elapsed between the filing of the Complaint and the filing of the motion to compel arbitration. ARS never raised the arbitration claim as a defense in its Answer.² The parties also engaged in extensive discovery and participated in the court-mandated mediation procedure. ARS clearly took advantage of the judicial system by engaging in discovery that likely would not have been permitted in an arbitration proceeding.³ Most significantly, as in Rhodes, ARS waited until the very day that trial was scheduled to begin to actually argue its motion to compel arbitration. ARS, “with full knowledge of [the arbitration provision], cannot invoke and enjoy the full benefits of discovery and then belatedly assert a right to arbitrate at the eleventh hour with the case approaching

arbitration provision itself defines “related third parties”.

² The failure to assert the arbitration defense is an affirmative defense that can be waived. See, Rule 8(c), SCRCP; see also, Liberty Builders, Inc. v. Horton, 336 S.C. 658, 521 S.E.2d 749 (Ct.App. 1999)(citing United Nuclear Corp. v. General Atomic Co., 93 N.M. 105, 597 P.2d 290,300 (1979) for the proposition that a defendant’s failure to raise arbitration as an affirmative defense in its answer is a factor to consider in finding waiver of one’s right to compel arbitration).

³

The arbitration agreement itself warns that discovery is limited.

trial.” Id. Based on all of these factors, the Court hereby finds that the Plaintiff has established prejudice and undue burden caused by ARS’ delay and that ARS has thereby waived any right it may have had to compel arbitration.

CONCLUSION

For the reasons set forth above, the Court denies Defendant ARS’ Motion to Compel Arbitration.

IT IS SO ORDERED this _____ day of April, 2015!

Perry M. Buckner, III
Chief Administrative Judge of the Fourteenth Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

JOYCE MYERS,

Plaintiff,

vs.

TITLEMAX OF SOUTH CAROLINA,
INC. AND AFFORDABLE RECOVERY
SOLUTIONS a/k/a ARS,

Defendant.

IN THE COURT OF COMMON PLEAS
C/A#: 13-CP-03-147

AFFIDAVIT OF
MARK TINSLEY

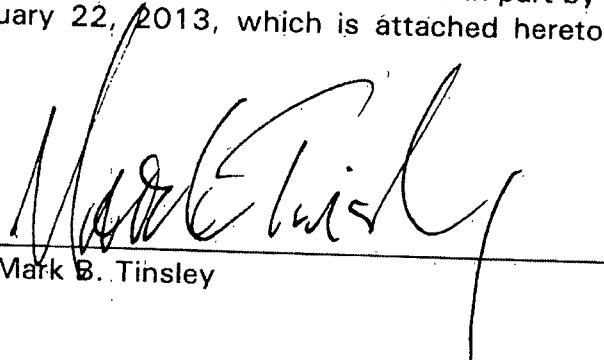
FILED FOR RECORD
2015 APR 17 PM 4:00
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Mark Tinsley, who being duly deposed
and sworn, says:

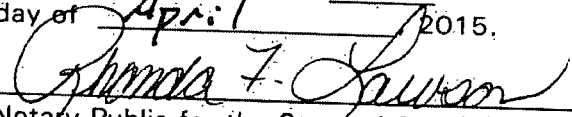
1. I am an attorney licensed to practice law in South Carolina, and I currently represent the Plaintiff in this action.
2. I give this affidavit based on my own personal knowledge, I am over the age of eighteen (18) years, and I am competent to make this affidavit.
3. The Complaint in this action was filed on August 16, 2013. On February 27, 2014, ARS filed its Answer to the Complaint. Significantly, ARS did not plead any right to arbitration in its Answer. Rather, not until August 27, 2014, more than one year after Plaintiff filed her Complaint, did ARS file a Motion to Compel Arbitration.
4. The parties have engaged in significant written discovery. On February 27, 2014, ARS served Interrogatories and Request for Production on Plaintiff. On May 7, 2014, Plaintiff answered ARS' discovery requests. On May 22, 2014, ARS served Requests for Admission to Plaintiff which Plaintiff answered on May 29, 2014. On July 25, 2014, Plaintiff served an Amended Response to ARS' Requests for Admission. On or about May 22, 2014, ARS served Plaintiff with Supplemental Interrogatories which Plaintiff answered on August 11, 2014. On June 6, 2014, ARS served Plaintiff with Second Supplemental Interrogatories which Plaintiff

answered on August 11, 2014. On December 8, 2014, and again on March 18, 2015, Plaintiff served supplemental answers to ARS' discovery requests.

5. Moreover, a number of depositions have been taken in this matter and all were taken after ARS ultimately filed its motion to compel arbitration. On August 20, 2014, ARS noticed Plaintiff's deposition and subsequently deposed Plaintiff on October 9, 2014. On November 12, 2014, Jason LaRussa, an ARS employee, and William Tison, a law enforcement officer, were deposed.
6. The parties also participated in mediation on February 19, 2015, as required by our court rules, and incurred costs as a result of this mediation.
7. Only after mediation and after all discovery has been completed, which would not have been permitted under the arbitration agreement, and after Plaintiff and her undersigned counsel have expended significant time and money preparing for trial, has ARS finally planned to argue or asked the court hear its Motion to Compel Arbitration; the date of the argument is on the very day a trial is scheduled in this matter and should begin.
8. ARS' significant delay in moving for an arbitration has significantly prejudiced Plaintiff as the discovery described above would not have been allowed in the arbitration proceeding and Plaintiff would not have incurred the delay or expenses described if ARS had timely asserted this claim.
9. Prior to the filing of its memorandum in support of its motion to compel arbitration, ARS and TitleMax have always taken the position that ARS was not TitleMax's agent; rather, they have consistently maintained that ARS was an independent contractor. This fact is evidenced in part by the letter of TitleMax of January 22, 2013, which is attached hereto as Exhibit 1.


Mark B. Tinsley

Sworn to before me this 17th
day of April, 2015.


Notary Public for the State of South Carolina

My Commission expires: 1/16/2024

TITLEMAX

January 22, 2013

Mark B. Tinsley, Esq.
Gooding and Gooding
Post Office Box 1000
Allendale, SC 29810

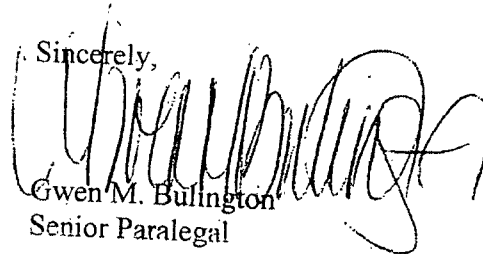
Re: Joyce Meyers
Date of Incident: 1/11/13
Claim No.: GC12092610013

Dear Mr. Tinsley:

I am in receipt of your letter. Please allow this letter to inform you that this matter has been reported to the insurance carrier for Affordable Recovery Solutions ("ARS") as it is an independent contractor.

The adjuster assigned to this matter is Kevin Rose and he can be reached at (312) 884-5804.

Sincerely,


Gwen M. Bulington
Senior Paralegal

cc: Kevin Rose



• 15 Bull Street Ste 200 • Savannah, GA 31401 •

(912) 525-2675 • Fax (912) 525-2679

000106

SHARPE INVESTIGATIONS, LLC

P.O. Box 366
Aiken, SC 29802
803-640-3240

AFFIDAVIT OF SERVICE

STATE OF SOUTH CAROLINA
COUNTY OF ALLANDALE

IN THE COURT OF:

PLAINTIFF(S) JOYCE MYERS

VS.

☐ FAMILY
☒ COMMONS PLEAS
☐ OTHER

DEFENDANT(S) TITEMAX OF
SOUTH CAROLINA, INC. & AFFILIATED
RECOVERY SOLUTIONS AKA ARS

CASE NUMBER: 13-CP-23-147

The undersigned deponent, HILARY RUCKER who being duly sworn; served the following: To: JASON LARUSSO (ARS)

CIVIL ACTION COVER SHEET
SUMMONS
COMPLAINT
PLAINTIFFS REQUEST FOR PRODUCTION TO DEFENDANTS
PLAINTIFFS INTERROGATORIES TO DEFENDANTS

PLACE OF SERVICE: Intersection of Old Waynesboro Road & Brown Road Augusta, GA.
DATE OF SERVICE: MARCH 10, 2014 TIME: 8:55 PM

☒ By Delivering To Him/Her Personally

☐ By Delivering To: _____, A Person Of Discretion And Age Residing At The Residence Of The Person To Be Served And Being At said Residence At Time Of Service

☐ By Delivering To: _____, A Person Of Discretion employed At The Place Of Business Of The Person To Be Served And Being At Business At Time Of Service.

Deponent is not a party to this action, and has no interest therein or connection therewith.

SWORN TO BEFORE ME

THIS 12th DAY OF MARCH, 2014

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9/1/19

[Signature]
DEPONENT

Record No.: 5435151

Supervised Loan Agreement

Date 08/15/2008

THIS AGREEMENT IS SUBJECT TO AN ARBITRATION PROVISION. BY ENTERING THIS AGREEMENT, YOU WILL WAIVE CERTAIN RIGHTS. PLEASE READ THE WAIVER OF JURY TRIAL AND ARBITRATION PROVISION CAREFULLY TO ASSESS YOUR RIGHTS TO RESOLVE DISPUTES.

SUPERVISED LENDER: TITLEMAX OF SOUTH CAROLINA, INC.		PHONE NUMBER (803) 541-3602		FAX NUMBER (803) 541-6051	
STREET ADDRESS 10520 DUNBARTON BLVD		CITY BARNWELL		STATE SC	ZIP CODE 29812
SUPERVISED LENDER HOURS OF OPERATION: Monday to Friday 9 A.M. to 7 P.M., Saturday 10 A.M. to 4 P.M., CLOSED ON SUNDAY				PRIMARY CONTACT PERSON mike fraebel	

BORROWER: FIRST NAME JOYCE	MIDDLE NAME BUTTS	LAST NAME MYERS	SOCIAL SECURITY NO XXX-XX-2385	DRIVER'S LICENSE NO./STATE ID NO. 007840858	
RESIDENCE STREET ADDRESS 915 COLLEGE ST			CITY ALLENDALE	STATE SC	ZIP CODE 29810
HOME PHONE (803) 584-3871	CELL PHONE (803) 397-4517	SEX FEMALE	HEIGHT 511	DATE OF BIRTH 09/11/1970	

BORROWER: FIRST NAME	MIDDLE NAME	LAST NAME	SOCIAL SECURITY NO	DRIVER'S LICENSE NO./STATE ID NO.	
RESIDENCE STREET ADDRESS			CITY	STATE	ZIP CODE
HOME PHONE	CELL PHONE	SEX	HEIGHT	DATE OF BIRTH	

MOTOR VEHICLE TITLE CERTIFICATE NUMBER 77003D138054926	STATE SC	VEHICLE IDENTIFICATION NUMBER (VIN) JN1CA21D7VM527771	LICENSE PLATE NUMBER 332 TEM
YEAR 1997	MAKE NISSAN	MODEL MAXIMA SE	COLOR BURGANDY
Name of Lienholder (if applicable) NA			Account No. NA
Lienholder Address: NA			Payoff Amount as of today: NA

In this Supervised Loan Agreement ("Loan Agreement") the words "you" and "your" mean the Borrower(s), identified above who have signed it. The words "Supervised Lender," "we," "us" and "our" mean TitleMax of South Carolina, Inc. d/b/a TitleMax. The words "collateral" and "Motor Vehicle" mean the Motor Vehicle identified above.

You promise to pay us the principal amount of this loan \$1,615.00, plus interest from the date of this Loan Agreement on the unpaid principal balance of the loan at the rate of 155.88 % per annum (the "Contract Rate"), and other permitted charges. The face amount of the Loan Agreement and principal proceeds loaned to you by us is set forth in the Amount Financed disclosure. Interest is calculated according to the simple interest method. The finance charge is calculated on the assumption that all payments will be made when due. You promise to timely pay us the principal and interest due in monthly installments of \$ 221.83 as set forth below in the Payment Schedule. On each Payment Date you will pay us, at the address indicated above, or at such other address as we direct you in writing, the amount stated. If your payment is due on a date in which we are not open for business then you agree to pay us on the next business day, and we will credit any payment received on our next business day, as if it were received on the appropriate date. You grant us a security interest in the Motor Vehicle, and have delivered to us the Keys. In the event you payoff the first lien during the term of this Loan Agreement, you agree to deliver the Motor Vehicle Certificate of Title to us. We do not accept personal checks.

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. 156.0646 %	FINANCE CHARGE The dollar amount the credit will cost you. \$ 3,708.98	Amount Financed The amount of credit provided to you or on your behalf. \$ 1,615.00	Total of Payments The amount you will have paid after you have made all payments as scheduled. \$ 5,323.98
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Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
23	221.83	Monthly Beginning On 9/15/2008.
1	221.89	8/15/2010

Security: You are giving a security interest in the Motor Vehicle.
Prepayment: If you pay off early, you will not have to pay a penalty.

See the terms below and on the other pages of this Loan Agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Itemization of Amount Financed of \$ 1,615.00
 \$ 1,600.00 Amount given to you directly
 \$ 0.00 Amount paid on account no. _____ with us

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 804-5368.

Additional Terms and Conditions of this Supervised Loan Agreement

Amount paid to others on your behalf
\$ 15.00 to public officials
\$ 0.00 to SC DMV

Prepayment. You may prepay your obligations under this Loan Agreement in full or in part at any time and you will not incur an additional fee, charge or penalty. In addition, if you prepay the Amount Financed prior to the close of business on the business day immediately following the date of this Loan Agreement, we will rebate and refund to you the interest we have earned.

Additional Charges. You agree to pay to us \$ 15.00 for official fees and taxes incurred for registering the Motor Vehicle Certificate of Title.

Default. You will be in default under this Loan Agreement if you fail to make a payment as required by this Loan Agreement or if the prospect of payment, performance, or realization of collateral is significantly impaired. Upon default, we may accelerate the balance owing hereunder, unless you timely cure such default. Upon your first default because of your failure to make a required payment, we will not accelerate maturity of the unpaid balance of the obligation, nor take possession of the Motor Vehicle or otherwise enforce a security interest in the Motor Vehicle until twenty days after giving you notice of your right to cure. Upon any subsequent default which you fail to cure, we may accelerate the full balance of your obligations to us. Upon default, we may take possession of the Motor Vehicle without judicial process as allowed by South Carolina Code § 37-6-112. Notwithstanding the foregoing, under South Carolina Code § 37-6-111, you may voluntarily surrender possession of your Motor Vehicle to us any time after default by leaving the Motor Vehicle at our store during normal business hours. If you voluntarily surrender the Motor Vehicle to us, we may accelerate maturity of the obligation and enforce the obligation and our security interest in the Motor Vehicle at any time after default.

Governing Law and Assignment. This Loan Agreement shall be governed by the laws of the State of South Carolina, except that the Waiver of Jury Trial and Arbitration Provision is governed by the Federal Arbitration Act ("FAA"). We may assign or transfer this Loan Agreement or any of our rights hereunder. You shall pay us until you receive notification of assignment of rights to payment.

WAIVER OF JURY TRIAL AND ARBITRATION PROVISION. Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. **THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:**

1. For purposes of this Waiver of Jury Trial and Arbitration Provision (hereinafter the "Arbitration Provision"), the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision, (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement (including the Arbitration Provision), the information you gave us before entering into this Loan Agreement, any past agreement or agreements between you and us, and/or any renewal of this Loan Agreement, (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts, (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (j) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

2. You acknowledge and agree that by entering into this Arbitration Provision:

- (a) YOU ARE WAIVING YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;
- (b) YOU ARE WAIVING YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and
- (c) YOU ARE WAIVING YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.

3. Except as provided in Paragraph 6 below, all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**

4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 804-5368

Additional Terms and Conditions of this Supervised Loan Agreement

has been filed. Regardless of who demands arbitration, you shall have the right to select either of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7679) <http://www.adr.org> or National Arbitration Forum (1-800-474-2371) <http://www.arb-forum.com>. However, the parties may agree to select a local arbitrator who is an attorney, retired judge, or arbitrator registered and in good standing with an arbitration association and arbitrate pursuant to such arbitrator's rules. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization or your desire to select a local arbitrator. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Loan Agreement or the Arbitration Provision, including the limitations on the arbitrator below. You may obtain a copy of the rules and procedures by contacting the arbitration organization listed above.

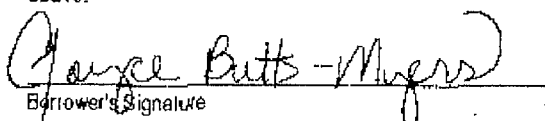
5. Regardless of who demands arbitration, we will advance your portion of the expenses associated with the arbitration, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the FAA, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitration hearing will be conducted in the county of your residence, or within 30 miles from such county, or in the county in which the transaction under this Loan Agreement occurred, or in such other place as shall be ordered by the arbitrator. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award may be filed with any court having jurisdiction.

6. All parties, including related third parties, shall retain the right to seek adjudication in a small claims tribunal for disputes within the scope of such tribunal's jurisdiction. Any dispute, which cannot be adjudicated within the jurisdiction of a small claims tribunal, shall be resolved by binding arbitration. Any appeal of a judgment from a small claims tribunal shall be resolved by binding arbitration. Furthermore, nothing in this Arbitration Provision shall limit the right of you or us (a) to foreclose against the Motor Vehicle by the exercise of any power under the Loan Agreement or under applicable law, (b) to exercise self-help remedies such as set off or repossession, or (c) to obtain provisional or ancillary remedies such as pre-judgment seizure of property, detinue, replevin, or injunctive relief, or to seek or obtain any other traditional equitable relief which does not claim money damages from a court having jurisdiction. The institution and maintenance by you or us of any action set forth in this Paragraph 6 shall not constitute a waiver of the right to submit any dispute to arbitration, including any counterclaim asserted.

7. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA. If a final non-appealable judgment of a court having jurisdiction over this transaction finds, for any reason, that the FAA does not apply to this transaction, then our agreement to arbitrate shall be governed by the arbitration law of the State of South Carolina.

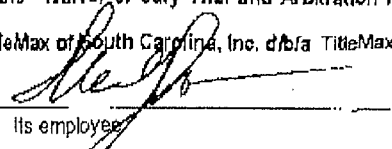
8. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if your obligations have been renewed, prepaid, paid or discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing.

By signing this Loan Agreement you acknowledge that it was filed in before you did so and that you have received an exact copy of it. You also warrant and represent that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code. **You verify that you are the rightful owner of the Motor Vehicle.** You verify that you are 18 years of age or older. You further acknowledge that you have read, understand, and agree to all of the terms of this Loan Agreement, including the "Waiver of Jury Trial and Arbitration Provision" above.


Borrower's Signature

Borrower's Signature

TitleMax of South Carolina, Inc. d/b/a TitleMax

By 

Its employee

Account Number: 5435151

THIS DOCUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF, AND PLEDGED AS COLLATERAL TO, MERRILL LYNCH MORTGAGE CAPITAL INC., AS AGENT FOR ITS OWN BENEFIT AND THE BENEFIT OF THE LENDERS

Any comments or questions may be directed to Customer Service at the following toll-free number. (800) 804-5368

TJM-SC-Customer Agr-2nd Lien-V 1 1-07 20 2007

Page 3 of 3

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THIS AGREEMENT IS SUBJECT TO AN ARBITRATION PROVISION. BY ENTERING THIS AGREEMENT, YOU WILL WAIVE CERTAIN RIGHTS. PLEASE READ THE WAIVER OF JURY TRIAL AND ARBITRATION PROVISION CAREFULLY TO ASSESS YOUR RIGHTS TO RESOLVE DISPUTES.

SUPERVISED LENDER: TITELMAX OF SOUTH CAROLINA, INC.		PHONE NUMBER (803) 541-3802		FAX NUMBER (803) 541-6051	
STREET ADDRESS 10520 DUNBARTON BLVD		CITY BARNWELL		STATE SC	ZIP CODE 29812
SUPERVISED LENDER HOURS OF OPERATION: Monday to Friday 9 A.M. to 7 P.M., Saturday 10 A.M. to 4 P.M., CLOSED ON SUNDAY.				PRIMARY CONTACT PERSON Cheryl Priester	

BORROWER: FIRST NAME JOYCE	MIDDLE NAME BUTTS	LAST NAME MYERS	SOCIAL SECURITY NO. XXX-XX-2365	DRIVER'S LICENSE NO./STATE ID NO. 007840858	
RESIDENCE STREET ADDRESS 915 COLLEGE ST			CITY ALLENDALE	STATE SC	ZIP CODE 29810
HOME PHONE (803) 584-3871	CELL PHONE		DATE OF BIRTH 09/11/1970		
BORROWER: FIRST NAME	MIDDLE NAME	LAST NAME	SOCIAL SECURITY NO.	DRIVER'S LICENSE NO./STATE ID NO.	
RESIDENCE STREET ADDRESS			CITY	STATE	ZIP CODE
HOME PHONE	CELL PHONE		DATE OF BIRTH		

MOTOR VEHICLE: TITLE CERTIFICATE NUMBER 770080196020345		STATE SC	VEHICLE IDENTIFICATION NUMBER (VIN) JN1CA21D7VM527771	LICENSE PLATE NUMBER DQN 445
YEAR 1997	MAKE NISSAN	MODEL MAXIMA	TYPE	COLOR BURGANDY

In this Supervised Loan Agreement ("Loan Agreement") the words "you" and "your" mean the Borrower(s), identified above who have signed it. The words "Supervised Lender," "we," "us" and "our" mean TitleMax of South Carolina, Inc. d/b/a TitleMax. The words "collateral" and "Motor Vehicle" mean the Motor Vehicle identified above. This transaction is not a short-term vehicle secured loan as defined by SC Code §37-3-413.

You promise to pay us the principal amount of this loan \$2,015.00, plus interest from the date of this Loan Agreement on the unpaid principal balance of the loan at the rate of 131.88% per annum (the "Contract Rate"), and other permitted charges. The face amount of the Loan Agreement and principal proceeds loaned to you by us is set forth in the Amount Financed disclosure. Interest is calculated according to the simple interest method. The finance charge is calculated on the assumption that all payments will be made when due. You promise to timely pay us the principal and interest due in monthly installments of \$241.88 as set forth below in the Payment Schedule. On each Payment Date you will pay us, at the address indicated above, or at such other address as we direct you in writing, the amount stated. If your payment is due on a date in which we are not open for business then you agree to pay us on the next business day, and we will credit any payment received on our next business day, as if it were received on the appropriate date. You grant us a security interest in the Motor Vehicle, and have delivered to us the Keys. In the event you payoff the first lien during the term of this Loan Agreement, you agree to deliver the Motor Vehicle Certificate of Title to us. We do not accept personal checks.

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. <u>132.3488 %</u>	FINANCE CHARGE The dollar amount the credit will cost you. <u>\$ 3,789.89</u>	Amount Financed The amount of credit provided to you or on your behalf. <u>\$ 2,015.00</u>	Total of Payments The amount you will have paid after you have made all payments as scheduled. <u>\$ 5,804.69</u>
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Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
23	241.88	Monthly Beginning On 6/4/2012.
1	241.45	5/4/2014

Security: You are giving a security interest in the Motor Vehicle.
Prepayment: If you pay off early, you will not have to pay a penalty.
See the terms below and on the other pages of this Loan Agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Itemization of Amount Financed of \$ 2,015.00

\$ 585.95 Amount given to you directly.

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 804-5368

Additional Terms and Conditions of this Supervised Loan Agreement

\$ 1,429.05 Amount paid on account no. 10822731 with us.
Amount paid to others on your behalf
\$ 0.00 to public officials
\$ 0.00 to _____

Prepayment and Right to Rescind. You may prepay your obligations under this Loan Agreement in full or in part at any time and you will not incur an additional fee, charge or penalty. In addition, we agree you may rescind your payment obligations hereunder if you return the loan proceeds given to you or paid on your account with us prior to the close of business on the business day immediately following the date of this Loan Agreement. If you rescind by returning the loan proceeds, then your loan will be considered as paid in full, and we will rebate and refund to you the interest we have earned and credit your account with any amounts paid to public officials to perfect our security interest.

Additional Charges. You agree to pay to us \$ 0.00 for official fees and taxes incurred for registering the Motor Vehicle Certificate of Title.

Default and Limited Recourse. You will be in default under this Loan Agreement if you fail to make a payment as required by this Loan Agreement or if the prospect of payment, performance, or realization of collateral is significantly impaired. Upon default, we may accelerate the balance owing hereunder, unless you timely cure such default. Upon your first default because of your failure to make a required payment, we will not accelerate maturity of the unpaid balance of the obligation, nor take possession of the Motor Vehicle or otherwise enforce a security interest in the Motor Vehicle until twenty days after giving you notice of your right to cure. Upon any subsequent default which you fail to cure, we may accelerate the full balance of your obligations to us. Upon default we may take possession of the Motor Vehicle without judicial process as allowed by South Carolina Code § 37-5-112. Notwithstanding the foregoing, under South Carolina Code § 37-5-111, you may voluntarily surrender possession of your Motor Vehicle to us any time after default by leaving the Motor Vehicle at our store during normal business hours. If you voluntarily surrender the Motor Vehicle to us, we may accelerate maturity of the obligation and enforce the obligation and our security interest in the Motor Vehicle at any time after default. Furthermore, upon default will limit our recourse against you to taking possession of the collateral and selling it pursuant to the Uniform Commercial Code. Except in the event of fraud by you, if you default in the repayment of the loan, our sole remedy is to seek possession and sale of the motor vehicle securing the loan, and we will not pursue you personally in an action for repayment of the loan or for any deficiency after sale. In addition, we will return to you any surplus obtained after sale in excess of the amount owed on the loan and reasonable expenses of repossession and sale in accordance with Title 36, Chapter 9 of the South Carolina Code of Laws.

Governing Law and Assignment. This Loan Agreement shall be governed by the laws of the State of South Carolina, except that the Waiver of Jury Trial and Arbitration Provision is governed by the Federal Arbitration Act ("FAA"). We may assign or transfer this Loan Agreement or any of our rights hereunder. You shall pay us until you receive notification of assignment of rights to payment.

WAIVER OF JURY TRIAL AND ARBITRATION PROVISION. Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. **THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:**

1. For purposes of this Waiver of Jury Trial and Arbitration Provision (hereinafter the "Arbitration Provision"), the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement (including the Arbitration Provision), the information you gave us before entering into this Loan Agreement, any past agreement or agreements between you and us, and/or any renewal of this Loan Agreement; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (j) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

2. You acknowledge and agree that by entering into this Arbitration Provision:

- (a) YOU ARE WAIVING YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;
- (b) YOU ARE WAIVING YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and
- (c) YOU ARE WAIVING YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.

3. Except as provided in Paragraph 4 below, all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**

4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Regardless of who demands arbitration, you shall have the right to select either of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7879) <http://www.adr.org>, or JAMS (1-800-352-5267) <http://www.jamsadr.com>. However, the parties may agree to select a local arbitrator who is an attorney, retired judge, or arbitrator.

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 804-5368.

Additional Terms and Conditions of this Supervised Loan Agreement

registered and in good standing with an arbitration association and arbitrate pursuant to such arbitrator's rules. If the arbitration associations listed above are not available and the parties cannot otherwise agree on a substitute, then any party may petition a court pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. sections 1-16 to select an arbitration organization, provided such arbitration organization shall enforce the terms of this Loan Agreement and the Arbitration Provision, including the prohibition on class arbitration. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization or your desire to select a local arbitrator. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Loan Agreement or the Arbitration Provision, including the limitations on the arbitrator below. You may obtain a copy of the rules and procedures by contacting the arbitration organization listed above.

5. Regardless of who demands arbitration, we will advance your portion of the expenses associated with the arbitration, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the FAA, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitration hearing will be conducted in the county of your residence, or within 30 miles from such county, or in the county in which the transaction under this Loan Agreement occurred, or in such other place as shall be ordered by the arbitrator. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award may be filed with any court having jurisdiction.

6. All parties, including related third parties, shall retain the right to seek adjudication in a small claims tribunal for disputes within the scope of such tribunal's jurisdiction. Any dispute, which cannot be adjudicated within the jurisdiction of a small claims tribunal, shall be resolved by binding arbitration. Any appeal of a judgment from a small claims tribunal shall be resolved by binding arbitration. Furthermore, nothing in this Arbitration Provision shall limit the right of you or us (a) to foreclose against the Motor Vehicle by the exercise of any power under the Loan Agreement or under applicable law, (b) to exercise self-help remedies such as set off or repossession, or (c) to obtain provisional or ancillary remedies such as pre-judgment seizure of property, detinue, replevin, or injunctive relief, or to seek or obtain any other traditional equitable relief which does not claim money damages from a court having jurisdiction. The institution and maintenance by you or us of any action set forth in this Paragraph 6 shall not constitute a waiver of the right to submit any dispute to arbitration, including any counterclaim asserted.

7. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA. If a final non-appealable judgment of a court having jurisdiction over this transaction finds, for any reason, that the FAA does not apply to this transaction, then our agreement to arbitrate shall be governed by the arbitration law of the State of South Carolina.

8. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if (i) you exercise your right to rescind hereunder, (ii) your obligations have been renewed, prepaid, or paid; or your obligations have been discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing.

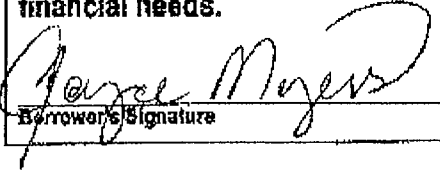
9. **OPT-OUT PROCESS.** You may choose to opt-out of this Arbitration Provision but only by following the process set forth below. If you do not wish to be subject to this Arbitration Provision, then you must notify us in writing within sixty (60) calendar days of the date of this Loan Agreement at the following address: Attn: Legal Dept, P.O. Box 8323, Savannah, GA 31412. Your written notice must include your name, address, Account number, the date of this Loan Agreement, and a statement that you wish to opt out of the Arbitration Provision. If you choose to opt out, then your choice will apply only to this Loan Agreement.

(A) This is a high-cost loan. You should consider what other lower-cost loans are available to you.

(B) If you fail to pay this loan as agreed this lender has the right to take possession of your motor vehicle and sell it to repay the loan.

(C) You should use this loan only to meet short-term cash needs, not for long term financial needs.

Account Number: 21451359

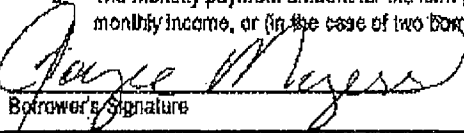

Borrower's Signature

Borrower's Signature

Additional Terms and Conditions of this Supervised Loan Agreement

Representations and Warranties. You represent and warrant that the following statements are true and accurate:

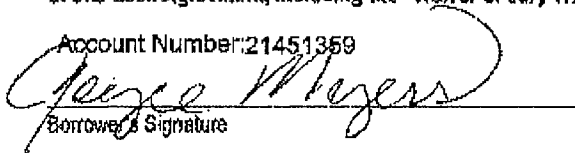
1. You have provided us with accurate monthly income information.
2. You believe that you have the ability to repay the loan.
3. The monthly payment amount for the loan (in the case of one borrower) does not exceed fifty percent (50%) of your gross monthly income, or (in the case of two borrowers) fifty percent (50%) of your combined gross monthly income.


Borrower's Signature

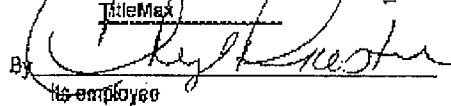
Borrower's Signature

By signing this Loan Agreement you acknowledge that it was filed in before you did so and that you have received an exact copy of it. You also warrant and represent that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code. You verify that you are the rightful owner of the Motor Vehicle. You verify that you are 18 years of age or older. You further acknowledge that you have read, understand, and agree to all of the terms of this Loan Agreement, including the "Waiver of Jury Trial and Arbitration Provision" above.

Account Number: 21451359


Borrower's Signature

TitleMax of South Carolina, Inc. d/b/a


By _____
its employee

Borrower's Signature

THIS DOCUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF, AND PLEDGED AS COLLATERAL TO, WELLS FARGO BANK, NATIONAL ASSOCIATION, AS COLLATERAL AGENT.

TITLEMAX OF BARNWELL #1
10520 DUNBARTON BLVD
BARNWELL, SC 29812
(803) 541-3602

12/1/2009

JOYCE BUTTS MYERS
915 COLLEGE ST
ALLENDALE, SC 29810

RE: Notice of Default and Right to Cure

Dear Customer:

You are late in making your payment(s) on the account below:

Account #: 7362140
Supervised Loan Agreement dated 7/20/2009
Property: 1997 NISSAN MAXIMA, JN1CA21D7VM627771

If you pay the AMOUNT NOW DUE by the LAST DAY FOR PAYMENT (below), you may continue with the agreement as though you were not late. If you do not pay by that date, we may exercise our rights under the law. These rights include the right to repossess any property held as collateral for this transaction 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 us on the credit transaction in question.

AMOUNT NOW DUE: \$ \$205.92

LAST DAY FOR PAYMENT: 12/21/2009

Please make your payment to:

TITLEMAX OF BARNWELL #1
10520 DUNBARTON BLVD
BARNWELL, SC 29812

If you are late again in making you
sending you another notice like thi

If you have any questions, please
telephone promptly.

Sincerely,

Store Manager

LG-TM Notice of Default Lr-SC-V.2.2-10-24-2

U.S. POSTAL SERVICE
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT
PROVIDE FOR INSURANCE. POSTMASTER

CERTIFICATE OF MAILING

Received From:
10520 Dunbarton Blvd
Barnwell SC 29812

One piece of ordinary mail addressed to:
Joyce Butts Myers
915 College St.
Allendale SC 29810

1000
BARNWELL SC 29812
DEC 1 2009
00015638-08
U.S. POSTAGE
PAID
BARNWELL, SC
29812
DEC 01 2009
FACILITY

PS Form 3817, Mar. 1999
U.S. G.P.O.: 1992-329-823/60237

000115

TITLEMAX OF SOUTH CAROLINA, INC.
10520 DUNBARTON BLVD
BARNWELL, SC 29812
(803) 541-3602

1/25/2013

JOYCE BUTTS MYERS
PO BOX 585
ALLENDALE, SC 29810

RE: Explanation of Surplus or Deficiency
Account #: 21451359
Supervised Loan Agreement dated 05/04/2012
Property: 1997 NISSAN MAXIMA, JN1CAZ1D7VM527771

Dear Customer:

Because you broke promises in our Agreement, we repossessed the property described above on 01/11/2013 which secured the loan. We sold this property on 01/23/2013. The funds received from the sale were applied as shown below.

LOAN OBLIGATION	
PRINCIPAL AMOUNT DUE:	\$ 1,528.97
INTEREST DUE:	\$ 432.40
TOTAL LOAN OBLIGATION:	\$ 1,961.37
LESS TOTAL PROCEEDS FROM SALE:	\$ 950.00
BALANCE DUE:	\$ 1,011.37
EXPENSES	
REPOSSESSION CHARGE:	\$ 250.00
STORAGE CHARGES	\$ 0.00
COSTS FOR PREPARING FOR SALE	\$ 80.00
REPAIR COSTS	\$ 0.00
ATTORNEY'S FEES	\$ 0.00
LESS TOTAL EXPENSES:	\$ 330.00
AMOUNT OF SURPLUS:	\$
AMOUNT OF DEFICIENCY:	\$ 1,341.37

If the sale resulted in a surplus balance, the proceeds are being delivered to you in the form of a check which is enclosed. If the sale resulted in a deficiency balance, the company will not seek to recover this amount. Your account will be considered closed.

If you have any questions or would like additional information, please call us at (803) 541-3602 or write us at 10520 DUNBARTON BLVD BARNWELL, SC 29812

Sincerely,


Store Manager

Enclosure: Check # _____

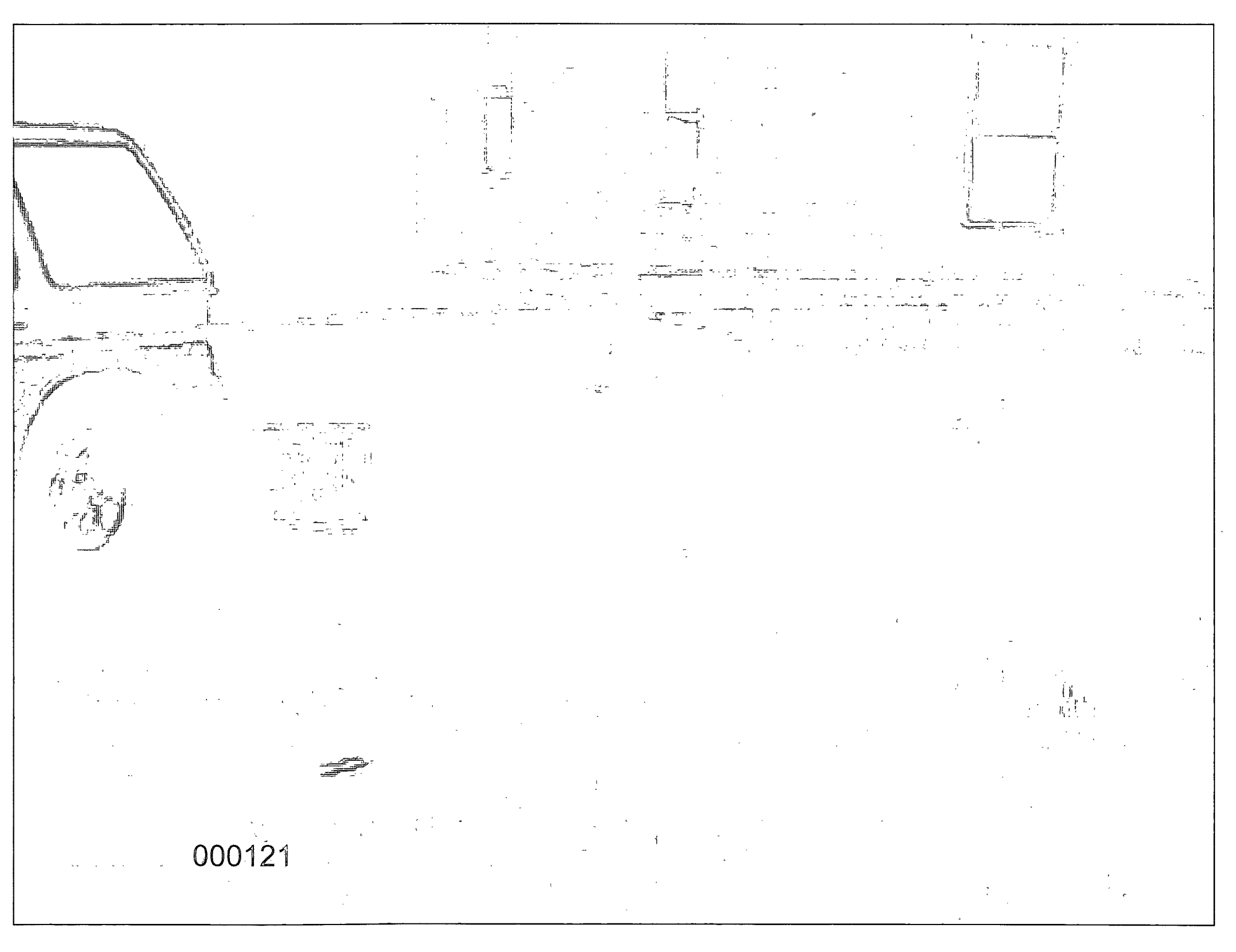
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GENERAL
INFORMATION
SECTION

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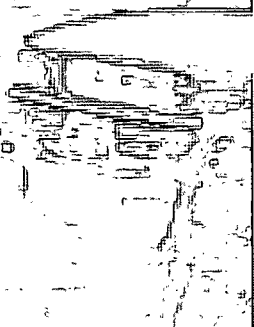
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AGENCY I.D.
SC0030100

ALLENDALE POLICE DEPARTMENT
INCIDENT REPORT

CASE NUMBER		NCIC	
1 3 0 0 2 7		INC.	ENTD.

E V E N T	INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM						
	1. 90Z - CIVIL DISPUTE / DISTURBANCE, 90Z		☒ YES ☐ NO	☐ YES ☐ NO	20		☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Police Off.						
	2.		☐ YES ☐ NO	☐ YES ☐ NO									
	3.		☐ YES ☐ NO	☐ YES ☐ NO									
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)					ZIP CODE	WCAPON TYPE							
306 UNITY DR., ALLENDALE SC					29810								
INCIDENT DATE		24 HR. CLOCK	TO	DATE	24 HR. CLOCK	LOCATION NO.							
01/11/2013		0800		01/11/2013	0810								
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE (803) 220-6639H	EVENING PHONE			
MYERS, JOYCE				☒ S O U	B	F	42	N					
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.							
306 UNITY DR.		ALLENDALE		SC	29810								
V I C T I M	VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE (803) 220-6639H	EVENING PHONE		
	MYERS, JOYCE				☒ S O U	B	F	42	N				
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
			XXX	XXX									
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.							
306 UNITY DR.		ALLENDALE		SC	29810								
VISIBLE INJURY (VICT. I) ☐ YES ☒ NO, EXPLAIN --													
VICTIM (NO. 1) USING: ALCOHOL: ☐ YES ☒ NO ☐ UNK. DRUGS: ☐ YES ☒ NO ☐ UNK.													
☐ TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED J - This Jurisdiction S - State O - Out of State U - Unknown													
S U B J E C T	☐ SUSPECT		SUBJECT NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
	☐ RUNAWAY		UNKNOWN, UNKNOWN		U	U	00	U				XXX	XXX
	☐ WANTED		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.										
	☐ WARRANT												
☐ ARREST		ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.					
☐ JAIL													
# 1	☒ SUMMONS		SUBJECT (NO. 1) USING ALCOHOL: ☐ YES ☐ NO ☒ UNK.		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST				
			DRUGS: ☐ YES ☐ NO ☒ UNK. TYPE:		TOTAL # ARRESTED 0		01/11/2013 0800						
	Offenses:												
	CIVIL DISPUTE / DISTURBANCE, 90Z												
N A R R A T I V E	ON THE ABOVE DATE AND TIME R/O RECEIVED A CALL FROM DISPATCH TO RESPOND TO 306 UNITY DR IN REFERENCE TO A CIVIL DISTURBANCE. UPON ARRIVAL R/O MADE CONTACT WITH THE COMPLAINANT WHO STATED THAT A REPO TRUCK HAD COME INTO HER YARD AND TAKEN HER VEHICLE. THE COMPLAINANT STATED THAT SHE KNEW SHE WAS BEHIND ON PAYMENTS WITH TITLEMAX, BUT STATED THAT SHE HAD MADE ARRANGEMENTS TO GO MAKE THE PAYMENTS TODAY. THE COMPLAINANT STATED THAT SHE WHEN SHE REALIZED THAT THE SUBJECT WAS IN HER YARD, SHE WENT OUTSIDE AND ADVISED THE SUBJECT THAT SHE HAD ARRANGEMENTS MADE TO PAY THE PAYMENTS. THE COMPLAINANT ALSO STATED THAT THE REPO DRIVER HAD ALREADY OPENED THE GATE THAT LED INTO HER YARD AND HAD HER VEHICLE HOOKED UP TO TOW. THE COMPLAINANT STATED THAT SHE KEPT TELLING THE SUBJECT TO GET OUT OF HER YARD BECAUSE HE WAS TRESPASSING. THE COMPLAINANT THEN ADVISED R/O THAT THE SUBJECT SCRATCHED HER FINGER SOMEHOW WHEN HE PUT HIS HAND UP AND HIT HER HAND. R/O NOTICED THAT THERE WAS A SMALL SCRATCH ON ONE OF THE COMPLAINANT'S FINGERS THAT APPEARED TO BE A CONTACT SCRATCH ONLY, BASED ON THE WAY IN WHICH THE COMPLAINANT STATED THE SCRATCH WAS OBTAINED, R/O HAD THE COMPLAINANT DEMONSTRATE HER HAND MOVEMENTS IN RELATION TO WHERE THE SUBJECT WAS STANDING TO HER. THE COMPLAINANT PUT HER HAND WITHIN ONE FOOT OF R/O'S FACE, TO THE SIDE OF IT, AND STATED THAT SHE WAS DOING THIS (POINTING PAST THE SUBJECT WITH QUICK HAND MOTIONS) TELLING THE SUBJECT TO GET OFF OF HER PROPERTY. R/O HAD A DISCOMFORT HIMSELF WITH THE COMPLAINANT'S HAND BEING SO CLOSE TO HIS FACE MOVING. R/O THEN ASKED IF THE INJURY HAD BEEN ACCIDENTAL AND IF THE SUBJECT HAD POSSIBLY BEEN TRYING TO KEEP THE COMPLAINANT'S HAND												
P R O P E R T Y	TYPE (GROUP)				JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		TOTAL VALUE				
	Burned												
	Count./Forged												
	Dent./Damaged												
Recovered													
Seized													
Stolen													
Unknown													
A D M I N I S T	SUBJECT IDENTIFIED		SUBJECT LOCATED		☒ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 10		☐ EX-CLEAR UNDER 10				
	☐ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED		☐ ARRESTED 10 AND OVER		☐ EX-CLEAR 10 AND OVER				
	HARRISON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY												
	REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE		UNIT NUMBER		
TY TISON													
						FOLLOW-UP INVESTIGATION OFFICER							
						☐ YES ☐ NO							

AGENCY I.D.
SC0030100

ALLENDALE POLICE DEPARTMENT
INCIDENT REPORT

CASE NUMBER		NCIC	
13 - 0027		INO.	ENTO.

FROM HITTING HIS FACE. THE COMPLAINANT STATED THAT SHE DOES NOT KNOW IF IT WAS ACCIDENTAL OR NOT BUT THAT KEPT TELLING THE SUBJECT TO GET OFF OF HER PROPERTY. R/O THEN ADVISED THE COMPLAINANT THAT HE WOULD CHECK AROUND THE AREA TO SEE IF HE COULD LOCATE THE SUBJECT. R/O HAD RECALLED SEEING A BLACK IN COLOR SINGLE CAB SELF LOADER TRUCK WITH A CAR HOOKED TO IT WHILE EN ROUTE TO THE COMPLAINANT'S RESIDENT. WHEN ASKED IF THAT HAD BEEN THE TRUCK, THE COMPLAINANT STATED YES. R/O THEN LEFT AND ATTEMPTED TO LOCATE THE TRUCK BUT WAS UNSUCCESSFUL.

				JURISDICTION OF THE CITY LAW ENFORCEMENT AGENCY		JURISDICTION OF THE COUNTY LAW ENFORCEMENT AGENCY	
PROPERTY	TYPE (GROUP)						TOTAL VALUE
	Burned						
	Crash/Forced						
	Destroyed/Damaged						
	Recovered						
	Seized						
ADDITIONAL INFORMATION	Unknown						
	SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE				☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ EXTRADITION DENIED ☐ VICTIM DECLINES COOPERATION ☐ JUVENILE - NO CUSTODY			
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER	
TY TISON						DATE	
						FOLLOW UP INVESTIGATION OFFICER	
						☐ YES ☐ NO	

01/22/13
16:23:31CAROLINA MEDICAL ASSOCIATES
CURRENT TICKET INQUIRYPAGE 1
ORIG 003-----
Patient Information25015 MYERS, JOYCE E
PO BOX 585ALLENDALE SC 29810 Sex : FEMALE Home : 803-397-4517
D.O.B. : 09/11/70 S.S. : 198-54-2365 Work :
Guar : Self GuarrIns : 600 PATIENT PA 601 SP AFTER I R79 UNITED HEA 619 MEDICAID
198542365 198542365 808557538 3031004101

	Current	30 Days	60 Days	90 Days	120 Days	Total
Private	5.21	.00	.00	.00	217.08	232.29
Insurance	.00	.00	.00	.00	.00	.00
						232.29

* Ticket Information *Ticket : 349905 Location : LWC LAFFITTE AND WARRE POS : OFFICE
P/A : Doctor : 238 NUNN, ROGER E Batch : 0111DL
of Statements : 0 Billed :
Date of : None Billed : Balance : .00
Insur : 600 PATIENT PAY

Service	Phy	--- Modifiers ---	Procedure	Fee
01/11/13	238		90703 TETANUS TOXOID ABSORBED	10.00
	040.42		WOUND BOTUL	
			Total Chg :	10.00

Tx Date	Code	Description	Reference	Tx Amt
01/11/13	2600	PAYMENT PATIENT PAY	CASH	-10.00
			Total Pay :	-10.00
			* Total Bal *	.00

** END OF REPORT **

Ashley Darden

From: Ackley, Joan <JOAN.ACKLEY@LibertyMutual.com>
Sent: Friday, May 15, 2015 10:23 AM
To: Doug Aime
Subject: Subrogation demand
Attachments: 751252100-Subrogation-Salvage-Demand-05_15_2015.pdf

Your Claim No: GC1209261002
Your Insured: Affordable Recovery Solutions

Our Claim No: P58D-004089-01
Our Insured: TMX Finance Holdings
Claimant: Joyce Meyers

We are pursuing reimbursement of our loss paid as a result of an incident that took place on 1-11-2013.

Attached are our supporting documents. Please make payment to LIBERTY MUTUAL INSURANCE, PO BOX 2397, PORTLAND, OR 97208 in the amount of \$60,000.00 .

Please include My Claim Number above.

Thank you.

Joan Ackley
Liberty Mutual Insurance
Recovery Specialist 1
CRU Mishawaka
800-348-2478 x5282516
FAX: 603-422-6039
SDN: 8528-2516
[Joan.Ackley@Liberty Mutual.com](mailto:Joan.Ackley@LibertyMutual.com)

*****Confidentiality Notice*****

This message is intended for the sole use of the individual and entity to whom it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. Any unauthorized review, use, disclosure or distribution of this email message, including any attachment, is prohibited. If you are not the intended recipient, please advise the sender by reply email and destroy all copies of the original message. Thank you.

SPEC CLM SERV N

DOL 01/11/2013 CLAIM NO P 58D-004089-01 HOD
CLAIM STATUS 0

SKIP TO DATE

ENTER SV NO AND :
SP CMSP R+C CMR+C STATUS STOP PRINT DISPLAY CORR MENU
R/R ST MESSAGE

SCREEN	SUFFIX	REMARKS Y	ID C499B11
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ALLENDALE) CASE NO.: 2013-CP-03-00147

JOYCE MEYERS,)
PLAINTIFF,)
v.) TRANSCRIPT OF RECORD
TITLEMAX OF SOUTH CAROLINA,)
INC., and AFFORDABLE RECOVERY)
SOLUTIONS, a/k/a ARS,)
DEFENDANTS.)

APRIL 20, 2015
ALLENDALE, SOUTH CAROLINA
BEFORE THE HONORABLE PERRY M. BUCKNER, III, JUDGE.

APPEARANCES:

MR. MARK TINSLEY, ESQUIRE
Attorney for the Plaintiff

MR. PATRICK HIGGINS, ESQUIRE
Attorney for the Defendant ARS

MR. ADAM YOUNT, ESQUIRE
Attorney for the Defendant TitleMax

Rebecca H. Hill
Official Court Reporter

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ARBITRATION

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EXHIBITS

NONE.

1 THE COURT: The next case is 2013 at 147, Joyce Meyers,
2 plaintiff, versus TitleMax of South Carolina, Inc., and
3 Affordable Recovery Solutions, a/k/a ARS, the defendants.
4 Present before me is Mr. Patrick Higgins. Pat, you
5 represent which defendant?

6 MR. HIGGINS: Your Honor, I represent the defendant,
7 ARS.

8 THE COURT: Who represents TitleMax?

9 MR. HIGGINS: Toland Sams. My understanding is that
10 they may ---

11 THE COURT: Is Toland here?

12 MR. YOUNT: No, Judge, I'm here on behalf of TitleMax.
13 We've resolved ---

14 THE COURT: Come on up here, Adam. You know what it's
15 like; you've been here with me.

16 MR. YOUNT: I'm here on behalf of TitleMax. We've
17 resolved our part of the case.

18 THE COURT: Do you take any position on this motion,
19 Mr. Yount?

20 MR. YOUNT: I do not.

21 THE COURT: You're not going to sit with Mr. Higgins or
22 Mr. Tinsley?

23 MR. YOUNT: I would love to.

24 THE COURT: All right. You want to sit down by Mr.
25 Higgins?

1 MR. YOUNT: I will, Your Honor.

2 THE COURT: Becky, let the record reflect that Adam
3 Yount is present in the courtroom after trying to claim he
4 just came to check on me. He now admits that he represents
5 TitleMax and that all of his matters are resolved in regards
6 to this motion and he takes no position on the motion.

7 Now, Mr. Higgins, it's my understanding that this is
8 your motion, that you filed a motion to compel arbitration.
9 You sent me a memorandum in support of your motion. Mr.
10 Tinsley is present and represents the plaintiff.
11 Apparently, Mr. Yount has a cross-claim in this matter; is
12 that also resolved?

13 MR. YOUNT: No, sir.

14 THE COURT: Well, then, TitleMax is still very much in
15 this case, Mr. Yount, because you have a cross-claim for
16 identity against ARS. It's my understanding, Mr. Tinsley,
17 that the plaintiff alleges emotional and physical injury to
18 her finger as a result of a repossession of her car; is that
19 right?

20 MR. TINSLEY: Not exactly. She was assaulted during
21 the repossession.

22 THE COURT: So there was injury alleged other than the
23 finger is what you're telling me?

24 MR. TINSLEY: Yes, sir.

25 THE COURT: All right. It is my understanding, Mr.

1 Higgins, that it is your intention to argue that the
2 plaintiff signed an arbitration agreement, but not with your
3 client, Mr. Higgins. That's the one little problem that you
4 have. It was signed with Mr. Yount's client; is that right?

5 MR. HIGGINS: That is correct.

6 THE COURT: Happy to hear from you. Your 15 minutes
7 begin right now.

8 MR. HIGGINS: Thank you, Your Honor. Just as a
9 preliminary matter. I received two e-mails ---

10 THE COURT: Come on up here for Becky's sake.

11 MR. HIGGINS: I'm sorry, I have a little cold.

12 THE COURT: And I apologize that you have a cold. Come
13 on up here and use Elaine's railing. She's not going to be
14 able to hear you if you stand back there and look down.

15 MR. HIGGINS: Yes, sir. Is right here fine, Your
16 Honor?

17 THE COURT: That's fine.

18 MR. HIGGINS: Your Honor, just as a preliminary matter,
19 I received two e-mails on Friday. One at 4:30 in the
20 afternoon, which attached an affidavit of the plaintiff,
21 Joyce Meyers, and also an affidavit from plaintiff's
22 counsel, from Mark. I did receive those at 4:30 on Friday
23 afternoon. I didn't realize until yesterday, but that after
24 work hours on Friday, around 7:30 or so, there was another
25 e-mail that was attempted to be sent to me. I'm not sure

1 what that is, because I couldn't open it. It looks to be --
2 -

3 THE COURT: Why is this a housekeeping matter? Tell me
4 what you're asking for. It's a motion to compel
5 arbitration.

6 MR. HIGGINS: That's correct. What I'm asking the
7 Court to do is not consider those affidavits, because
8 they're late under Rule 6.

9 THE COURT: Well, you also, I can give you time to get
10 reply affidavits. You know the rule, Mr. Higgins; it's Rule
11 5, is it not?

12 MR. HIGGINS: Well, I thought it was six.

13 MR. TINSLEY: It's 6(d).

14 MR. HIGGINS: It's 6(d).

15 THE COURT: I believe the rule says it can be served
16 two days before the hearing, does it not?

17 MR. HIGGINS: Correct, and we were served with it
18 Friday, so that's one day.

19 THE COURT: Mr. Tinsley, is it your position that you
20 want to rely on these affidavits, because I'm coming back
21 tomorrow and I can certainly hear this matter tomorrow and
22 give Mr. Higgins time to file counter affidavits.

23 MR. TINSLEY: Your Honor, we would rely on the
24 affidavits. We believe that the affidavits are timely.

25 THE COURT: Why?

1 MR. TINSLEY: Well, I think two days means two days. I
2 don't think two days means two business days, or the rule
3 would have specified that.

4 THE COURT: Normally, we don't count holidays and
5 Sundays, so you think service on Friday is good for Monday?

6 MR. TINSLEY: Absolutely. You don't count Sunday if
7 the last day to act falls on Sunday, but you do count Sunday
8 for two days. But Your Honor, if he thinks that he can get
9 an affidavit that somehow rebuts this, I'm happy to allow
10 him to supplement.

11 THE COURT: Pat, I'm more than willing to give you time
12 if you want to get an affidavit to rebut it, and I'll be
13 happy to schedule the hearing tomorrow because I think,
14 clearly, it might be an argument about the weekend, but
15 there won't be any argument about it tomorrow, and I'm
16 coming back tomorrow.

17 MR. HIGGINS: Yes, sir. The one problem I have, I
18 didn't get the second e-mail. I couldn't open it. I don't
19 know what it is.

20 THE COURT: Now, how can I rule on something that I
21 don't know anything about?

22 MR. HIGGINS: Okay. I didn't know if it was the same
23 thing he tried to send me twice, Your Honor, that's all.

24 THE COURT: You're taking up 15 minutes of time on
25 something entirely different. Take a look at it and tell me

1 whether you want to continue this for tomorrow or you want
2 to be heard today?

3 MR. HIGGINS: Thirty seconds, Your Honor, please.

4 (Brief pause as Mr. Higgins reviews e-mail.)

5 MR. HIGGINS: No, Your Honor, I don't need to respond
6 to that.

7 THE COURT: All right. So you want to be heard?

8 MR. HIGGINS: Yes, sir, thank you. I do not need to
9 respond to that.

10 THE COURT: You don't need any additional time to get
11 any other affidavit?

12 MR. HIGGINS: No, sir.

13 THE COURT: All right. Let's proceed.

14 MR. HIGGINS: Thank you, though, for allowing me that
15 opportunity, Your Honor. You have a copy of our Brief, sir?

16 THE COURT: I do. I've already read it, Mr. Higgins.
17 You've used enough time. Let's move.

18 MR. HIGGINS: All right. We filed our motion to amend
19 our answer and our motion to compel arbitration six days
20 after we received the co-defendant's discovery responses.
21 Those responses included the supervised loan agreement; this
22 is the basis of our motion. Six days later we filed this
23 motion, back in August -- well, it was actually filed on
24 September 2nd. So we filed this as soon as we became aware
25 that this agreement existed and that we were entitled under

1 the agreement to arbitration.

2 THE COURT: Now, let's deal with the issue when you
3 say, "We were entitled."

4 MR. HIGGINS: Yes.

5 THE COURT: Frankly, Mr. Higgins, the arbitration
6 agreement was signed with Mr. Yount's client.

7 MR. HIGGINS: Correct.

8 THE COURT: Who is sitting over there as quiet as he
9 can be at this time, who is also asking that you indemnify
10 him of anything that he's had to pay out.

11 MR. HIGGINS: Correct.

12 THE COURT: So when you say "we," your client never got
13 an arbitration agreement; isn't that true? Or at least a
14 contract between ARS and the plaintiff?

15 MR. HIGGINS: Yes, sir. We were not a signatory to
16 that contract, but we are a beneficiary of that contract.

17 THE COURT: Why are you a beneficiary of the contract
18 between your client and TitleMax?

19 MR. HIGGINS: We are what's called a related third
20 party under the terms of the contract. We were retained by
21 TitleMax to repossess the plaintiff's vehicle after she
22 failed to pay under the finance agreement. They hired us to
23 go out and repossess the vehicle, which we did, and so as
24 that it is a related third party. And in my brief I went
25 through this, Your Honor, there's five different categories,

1 which would make us a related third party. The fact that we
2 could either be an employee, an agent, and independent
3 contractor, it doesn't matter what it is, but we were
4 working on behalf of them to repossess this vehicle.

5 THE COURT: Is the term "related third parties" defined
6 in the contract?

7 MR. HIGGINS: Yes.

8 THE COURT: Or does it just say "related third
9 parties"?

10 MR. HIGGINS: Let's see here. I did address that in
11 the Brief, Your Honor. I discuss in here, Your Honor, that
12 the party does not have to be a signatory to the arbitration
13 agreement to enforce it. It's well established, common law
14 principle, that in an appropriate case, a non-signatory like
15 us ---

16 THE COURT: Where are you quoting from?

17 MR. HIGGINS: Page four of my Brief.

18 THE COURT: All right.

19 MR. HIGGINS: Discussion on page two, it's actually
20 page four, but page two of the discussion. The Court of
21 Appeals has recognized five theories which could provide a
22 basis for binding non-signatories to arbitration agreements.
23 There's incorporation by references, assumption, agency,
24 veil piercing/alter ego, and estoppel.

25 THE COURT: Those are theories of the law as to when a

1 basis for a binding non-signatory is to have an arbitration
2 hearing. I'm asking you where in the agreement between
3 TitleMax and the plaintiff is the term that you are relying
4 on defined? And that would be the term that you just argued
5 to me, which is "related third party."

6 MR. HIGGINS: Let's see here. Okay, if you look at
7 page two of the Finance Agreement, which is Exhibit A, under
8 waiver of jury trial and arbitration provision.

9 THE COURT: I'm there.

10 MR. HIGGINS: In paragraph one, that paragraph defines
11 that. It includes claims.

12 THE COURT: It defines dispute, disputes.

13 MR. HIGGINS: Yes, related third parties is in quotes
14 there, Your Honor, and it says, "All claims asserted on your
15 behalf by another person," sorry. "Herein collectively
16 referred to as related third parties," so it goes into all
17 preceding that it lists all individuals, employees ---

18 THE COURT: Well, it defines claims and disputes, but I
19 don't see the definition for related third parties.

20 MR. HIGGINS: Okay. I'm sorry, Your Honor, G, it says,
21 "All claims asserted by you, individually, against us and/or
22 any of our employees, agents, directors, officers,
23 shareholders, governors, managers, members, parent company,
24 or affiliated entities, hereinafter collectively referred to
25 as related third parties.

1 THE COURT: I see that. It's defining what a claim is
2 for purposes of that, but go ahead.

3 MR. HIGGINS: Well, I think that what that does is it
4 says, "These are related third parties."

5 THE COURT: The answer to my question is there isn't an
6 explicit definition section that says "related third parties
7 for the purposes of this contract means the following," but
8 you tell me that you're using the definition when they're
9 defining disputes and claims where it refers to that
10 collectively as related third parties?

11 MR. HIGGINS: Yes, and that's correct, Your Honor. It
12 says, "These are related third parties, those agents,
13 employees, et cetera."

14 THE COURT: Very well. Proceed.

15 MR. HIGGINS: In that context, Your Honor, yes. And of
16 course, as a general rule, arbitration is favored, and as a
17 general rule, interpretation of arbitration agreements
18 should be in favor of being arbitrated -- or subject to
19 arbitration, excuse me.

20 THE COURT: Which one of the theories that you espoused
21 to me do you believe you're entitled to that have been
22 recognized to provide a basis for a binding non-signatory to
23 an arbitration agreement to be enforced against a party, and
24 in this case, the plaintiff?

25 MR. HIGGINS: Well, it would be -- let's see here.

1 What I say in my Brief here, Your Honor, is, "Additionally,
2 plaintiff's claims in this action easily fall within the
3 scope of the arbitration agreement." And the basis that we
4 use is that we are an agent and we're doing the work of
5 TitleMax at the time, and therefore, under the agency
6 theory, which is the third of the five theories that the
7 Court generally accepts as allowing non-signatories to be
8 entitled to arbitration. So agency is probably the first
9 argument that we would have that we are acting on behalf of
10 TitleMax, doing this work, and therefore, we are entitled to
11 that arbitration.

12 THE COURT: So you believe it's on an agency theory?

13 MR. HIGGINS: Absolutely, yes, yes, sir.

14 THE COURT: Very well.

15 MR. HIGGINS: And there is also, "Courts have allowed
16 non-signatory to an arbitration agreement to force one of
17 the signatories to that agreement to arbitrate claims
18 against it pursuant to a so-called intertwined claims test.
19 Under the intertwined claims test, the circuits have been
20 willing to stop a signatory from avoiding arbitration with a
21 non-signatory when issues of the non-signatory is seeking to
22 resolve an arbitration or intertwine with the agreement and
23 the estopped party is signed." So we have an intertwined
24 situation where we have been retained by TitleMax under
25 their agreement with the plaintiff to do something on their

1 behalf, which is repossess the car; we did that. It was all
2 pursuant in growing out of that agreement that we did this.

3 THE COURT: So your motion to amend is basically to
4 include the issue of arbitration?

5 MR. HIGGINS: That is my motion to amend, correct.
6 Yes, that's my motion to amend my answer.

7 THE COURT: But you're asking me to compel arbitration
8 of the plaintiff even though you were not a signatory to the
9 agreement on the theory of agency?

10 MR. HIGGINS: Yes, sir.

11 THE COURT: Does that sum up your argument, Mr.
12 Higgins?

13 MR. HIGGINS: It does, as set out in my Brief, which
14 you have.

15 THE COURT: I have and I've looked at it.

16 MR. HIGGINS: I will not go over that, unless you want
17 me to, but that is the reason or ration behind it.

18 THE COURT: No, sir, I think I understand it. Thank
19 you very much.

20 MR. HIGGINS: Thank you, Your Honor.

21 THE COURT: All right. Mr. Tinsley? Your turn. Your
22 15 minutes begin right now.

23 MR. TINSLEY: If I can, I'd like to hand up what I've
24 entitled an Order denying the motion. I'll let it serve as
25 my memo, along with the cases that I believe are relevant.

1 THE COURT: All right.

2 MR. TINSLEY: Included is Chassereau.

3 THE COURT: Does that mean you made Laine draw an Order
4 in advance, Mr. Tinsley? Is that what that means?

5 MR. TINSLEY: That's exactly what that means, Your
6 Honor.

7 THE COURT: That's what I thought. Did Laine draw the
8 Order or did Rhonda draw the Order and let Laine review it
9 and give it to you before you came to this hearing?

10 MR. TINSLEY: Laine drew it.

11 THE COURT: All right. Go ahead. At least he's
12 honest, Mr. Higgins. You may be seated.

13 MR. HIGGINS: Your Honor, I have one, too, but I didn't
14 draw it either.

15 THE COURT: You can hand it up. Hand it to Angela.

16 (Mr. Higgins hands up Order to the Court.)

17 MR. TINSLEY: Brantley, a Fourth Circuit Case, a
18 Westmoreland case.

19 THE COURT: I noticed you cite the Chassereau case.
20 You're pretty familiar with that case, aren't you, Mr.
21 Tinsley?

22 MR. TINSLEY: I'm very familiar with it, Your Honor,
23 and it is one of the lead arguments, but I do agree with Mr.
24 Higgins that related third parties is defined in the
25 contract. However, it does not include his client. I've

1 also given you the Dean case, which is a 2014 Supreme Court
2 case. Then, Rhodes v. Benson and Chrysler Plymouth, a 2007
3 Court of Appeals case; Liberty Builders. And I've given you
4 my affidavit, the affidavit of Adam Yount, as well as the
5 affidavit of my client.

6 THE COURT: All right.

7 MR. TINSLEY: Your Honor, let me start, first, with the
8 issues that you raised to Mr. Higgins. This idea that his
9 client is a related third party. I would submit to you, as
10 you well know, that the party's intentions to be bound as a
11 matter of contract. And as a matter of contract, there are
12 independent third parties and then there are agents, related
13 third parties. If you look at the provision he cites to
14 you, it is those related third parties. In fact, it says
15 that those people include TitleMax's employees, their
16 agents, their directors, officers, shareholders, governors,
17 managers, members, parent company, or affiliates. It does
18 not include an independent contractor. My affidavit, Your
19 Honor, includes a letter that initially came from TitleMax,
20 Exhibit One, that says -- it's from Gwen Bullington, Senior
21 Paralegal at TitleMax. It says that this is to inform me
22 that the matter has reported to the insurance company for
23 ARS, and that's Mr. Higgins' client, as it is an independent
24 contractor. And what happened there, Your Honor, is that
25 ARS then hires Toland Sams, because it acknowledges that it

1 is an independent contractor to indemnify and defend
2 TitleMax. Adam Yount is actually TitleMax's lawyer. ARS
3 should be estopped from taking the position that it is
4 anything other than an independent contractor, based upon
5 its conduct in this case.

6 THE COURT: Apparently, Mr. Higgins and ARS were in
7 love with the contract that TitleMax had and want the
8 benefit of the provisions drawn by TitleMax.

9 MR. TINSLEY: The problem with that, Your Honor, is
10 several. But in addition to the estoppel argument, they deny
11 -- ARS denies in its answer that its client is an agent of
12 TitleMax.

13 THE COURT: Is that correct, Mr. Yount?

14 MR. TINSLEY: Paragraph 5. No, both defendants deny
15 it, Your Honor.

16 THE COURT: So Mr. Yount denies it -- or Mr. Sams did
17 on behalf of TitleMax and Mr. Higgins denies it also in his
18 answer?

19 MR. TINSLEY: I believe John Tiller answered for
20 TitleMax and then the defense was tendered to ARS and ---

21 THE COURT: That would be the subject of the cross-
22 claim, I believe.

23 MR. TINSLEY: Yes, Your Honor. But in addition to the
24 fact that they should be estopped ---

25 THE COURT: What? In addition to estoppel, what are

1 you arguing?

2 MR. TINSLEY: Well, you asked me a question right
3 before that and I was going to give you the answer for that.

4 THE COURT: What was that?

5 MR. TINSLEY: That's what I forgot.

6 THE COURT: You can't remember my question?

7 MR. TINSLEY: No, I can't remember your question, Your
8 Honor, but they absolutely should be estopped. They are not
9 agents and it is not within the contemplation of the
10 parties, which gets us to Chassereau. Now, I have offered
11 the affidavit of Adam Yount who has given an affidavit on
12 behalf of TitleMax.

13 THE COURT: I haven't seen Mr. Yount's affidavit. Let
14 me look at it.

15 MR. TINSLEY: It's at the very end, Your Honor.

16 THE COURT: Yes, I see it now. When did TitleMax
17 contract with ARS in relation to the agreement that your
18 client, Ms. Meyers, signed with TitleMax?

19 MR. TINSLEY: Two years later.

20 THE COURT: Two years?

21 MR. TINSLEY: Yes, sir, two years later, and clearly,
22 ARS was never contemplated, but more importantly, Your
23 Honor, just as Chassereau notes, "A reasonable person would
24 not, could not, have foreseen this type of outrageous
25 conduct. And if you look at the allegations of the

1 complaint, they're all related to the outrageous conduct,
2 very similar. And I would submit to the Court, worse than
3 those that happened in Chassereau.

4 In Chassereau, it was over the phone. It was
5 harassment. It was violation of the statute in the
6 collection of a debt. Here, it's an actual assault and a
7 battery of this lady in the repossession of a vehicle, in
8 which they were trespassing at the time. The allegations
9 are much worse. And there are no intertwined allegations.
10 If you look at the Fourth Circuit case that I've handed you,
11 mere agency is not enough, Your Honor. They had to have
12 acted -- TitleMax and ARS have to act in concert for these
13 claims to be intertwined. These allegations against
14 TitleMax were merely that; it was respondeat superior.
15 That's not enough under the Fourth Circuit law. And the
16 2014 case that I handed up to Your Honor from our Supreme
17 Court says, "On these matters, we look to the Fourth
18 Circuit. We look to Federal Law." And I would submit to
19 the Court that the Fourth Circuit Case is an excellent place
20 and that's the Brantley case. Your Honor ---

21 THE COURT: It appears from Mr. Yount's affidavit,
22 which is dated -- well, I can't read Mr. Yount's
23 handwriting, but it looks like it's dated April 17th, 2015.
24 Mr. Yount tells me that TitleMax never intended or
25 contemplated that the arbitration agreement, which is the

1 arbitration agreement contained with your client and
2 TitleMax would cover assaults, batteries, trespasses or any
3 other abusive behavior, which is alleged in the complaint,
4 because ARS could not use and had previously agreed not to
5 use such tactics. Is that your understanding of the
6 affidavit as well?

7 MR. TINSLEY: Yes, sir, Your Honor. And if you look at
8 Exhibit One, which is the repossession agreement that was
9 signed on September 10th, 2010, paragraph 2 does prohibit
10 all of these outrageous activities.

11 THE COURT: So the repossession agreement between
12 TitleMax and ARS prohibits that type of behavior by ARS when
13 repossessing vehicles?

14 MR. TINSLEY: That's correct, Your Honor.

15 THE COURT: And did ARS in its agreement with TitleMax
16 warrant in the agreement that it would not engage in that
17 type of behavior?

18 MR. TINSLEY: It did, Your Honor. Which is the basis
19 for their legal indemnity claim, which is the cross-claim.
20 Your Honor, I would submit to the Court, and in addition to
21 the other things that are stated in the Brief -- or in my
22 proposed Order, that these claims don't involve interstate
23 commerce. I'm just going to try to hit some of the
24 highlights. This is, as opposed to the Dean v. Heritage
25 Healthcare case, which was a nursing home case, the test if

1 that it must, in fact, involve interstate commerce. Here,
2 this is merely a loan; a personal loan between a South
3 Carolina company and a South Carolina individual. That
4 transaction, in fact, does not involve interstate commerce.
5 And we would submit to you that it does not.

6 In addition to the fact that it was beyond
7 contemplation of the parties, their affidavits state that --
8 I would cite to Your Honor 15-48-10 (b)(4), which is our
9 South Carolina Arbitration Act that says, "This chapter
10 shall not apply to any claims arising out of personal
11 injury."

12 Again, we believe that it was beyond the contemplation
13 of the parties, that being my client and TitleMax at the
14 time, which is the law in support of it. Triple A doesn't
15 even allow the arbitration of personal injury claims such as
16 this, Your Honor. There is no way that this agreement
17 contemplated something that was going to have to happen much
18 later. With respect to the intertwine test, it has to be,
19 and the test is at the time of contract. At the time of
20 contract, did the parties intend to confer benefit on -- I'm
21 sorry, this is the third party beneficiary test. But did
22 they intend to confer benefit on ARS? They couldn't have,
23 Your Honor. That contract is not until two years later.

24 THE COURT: That's the reason I asked you about time,
25 Mr. Tinsley. You're telling me that the agreement between

1 ARS and TitleMax did not occur until two years after the
2 arbitration agreement was signed between your client and
3 TitleMax?

4 MR. TINSLEY: Absolutely, Your Honor. And there is no
5 reference to any agent for repossession. There is no
6 reference to any independent contractor, which they have
7 maintained. They, the defendants, have maintained
8 throughout this litigation. It clearly just does not apply.

9 With respect to the intertwined test, it's not as
10 simple as Mr. Higgins stated it. There are basically two
11 tests: one is that the signatory, that would be my client,
12 is suing; finds the basis of her allegations from the
13 agreement. That's not the case here. This is intentional
14 infliction of emotional stress, assault, battery. This is
15 just like Chassereau where our rights are founded wholly and
16 separate from the contract.

17 The second test in the intertwined test is enunciated
18 by the Fourth Circuit in the Brantley case. Your Honor, the
19 allegation is that the non-signatory engaged in this what
20 they call "interdependent and concerted misconduct with the
21 signatory." So that would mean that TitleMax was in fact
22 out there doing the exact same thing that ARS was doing, and
23 that's simply not the case.

24 We've offered you, also, the deposition testimony of
25 Jason Larue, who is the head of ARS and said that TitleMax

1 did not control their activities. In addition to the
2 merits, we would argue that there has been a substantial
3 waiver of any right.

4 THE COURT: What type of activity occurred discovery-
5 wise before this motion was filed, for purposed of waiver,
6 Mr. Tinsley?

7 MR. TINSLEY: Everything, Your Honor. This case was
8 set for trial today and is on the trial roster. And from my
9 perspective, would have been tried, but for the fact I was
10 told they were going to file a notice of appeal the instant
11 the motion was denied or the case would have been
12 arbitrated. But they didn't intend to go forward with it.

13 But to specifically answer that, Your Honor, one of the
14 things that I have handed up is the Rhodes case, Rhodes v.
15 Benson Chrysler Plymouth, 374, S.C., 122.

16 THE COURT: Becky, for the record, he keeps referring
17 to the Fourth Circuit, it's Brantley v. Republic Mortgage
18 Insurance Company. It's found at 424, F3rd, 392. Go ahead.

19 MR. TINSLEY: Yes, sir, Your Honor. In there, our
20 Court makes out and makes clear that a party can waive its
21 right to arbitration, and the focus here, and what the Court
22 found as dispositive was the fact that all of the activities
23 in the case that had been conducted by the defendant were
24 essentially over; the discovery is over.

25 There were a number of motions to compel discovery that

1 were filed by ARS, which Mr. Higgins has acknowledged are
2 moot. There is substantial discovery that's been completed
3 in this case by ARS. They have taken depositions of the
4 police officer that was involved, as well as my client.
5 They've exchanged substantial written discovery. But as the
6 Court noted in the Rhodes case, the fact that this case, in
7 addition to the substantial length of time that has passed.
8 and the activities that have occurred, the fact that it is
9 on the trial roster and would be for trial today is the
10 single most telling and dispositive issue in the case
11 because in there it says, "To ascertain whether the non-
12 moving party was prejudiced, our Courts often examine
13 whether the party requesting arbitration took advantage of
14 the judicial system by engaging in discovery." This
15 inquiry, however, is just a part of the broader sense
16 approach that our courts take to determine whether a motion
17 to arbitrate should be granted or denied. One, if the
18 parties conduct little or no discovery, not the case here,
19 Your Honor. They've conducted all of the discovery. This
20 case is for trial and they've done everything they needed to
21 do, including filing two motions to compel and participate
22 in a court-ordered mediation, which obviously, we didn't
23 settle, but they participated.

24 Then, two, if the parties conduct significant
25 discovery, then the party seeking arbitration has taken

1 advantage of the judicial system, prejudice will likely
2 exist, and the law would disfavor an arbitration. We've
3 spent substantial money and time, Your Honor. In the memo,
4 it outlines the dates in which the different things occurred
5 in this case, but in addition to having to go and mediate
6 this matter, respond to the discovery, answer the discovery,
7 attend and pay for the depositions, what our Court says in
8 Rhodes is "the substantial prejudice is presumed by the
9 delay to assert the right." I do believe that the ---

10 THE COURT: So you think that in addition to denying
11 the motion on the merits, you think waiver applies because
12 everything had been done discovery-wise for the preparation
13 of trial at the time this occurred?

14 MR. TINSLEY: Absolutely, Your Honor.

15 THE COURT: Mr. Tinsley, your 15 minutes are up.

16 MR. TINSLEY: Thank you, Your Honor.

17 THE COURT: Thank you. Mr. Higgins, you have one
18 minute in reply. I've got people waiting and I'm going to
19 enforce the time. Come on up here, if you need to.

20 MR. HIGGINS: I think I'm okay now.

21 THE COURT: All right.

22 MR. HIGGINS: This was not a waiver, Your Honor, for
23 several reasons. TitleMax made the same motion only
24 recently for arbitration.

25 THE COURT: But TitleMax was a party to the agreement,

1 that's a whole different matter; although waiver may or may
2 not apply to TitleMax, he argues it. Tell me why waiver
3 doesn't apply to you, not to TitleMax.

4 MR. HIGGINS: Discovery would have been ongoing anyway
5 because TitleMax was involved in the case. That discovery
6 would have been ongoing anyway because TitleMax was still
7 involved in the case. That discovery would have been going
8 on at any rate. We filed our motion to arbitrate within a
9 week of finding out there wasn't an agreement that existed
10 and that we were beneficiaries. We did it as soon as we
11 found that out. And since that time, Mark has never filed
12 any objections to any of the discovery we've sent out. All
13 we did was general discovery.

14 In fact, about a month after I filed my motion, or less
15 time than that, they were all noticed prior to us knowing
16 that. And the key is what discovery was done prior to us
17 filing the motion. It was very little discovery, other than
18 initial discovery responses. Very little discovery was done
19 prior to us filing the motion.

20 THE COURT: I see. Thank you very much. All right, I
21 have proposed Orders from both of you. Mr. Higgins tells me
22 he didn't want additional time for any counter affidavits; I
23 offered him a continuance and he didn't want it. So I'm
24 going to consider Mr. Yount's affidavit and Mr. Tinsley's
25 affidavit. I have a memorandum from Mr. Higgins, and I want

1 to thank Laine for doing the research and preparing the
2 proposed Order, because Mr. Tinsley, you and Mr. Gooding get
3 absolutely no credit for having done it yourself.

4 I will let you know. I'm going to take it under
5 advisement. I'm going to read the cases, since Mr. Tinsley
6 managed to hand me six cases to read at the time of the
7 hearing, which were not provided to me prior to the hearing,
8 and I'll let you have my Order as soon as I have an
9 opportunity to review everything that you both have provided
10 for me during the hearing. Thank you for being prepared.
11 Thank you for your patience. This concludes the hearing in
12 this matter.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON) CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had in the
hearing of the captioned case, in the Court of Common Pleas
Non-Jury for Allendale County, South Carolina, on the 20th
day of April 2015.

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

June 1st, 2015

Rebecca H. Hill

Rebecca H. Hill
Official Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF ALLENDALE) CASE NO.: 2013-CP-03-00147

JOYCE MEYERS,)
)
PLAINTIFF,)
)
v.) TRANSCRIPT OF RECORD
)
TITLEMAX OF SOUTH CAROLINA,)
INC., and AFFORDABLE RECOVERY)
SOLUTIONS, a/k/a ARS,)
)
DEFENDANTS.)
)

JUNE 19th, 2015
ALLENDALE, SOUTH CAROLINA
BEFORE THE HONORABLE PERRY M. BUCKNER, III, JUDGE.

APPEARANCES:

MR. MARK TINSLEY, ESQUIRE
Attorney for the Plaintiff

MR. PATRICK HIGGINS, ESQUIRE
Attorney for the Defendant ARS

Rebecca H. Hill
Official Court Reporter

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EXHIBITS

NONE.

1 THE COURT: The next case is 2013 at 147. This is
2 Joyce Meyers v. TitleMax. Mr. Higgins is present on behalf
3 of Affordable Recovery Solutions, ARS. And this is Mr.
4 Higgins motion for me to reconsider my Order of April 30,
5 2015. It was filed May 6th, 2015. I've reviewed my Order
6 and I've also read Mr. Higgins' motion. He asked for 10
7 minutes. I'm happy to hear from you at this time.

8 MR. HIGGINS: Good morning, Your Honor. I'll be as
9 brief and clear as I can.

10 THE COURT: All right.

11 MR. HIGGINS: Your Honor, this is my client's motion to
12 reconsider your April 30th Order. My client is Affordable
13 Recovery Solutions and in ---

14 THE COURT: I remember well, because when we argued it
15 before, Mr. Yount was present.

16 MR. HIGGINS: That's correct.

17 THE COURT: Who submitted an affidavit, which I have
18 reviewed as far as the motion. Mr. Yount is not present
19 today. Becky, let the record reflect, because I didn't mean
20 to leave anyone out, that Mr. Tinsley is here for the
21 plaintiff. Mr. Higgins is here for Affordable Recovery
22 Solutions. Mr. Yount, as I recall, represented TitleMax of
23 South Carolina.

24 MR. HIGGINS: Yes, sir, that's correct. I don't
25 believe he is a necessary party to this motion, at any rate.
26 Your Honor, I'll cut to the chase, everything that I've

1 examined, my argument is all contained within my motion,
2 Your Honor. Everything -- I'm not going to argue anything
3 outside of the confines of that.

4 Really, the crux of our argument, Your Honor ---

5 THE COURT: You believe a significant relationship
6 exists.

7 MR. HIGGINS: Exactly, Your Honor. You anticipated my
8 argument. It is our argument, Your Honor, that the
9 significant relationship does exist between my clients and -
10 --

11 THE COURT: Do you believe that the type of conduct
12 that was alleged in the pleadings was foreseeable to a
13 consumer, Mr. Higgins?

14 MR. HIGGINS: Well, I can tell you this, Your Honor,
15 generally speaking, there is a strong presumption that these
16 arbitration agreements should be upheld. I think everyone
17 agrees upon them, but in your Order, I understand clearly
18 what your Order is saying. Now, regarding -- and I'm going
19 to skate through that argument, Your Honor, because --
20 regarding generally that arbitration Orders should be --
21 favor and all that. I'm not even going to address that.

22 THE COURT: I'm aware -- you know, I cited, Mr.
23 Higgins, just so you know, because this has been an
24 interesting issue that has -- I was the judge in the
25 Chassereau case with ---

1 MR. HIGGINS: Yes, sir.

2 THE COURT: --- and I'm trying to think of the name of
3 the case. Mr. Tinsley didn't site it. I had a bait and
4 switch case that I heard in Anderson that went to the
5 Supreme Court. There was an arbitration agreement signed in
6 connection with the purchase of an automobile and the
7 consumer picked out -- or made a list of all the options
8 they wanted on their vehicle, from air conditioning to
9 leather interior to FM radio to everything.

10 MR. HIGGINS: Bells and whistles.

11 THE COURT: The consumer went to the dealership and
12 they had the exact vehicle that he wanted. They agreed on a
13 price. They told him if he would come back in two hours,
14 they would have it ready for him. He brings the check back.
15 They drive the vehicle out. It was the right color and
16 right interior, but when he gets home, he realizes this is
17 not the vehicle he had test drove. It was the same color
18 and interior, but did not have the options.

19 In other words, he alleged that they switched vehicles
20 on him. The agreement that he had signed was as generally
21 inclusive as to one that you argue today. I will call it a
22 broadly worded arbitration agreement.

23 MR. HIGGINS: Yes, sir.

24 THE COURT: The Court held that there was no way that a
25 consumer could have foreseen the bait -- and I wish I could

1 -- I can get you the site. It's fairly recent. Justice
2 Toal wrote the Opinion. There is no way that it could have
3 been foreseeable that a dealership would try to use the
4 "bait and switch" method, and therefore, arbitration didn't
5 apply. The reason I ask that question is because it appears
6 that the Court is looking at foreseeability in order to
7 determine whether or not these agreements are binding, and
8 thus a significant relationship exists for purposes of
9 enforcing arbitration. Anything else you want to tell me?

10 MR. HIGGINS: Like I said, Your Honor, everything is
11 contained within that and you've had a chance to review
12 that, Your Honor. I'm not going to -- I don't think there
13 is any need to belabor that. I think I was fairly clear in
14 what our position is, and obviously, the Court is clear with
15 the Court's position.

16 THE COURT: Thank you very much, Mr. Higgins. All
17 right, Mr. Tinsley, you're up.

18 MR. TINSLEY: Your Honor, as I read his motion, he
19 indicates that the Court misconstrued or misapplied a number
20 of things.

21 THE COURT: He thinks I misconstrued the law and the
22 facts, and he also says in his motion that I shouldn't have
23 considered Mr. Yount's affidavit.

24 MR. HIGGINS: Respectfully, Your Honor.

25 THE COURT: I understand that.

1 MR. TINSLEY: The problem for Mr. Higgins is, is that
2 he agreed to allow you to consider Mr. Yount's affidavit and
3 didn't raise any objection that you shouldn't.

4 THE COURT: Yes, I'm afraid that Mr. Higgins didn't
5 object to it when we heard it, but he now doesn't like the
6 fact -- he didn't like Mr. Yount's position in the
7 affidavit. And so that the record is clear, Mr. Yount's
8 affidavit is dated -- I can't read his writing very well.
9 It's dated April 17th, 2015. He did it as counsel for
10 TitleMax of South Carolina and he said that he had personal
11 knowledge about things in his affidavit and that TitleMax is
12 the defendant in the action in which all of this arose as a
13 result of an incident that occurred back in January of 2013,
14 which the plaintiff's vehicle was repossessed. And that
15 prior to that date, TitleMax's parent company had contracted
16 with Mr. Higgins's client, ARS, to repossess vehicles and
17 that the finance agreement between TitleMax and plaintiff
18 contains an arbitration provision.

19 However, TitleMax never intended nor contemplated that
20 the arbitration agreement contained in that contractual
21 relationship would cover assaults, batteries, trespasses, or
22 any other abusive behavior, which in this case is alleged in
23 the plaintiff's complaint. Because they did not feel they
24 or ARS could use, or previously had agreed not to use, any
25 such tactics of that nature in performing a repossession.

1 In fact, Mr. Yount pointed out to this Court that
2 paragraph two of the repossession agreement between TitleMax
3 and ARS specifically prohibited this type of behavior by ARS
4 when repossessing vehicles and that ARS warranted and agreed
5 that it would not engage in such behavior. Go ahead, Mr.
6 Tinsley.

7 MR. TINSLEY: Thank you, Your Honor. Other than the
8 first two points in Mr. Higgins motion, he didn't raise any
9 of these things to the Court when we argued his motion to
10 compel. There is no question that the Court found that
11 there was no significant relationship between the
12 allegations that formed the basis of her complaint and any
13 rights arising out of the arbitration agreement.

14 You clearly found that the law favors arbitration
15 agreements and I don't think there is any dispute that doubt
16 should be resolved in favor of arbitration. It was simply
17 that the Court had no doubts here that it wasn't
18 contemplated by the parties first that this conduct would be
19 within the arbitration agreement. You cite Savinski; it
20 says that a party cannot be required to arbitrate any
21 dispute which he has not agreed to arbitrate.

22 Now, Mr. Higgins for the first time raises that you
23 shouldn't consider and look at Mr. Yount's affidavit because
24 clearly the plaintiff couldn't have contemplated these
25 things. The point was is that TitleMax didn't even

1 contemplate that this conduct would be covered, and clearly,
2 it was an adhesion contract that TitleMax drew, and if they
3 don't even contemplate this is covered, there is no way that
4 it could be contemplated by the parties or that that would
5 be their agreement.

6 Nonetheless, we found under Aiken and Chassereau, as a
7 matter of law, this conduct is not foreseeable and that the
8 arbitration agreement does not apply. Clearly, you didn't
9 misconstrue, you didn't fail to address any argument that he
10 raised, and his motion should be denied, Your Honor.

11 THE COURT: Very well. Anything in reply, Mr. Higgins?

12 MR. HIGGINS: No, I won't belabor the point, Your
13 Honor. I just would add one thing that TitleMax did, in
14 fact, also make a motion to compel arbitration as well,
15 which is not unheard of, but they did that as well; just for
16 the record.

17 MR. TINSLEY: If I can address that, Your Honor. If
18 you recall from the first argument, I argued that ARS should
19 be estopped from taking the position that it takes in its
20 answer, which is "they are not an agent of TitleMax."

21 THE COURT: I didn't rule on that.

22 MR. TINSLEY: I understand, Your Honor. But the point
23 of this is that ARS agreed that they were an independent
24 contractor and they hired Toland Sams that they control and
25 they had Toland file a motion that ARS and John Tiller did

1 not raise, they did not put in their answer, and they did
2 not file this motion. That was ARS filing this motion. So
3 it's disingenuous to stand up and say that they filed a
4 motion, which has been withdrawn, because they didn't; ARS's
5 insurance carried did.

6 MR. HIGGINS: Disingenuous, I had nothing to do with
7 that motion.

8 THE COURT: I understand you didn't file it personally,
9 Mr. Higgins.

10 MR. HIGGINS: Yes, sir, I just want to make that clear.

11 THE COURT: I understand your motion. I was made aware
12 at the last hearing that the motion was withdrawn.

13 MR. HIGGINS: Yes, sir, Your Honor.

14 THE COURT: Mr. Higgins, Courts generally hold that a
15 broadly worded arbitration agreement applied to disputes in
16 which a significant relationship exists between the asserted
17 claim and the contract in which the arbitration clause is
18 contained. But even the most broadly worded arbitration
19 agreement has limits. The Courts have refused to enforce an
20 arbitration agreement as applying to outrageous force that
21 are unforeseeable to a reasonable consumer, in the context
22 of a normal business dealings.

23 I cited the Aiken case, World Finance, and I wish I
24 could give you the site of the case I referred to earlier,
25 because it also dealt with foreseeability under bait and

1 switch. It involved a dealership in Anderson, but it was
2 decided by the Supreme Court. I just can't give you the
3 site.

4 I find from looking at your motion and I've taken
5 another look at this, and this complaint alleges abusive
6 behavior, abusive conduct, including intentional infliction
7 of emotional distress, battery, assault, trespass, which, if
8 true, would not, in my opinion, be something that would be
9 foreseeable. Your motion for a reconsideration is
10 respectfully denied. I will enter a form order showing that
11 you and Mr. Tinsley appeared. Look forward to seeing you
12 both again.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON) CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had in the
hearing of the captioned case, in the Court of Common Pleas
Non-Jury for Allendale County, South Carolina, on the 19th
day of June 2015.

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

July 10, 2015

Rebecca H. Hill

Rebecca H. Hill,
Official Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

JOYCE MYERS,)

Plaintiff,)

vs.)

TITLEMAX OF SOUTH CAROLINA,)
INC. AND AFFORDABLE RECOVERY)
SOLUTIONS a/k/a ARS,)

Defendant.)

IN THE COURT OF COMMON PLEAS

C/A#: 13-CP-03-147

AFFIDAVIT OF ADAM N. YOUNT

PERSONALLY APPEARED BEFORE ME, Adam N. Yount, who first being duly sworn, deposes and, says:

1. I am counsel for TitleMax of South Carolina, Inc. ("TitleMax").
2. I have knowledge about the matters contained in this affidavit. I make this affidavit based on information provided to me by corporate representatives of TitleMax and knowledge of information discovered in the above-referenced matter. I am over the age of eighteen (18) years, and I am competent to make this affidavit.
3. TitleMax is a defendant in the above-referenced matter which arises out of an incident that occurred on January 11, 2013, when the Plaintiff's vehicle was repossessed.
4. Prior to January 11, 2013, Titlemax's parent company TMX Finance, LLC, contracted with Defendant ARS on behalf of Titlemax for Defendant ARS to repossess vehicles upon written request from TitleMax. See, Repossession Agreement attached hereto as Exhibit 1. ARS is not and has never been an agent of TitleMax. Rather, at all times relevant to this action, ARS was an independent, third-party contractor of TitleMax.

C:\Users\ayount\Desktop\DM-#4042107-v1-Affidavit_for_Titlemax.doc

5. The finance agreement between TitleMax and Plaintiff contains an arbitration provision. See, Agreement attached hereto as Exhibit 2. However, TitleMax never intended or contemplated that the arbitration agreement contained in Exhibit 2 would cover assaults, batteries, trespasses, or any other abusive behavior as alleged in the Plaintiff's complaint because ARS could not use and previously had agreed not to use such tactics. In fact, paragraph 2 of the Repossession Agreement between TitleMax and ARS specifically prohibits this type of behavior by ARS when repossessing vehicles and ARS warranted and agreed that it would not engage in such behavior.

Adrian H. Galt

Sworn to before me this 17th
day of April, 2015.

Notary Public for the State of South Carolina
My Commission expires: 6-14-2017

STANLEY J. BERNARD

REPOSSESSION AGREEMENT

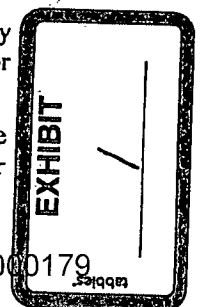
THIS REPOSSESSION AGREEMENT ("Agreement") is entered into this 10th day of Sept, 2010 by and between TMX FINANCE LLC, a Delaware limited liability company, and its subsidiaries and affiliates ("Company") whose corporate office is located at 15 Bull Street, Suite 200, Savannah, GA 31401, and ARS (AFFORDABLE RECOVERY SOLUTIONS), a(n) SOUTH CAROLINA ☒ sole proprietor, ☐ corporation, ☐ limited liability company, whose principal office is located at 2040 Commercial Drive, North Augusta, SC 29841 ("Repossession Vendor").

WHEREAS, Repossession Vendor is duly licensed to provide ☒ towing ☒ repossession services in the State of SOUTH CAROLINA;

WHEREAS, Repossession Vendor is a repossession agent duly licensed and operating within the State of SOUTH CAROLINA;

NOW THEREFORE, in consideration of the representations, agreements and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do mutually agree as follows:

1. **Term.** This Agreement shall begin on the date set forth in the first paragraph above and shall continue until terminated in accordance with the terms of this Agreement or upon a material breach by Repossession Vendor. Either party may terminate this Agreement by providing thirty (30) days advance written notice to the other party. Upon termination of this Agreement, Repossession Vendor shall discontinue all efforts to repossess property as assigned by Company and shall return any and all documents relating to Company's accounts to Company.
2. **Services-Repossessions.** The Repossession Vendor agrees to repossess vehicles upon a verbal or written request by Company within Repossession Vendor's sole discretion. Repossession Vendor agrees that all repossessions conducted for Company shall not be sub-contracted to another vendor. Repossession Vendor is the only firm authorized to conduct repossessions on behalf of Company. Company shall provide Repossession Vendor with 1) a description of the vehicle, including the color, year, make and model; 2) the VIN number ("Information"); and 3) a key to the vehicle, if available. Repossession Vendor will use Information provided by Company to identify the vehicle(s) to be repossessed and Repossession Vendor will use its best efforts to locate the vehicle. For each vehicle to be repossessed, Repossession Vendor warrants and agrees that the repossession will be accomplished without 1) the use of trick, fraud or other deceptive practices, including but not limited to impersonating a law enforcement or court official or other deceptive practices; 2) a breach of the peace; 3) force, threat or intimidation; or, 4) any other unlawful means. Repossession Vendor will comply with all applicable local, state and federal laws for each repossession.
3. **Services - Inventory of Items in Vehicle.** Immediately upon repossession, Repossession Vendor shall secure the vehicle by locking it and storing it in a secure location, and then contact the Company's Store Manager. Repossession Vendor shall inform Company's Store Manager of any issues arising during the repossession and note any physical damage to the vehicle or its contents between the time of repossession and delivery to the Company representative. A Company representative shall perform a complete inventory of all personal property located within or on the vehicle as soon as practicable. All personal property shall be itemized on an inventory list by the Company representative who shall store the personal property at the store location.
4. **Confidentiality.** Repossession Vendor agrees to maintain any and all Information provided by Company to Repossession Vendor confidential, and further agrees to return any and all Company documents to Company immediately when 1) the vehicle is repossessed, 2) the request to repossess is cancelled, or 3) the request is terminated for any other reason. Repossession Vendor agrees not to use any Information for any other purpose other than to provide services to Company, and agrees that it will not divulge Information to a third party unless required to do so by law.
5. **No Obligation.** Nothing herein obligates Company to use Repossession Vendor for every repossession nor does anything herein obligate Repossession Vendor to accept any particular assignment for repossession from Company.
6. **Compliance with Laws.** Repossession Vendor shall, in compliance with Section 1, retain complete discretion as to the time, place, manner and form of the repossession. Company shall exercise no control over any aspect of the transaction. Repossession Vendor is an independent contractor.



7. **Payment.** Company agrees to pay Repossession Vendor in accordance with the Fee Schedule (Exhibit C) attached hereto and made a part hereof.

8. **Insurance.** Repossession Vendor warrants that it maintains insurance covering premises, operations, product, completed operations and other liabilities as set forth in Exhibit A attached hereto and made a part hereof (endorsed to whatever extent is necessary to protect both Repossession Vendor and Company in the event of a claim, loss expense or damage as set forth in Section 5 Indemnification above) of at least \$1,000,000.00 per occurrence, providing coverage against claims for wrongful repossession and trespass. Repossession Vendor further warrants that it maintains insurance providing coverage for damage to the vehicle during 1) repossession, 2) delivery to Company or to a storage location designated by Company, or 3) storage on Repossession Vendor's premises, if applicable. Repossession Vendor will have Company named as an additional insured on Repossession Vendor's policies of insurance and will provide Company a certificate of coverage establishing such coverage for the current period and for subsequent periods throughout the term of this Agreement, all in accordance with Exhibit A (Insurance Specifications). Insurance is to be evidenced in a form satisfactory to Company, and Repossession Vendor shall, upon Company's request, provide complete copies of the required policies (whether current or expired), including all endorsements thereto.

9. **Trademark.** Repossession Vendor shall not use the name, trademark or logo of Company, or any of its subsidiaries or affiliates without the prior written consent of Company.

10. **Indemnification.** Repossession Vendor, its executors, administrators, successors and assigns agree to defend, indemnify and hold harmless Company, its agents, officers, employees and shareholders from any and all claims, demands, suits or civil actions brought by anyone regarding any aspect of the performance of, or failure to perform the repossession, including storage, if applicable (whether by Repossession Vendor, or any sub-contractor or vendor on its behalf) including, but not limited to, the manner in which the repossession was accomplished, the place at which the repossession was accomplished, or the time at which the repossession was accomplished, as well as all claims of whatever nature including, but not limited to, bodily injury, property damage (including the loss of use thereof), economic damage, personal injury, or any personal property alleged to have been present within or on the vehicle at the time of the repossession. This obligation includes personal injury (including death) of Repossession Vendor, its employees or sub-contractors. Any provision of this paragraph that is or has been judicially determined to be invalid or void under the laws of the state in which the contract is to be performed shall be deemed modified to the extent necessary, or deleted if absolutely necessary, so as to render the paragraph valid; and so that this provision shall apply to the maximum extent permitted under the state's laws and shall carry out the intentions of the parties, as expressed herein, to the maximum extent possible.

Company shall notify Repossession Vendor of any claims, demands or actions filed against Company which are subject to this Indemnification provision, and Repossession Vendor agrees to undertake the defense thereof, keeping Company fully informed regarding the status of any negotiations, offers of settlement, or litigation. Should the Repossession Vendor fail, neglect or refuse to undertake the defense of any claim or action, Company will select counsel and Repossession Vendor agrees to pay all reasonable costs associated with said defense or reimburse Company for all reasonable costs and attorney's fees incurred by Company in the defense of such action.

11. **Waiver and Enforceability.** The failure to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of such terms, covenants or conditions. The invalidity or unenforceability of any provision or clause of this Agreement in whole or in part, shall in no way impair or affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect.

12. **Entire Agreement.** The parties stipulate and agree that this Repossession Agreement constitutes the entire Agreement between them regarding repossession of vehicles. No other such Agreement exists. This Agreement may be amended from time-to time by Company by providing thirty (30) days advanced written notice to Repossession Vendor. Repossession Vendor may not modify the terms of this Agreement without the express written consent of Company. No oral modification of this Agreement is allowed. This Agreement shall be governed by and construed in accordance with the state laws in which this business is being conducted. This Agreement may not be assigned by either party without the prior written consent of the other party in writing.

IN WITNESS WHEREOF, the parties hereby have caused their duly authorized representatives to enter into this Agreement effective as of the date first stated above.

COMPANY:

TMX Finance LLC

By: _____

Name: Tracy Young

Title: Member

REPOSSESSION VENDOR:

ARS (AFFORDABLE RECOVERY SOLUTIONS)

By: _____

Name: Jason Larussa

Title: OWNER

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

JOYCE MYERS,

Plaintiff,

v.

TITLEMAX OF SOUTH CAROLINA, INC.,
AND AFFORDABLE RECOVERY
SOLUTIONS a/k/a ARS,

Defendants.

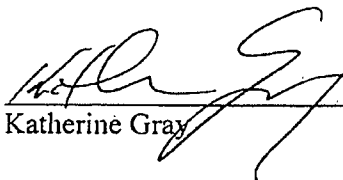
IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-03-147

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 30 day of October, 2013, caused the foregoing **Amended Answer and Cross Claim of TitleMax of South Carolina, Inc. and Cross Claim Summons** to be served via U.S. mail, postage prepaid, on all counsel of record at the address shown below:

H. Woodrow Gooding, Esquire
Gooding and Gooding
PO Box 1000
Allendale, SC 29810
Attorneys for Plaintiff


Katherine Gray

Record No.: 5435151

Supervised Loan Agreement

Date 08/15/2008

THIS AGREEMENT IS SUBJECT TO AN ARBITRATION PROVISION. BY ENTERING THIS AGREEMENT YOU WILL WAIVE CERTAIN RIGHTS. PLEASE READ THE WAIVER OF JURY TRIAL AND ARBITRATION PROVISION CAREFULLY TO ASSESS YOUR RIGHTS TO RESOLVE DISPUTES.

SUPERVISED LENDER: TITLEMAX OF SOUTH CAROLINA, INC		PHONE NUMBER (803) 541-3602	FAX NUMBER (803) 541-8051
STREET ADDRESS 10520 DUNBARTON BLVD		CITY BARNWELL	STATE SC
SUPERVISED LENDER HOURS OF OPERATION: Monday to Friday 9 A.M. to 7 P.M., Saturday 10 A.M. to 4 P.M., CLOSED ON SUNDAY		ZIP CODE 29812	
		PRIMARY CONTACT PERSON mike fraebel	

BORROWER: FIRST NAME JOYCE	MIDDLE NAME BUTTS	LAST NAME MYERS	SOCIAL SECURITY NO XXX-XX-2365	DRIVER'S LICENSE NO. / STATE ID NO. 007840866
RESIDENCE STREET ADDRESS 915 COLLEGE ST			CITY ALLENDALE	STATE SC
HOME PHONE (803) 594-3871	CELL PHONE (803) 397-4617	SEX FEMALE	HEIGHT 511	ZIP CODE 29810
			DATE OF BIRTH 09/11/1970	

BORROWER: FIRST NAME	MIDDLE NAME	LAST NAME	SOCIAL SECURITY NO	DRIVER'S LICENSE NO. / STATE ID NO.
RESIDENCE STREET ADDRESS			CITY	STATE
HOME PHONE	CELL PHONE	SEX	HEIGHT	ZIP CODE
			DATE OF BIRTH	

MOTOR VEHICLE TITLE CERTIFICATE NUMBER 77003D138054926	STATE SC	VEHICLE IDENTIFICATION NUMBER (VIN) JN1CA21D7VM527771	LICENSE / PLATE NUMBER 332 TEM
YEAR 1997	MAKE NISSAN	MODEL MAXIMA SE	COLOR BURGANDY
Name of Lienholder (if applicable) NA			Account No. NA
Lienholder Address: NA			Payoff Amount as of today: NA

In this Supervised Loan Agreement ("Loan Agreement") the words "you" and "your" mean the Borrower(s), identified above who have signed it. The words "Supervised Lender," "we," "us" and "our" mean TitleMax of South Carolina, Inc. d/b/a TitleMax. The words "collateral" and "Motor Vehicle" mean the Motor Vehicle identified above.

You promise to pay us the principal amount of this loan \$1,615.00, plus interest from the date of this Loan Agreement on the unpaid principal balance of the loan at the rate of 155.88 % per annum (the "Contract Rate"), and other permitted charges. The face amount of the Loan Agreement and principal proceeds loaned to you by us is set forth in the Amount Financed disclosure. Interest is calculated according to the simple interest method. The finance charge is calculated on the assumption that all payments will be made when due. You promise to timely pay us the principal and interest due in monthly installments of \$221.83 as set forth below in the Payment Schedule. On each Payment Date you will pay us, at the address indicated above, or at such other address as we direct you in writing, the amount stated. If your payment is due on a date in which we are not open for business then you agree to pay us on the next business day, and we will credit any payment received on our next business day, as if it were received on the appropriate date. You grant us a security interest in the Motor Vehicle, and have delivered to us the Keys. In the event you payoff the first lien during the term of this Loan Agreement, you agree to deliver the Motor Vehicle Certificate of Title to us. We do not accept personal checks.

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. 155.0646 %	FINANCE CHARGE The dollar amount the credit will cost you. \$ 3,708.98	Amount Financed The amount of credit provided to you or on your behalf. \$ 1,615.00	Total of Payments The amount you will have paid after you have made all payments as scheduled. \$ 5,323.98
--	---	--	---

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
23	221.83	Monthly Beginning On 9/15/2008.
1	221.89	8/15/2010

Security: You are giving a security interest in the Motor Vehicle
Prepayment: If you pay off early, you will not have to pay a penalty

See the terms below and on the other pages of this Loan Agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties

Itemization of Amount Financed of \$ 1,615.00
 \$ 1,600.00 Amount given to you directly
 \$ 0.00 Amount paid on account no. _____ with us

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 804-5368.

EXHIBIT

Additional Terms and Conditions of this Supervised Loan Agreement

Amount paid to others on your behalf

\$ 15.00 to public officials

\$ 0.00 to SC DMV

Prepayment. You may prepay your obligations under this Loan Agreement in full or in part at any time and you will not incur an additional fee, charge or penalty. In addition, if you prepay the Amount Financed prior to the close of business on the business day immediately following the date of this Loan Agreement, we will rebate and refund to you the interest we have earned.

Additional Charges. You agree to pay to us \$ 15.00 for official fees and taxes incurred for registering the Motor Vehicle Certificate of Title.

Default. You will be in default under this Loan Agreement if you fail to make a payment as required by this Loan Agreement or if the prospect of payment, performance, or realization of collateral is significantly impaired. Upon default, we may accelerate the balance owing hereunder, unless you timely cure such default. Upon your first default because of your failure to make a required payment, we will not accelerate maturity of the unpaid balance of the obligation, nor take possession of the Motor Vehicle or otherwise enforce a security interest in the Motor Vehicle until twenty days after giving you notice of your right to cure. Upon any subsequent default which you fail to cure, we may accelerate the full balance of your obligations to us. Upon default, we may take possession of the Motor Vehicle without judicial process as allowed by South Carolina Code § 37-5-112. Notwithstanding the foregoing, under South Carolina Code § 37-5-111, you may voluntarily surrender possession of your Motor Vehicle to us any time after default by leaving the Motor Vehicle at our store during normal business hours. If you voluntarily surrender the Motor Vehicle to us, we may accelerate maturity of the obligation and enforce the obligation and our security interest in the Motor Vehicle at any time after default.

Governing Law and Assignment. This Loan Agreement shall be governed by the laws of the State of South Carolina, except that the Waiver of Jury Trial and Arbitration Provision is governed by the Federal Arbitration Act ("FAA"). We may assign or transfer this Loan Agreement or any of our rights hereunder. You shall pay us until you receive notification of assignment of rights to payment.

WAIVER OF JURY TRIAL AND ARBITRATION PROVISION. Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. **THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:**

1. For purposes of this Waiver of Jury Trial and Arbitration Provision (hereinafter the "Arbitration Provision"), the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision, (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement (including the Arbitration Provision), the information you gave us before entering into this Loan Agreement, any past agreement or agreements between you and us, and/or any renewal of this Loan Agreement, (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts, (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief, (h) all claims asserted on your behalf by another person, (i) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"), and/or (j) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

2. You acknowledge and agree that by entering into this Arbitration Provision:

- (a) YOU ARE WAIVING YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;
- (b) YOU ARE WAIVING YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and
- (c) YOU ARE WAIVING YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.

3. Except as provided in Paragraph 6 below, all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**

4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 804-5368

TM-SC-Customer Agr-2nd Lien-V 1 1-07 20 0077

Page 2 of 3

000184

Additional Terms and Conditions of this Supervised Loan Agreement

has been filed. Regardless of who demands arbitration, you shall have the right to select either of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7879) <http://www.adr.org> or National Arbitration Forum (1-800-474-2371) <http://www.arb-forum.com>. However, the parties may agree to select a local arbitrator who is an attorney, retired judge, or arbitrator registered and in good standing with an arbitration association and arbitrate pursuant to such arbitrator's rules. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization or your desire to select a local arbitrator. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Loan Agreement or the Arbitration Provision, including the limitations on the arbitrator below. You may obtain a copy of the rules and procedures by contacting the arbitration organization listed above.

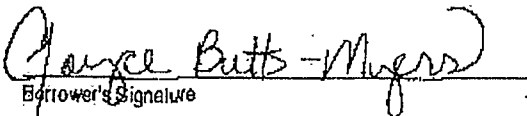
5. Regardless of who demands arbitration, we will advance your portion of the expenses associated with the arbitration, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the FAA, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitration hearing will be conducted in the county of your residence, or within 30 miles from such county, or in the county in which the transaction under this Loan Agreement occurred, or in such other place as shall be ordered by the arbitrator. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award may be filed with any court having jurisdiction.

6. All parties, including related third parties, shall retain the right to seek adjudication in a small claims tribunal for disputes within the scope of such tribunal's jurisdiction. Any dispute, which cannot be adjudicated within the jurisdiction of a small claims tribunal, shall be resolved by binding arbitration. Any appeal of a judgment from a small claims tribunal shall be resolved by binding arbitration. Furthermore, nothing in this Arbitration Provision shall limit the right of you or us (a) to foreclose against the Motor Vehicle by the exercise of any power under the Loan Agreement or under applicable law, (b) to exercise self-help remedies such as set off or repossession, or (c) to obtain provisional or ancillary remedies such as pre-judgment seizure of property, detinue, replevin, or injunctive relief, or to seek or obtain any other traditional equitable relief which does not claim money damages from a court having jurisdiction. The institution and maintenance by you or us of any action set forth in this Paragraph 6 shall not constitute a waiver of the right to submit any dispute to arbitration, including any counterclaim asserted.

7. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA. If a final non-appealable judgment of a court having jurisdiction over this transaction finds, for any reason, that the FAA does not apply to this transaction, then our agreement to arbitrate shall be governed by the arbitration law of the State of South Carolina.

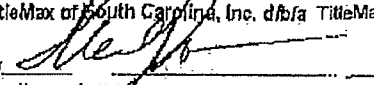
8. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if your obligations have been renewed, prepaid, paid or discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing.

By signing this Loan Agreement you acknowledge that it was filed in before you did so and that you have received an exact copy of it. You also warrant and represent that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code. You verify that you are the rightful owner of the Motor Vehicle. You verify that you are 18 years of age or older. You further acknowledge that you have read, understand, and agree to all of the terms of this Loan Agreement, including the "Waiver of Jury Trial and Arbitration Provision" above.


Borrower's Signature

Borrower's Signature

TitleMax of South Carolina, Inc. d/b/a TitleMax

By 
its employee

Account Number: 5435151

THIS DOCUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF, AND PLEDGED AS COLLATERAL TO, MERRILL LYNCH MORTGAGE CAPITAL INC., AS AGENT FOR ITS OWN BENEFIT AND THE BENEFIT OF THE LENDERS

STATE OF SOUTH CAROLINA)
COUNTY OF ALLENDALE)

IN THE COURT OF COMMON PLEAS
C/A#: 13-CP-03-147

JOYCE MYERS,)
Plaintiff,)

vs.)

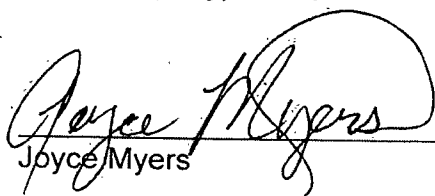
AFFIDAVIT OF
JOYCE MYERS

TITLEMAX OF SOUTH CAROLINA,)
INC. AND AFFORDABLE RECOVERY)
SOLUTIONS a/k/a ARS,)
Defendant.)

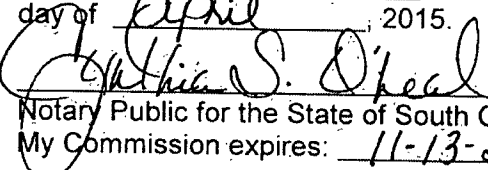
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2015 APR 17 PM 3:59
CLERK OF COURT
ALLENDALE COUNTY, S.C.

PERSONALLY APPEARED BEFORE ME, Joyce Myers, who being duly deposed
and sworn, says:

1. I am Joyce Myers, the Plaintiff in the above-referenced matter.
2. I give this affidavit based on my own personal knowledge, I am over the age of eighteen (18) years, and I am competent to make this affidavit.
3. When I signed the finance agreement with TitleMax that contains the arbitration provision, I did not contemplate that TitleMax or anyone acting on its behalf would engage in abusive behavior including but not limited to assault, battery, trespass and any other type of abusive behavior alleged in my Complaint.


Joyce Myers

Sworn to before me this 17th
day of April, 2015.


Notary Public for the State of South Carolina
My Commission expires: 11-13-2024

STATE OF SOUTH CAROLINA
 COURT OF COMMON PLEAS
 COUNTY OF ALLENDALE
 JOYCE MYERS,
 Plaintiff,
 vs. CASE NO. 13-CP-03-147
 TITLEMAX OF SOUTH CAROLINA,
 INC. and AFFORDABLE RECOVERY
 SOLUTIONS A/K/A ARS,
 Defendants.

DEPOSITION OF: JOYCE ELAINE BUTTS-MYERS
 DATE: October 9, 2014
 TIME: 10:25 AM
 LOCATION: Law Offices of Gooding & Gooding, PA
 265 Barnwell Highway
 Allendale, SC
 TAKEN BY: Counsel for the Defendant
 REPORTED BY: KELLY A. BALL, Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES
 Fast, Accurate & Friendly
 Charleston, SC Hilton Head, SC Myrtle Beach, SC
 (843) 722-8414 (843) 785-3263 (843) 839-3376
 Columbia, SC Greenville, SC Charlotte, NC
 (803) 731-5224 (864) 234-7030 (704) 573-3919

STIPULATION

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

* * * * *

(DFT. EXH. 1, TitleMax Customer
 Application dated August 15, 2008, was marked for
 identification.)

(DFT. EXH. 2, TitleMax of South
 Carolina Supervised Loan Agreement dated July 20,
 2009, was marked for identification.)

(DFT. EXH. 3, TitleMax Customer
 Application dated July 15, 2008 updated December 3,
 2010, was marked for identification.)

(DFT. EXH. 4, TitleMax Customer
 Application dated May 4, 2012, was marked for
 identification.)

(DFT. EXH. 5, Laffitte and Warren
 Medical Center medical record dated January 11,
 2013, was marked for identification.)

APPEARANCES OF COUNSEL:
 ATTORNEYS FOR THE PLAINTIFF
 JOYCE MYERS:

GOODING & GOODING, PA
 BY: LAINE B. GOODING
 265 Barnwell Highway
 Allendale, SC 29810
 (803) 584-7676

Laine@goodingandgooding.com
 ATTORNEYS FOR THE DEFENDANT
 TITLEMAX OF SOUTH CAROLINA, INC.:

SAMS & SAMS, PA
 BY: W. TOLANDS SAMS
 811 Craven Street
 Beaufort, SC 29902
 (843) 524-4189
 Wtsams@hargray.com
 HAYNSWORTH SINKLER BOYD, PA
 BY: ROOPAL S. RUPARELIA (by telephone)
 1201 Main Street, 22nd Floor
 Columbia, SC 29201
 (803) 540-7846
 Rruparelia@hsblawfirm.com

ATTORNEYS FOR THE DEFENDANT
 AFFORDABLE RECOVERY SOLUTIONS A/K/A ARS:
 HOWELL, GIBSON AND HUGHES, PA
 BY: PATRICK M. HIGGINS
 25 Rue DuBois
 Lady's Island
 Beaufort, SC 29907
 (843) 522-2400
 Hghpa@islc.net

(INDEX AT REAR OF TRANSCRIPT)

JOYCE ELAINE BUTTS-MYERS

being first duly sworn, testified as follows:

EXAMINATION

BY MR. HIGGINS:

Q. Good morning, Ms. Myers. How are you?

A. I'm fine. How are you?

Q. I'm doing fine, thank you. My name is
 Pat Higgins and I represent the defendant
 Affordable Recovery Solutions, ARS, and I'll be
 taking your deposition today, okay?

A. Okay.

Q. I'm sure you've probably talked to
 Laine a little bit about what a deposition is.
 Have you had your deposition taken before?

A. No, I've never...

Q. Okay. I'll just give you a little bit
 of the ground rules. We're taking this down so if
 you could, when you answer, vocalize your answer,
 not uh-huh or huh-uh, it doesn't -- you know, we
 can't take that all down. Okay?

A. Okay.

Q. If I ask you a question you don't
 understand, let me know and I'll try to rephrase
 it.

A. Okay.

1 Q. If you need to take a break at any
2 time, I don't expect this to take a long time, but
3 if you do, let me know and we'll take a break.
4 This is not an endurance contest. Okay?
5 A. Okay.
6 Q. And do you have any questions before we
7 start?
8 A. No.
9 Q. Okay. Could you give us your full
10 name, please?
11 A. Joyce Elaine Butts Myers.
12 Q. Okay. All right. Are you married?
13 A. Yes.
14 Q. Okay. What's your husband's name?
15 A. Timothy Leon Myers, Sr.
16 Q. Okay. And how long have y'all been
17 married?
18 A. 12 years.
19 Q. Okay. Do you have any children?
20 A. I have a son and he has a son, so we
21 have two together.
22 Q. Two kids together. All right. All
23 under the same roof?
24 A. No.
25 Q. Okay. Where do they live?

1 A. The oldest is in Allendale with his
2 aunt.
3 Q. Okay.
4 A. And our youngest is -- he's home --
5 Q. Uh-huh.
6 A. -- but he actually goes to college.
7 Q. All right.
8 A. He'll be starting next -- starting
9 again next semester --
10 Q. Where does he go?
11 A. -- but he was in Kansas.
12 Q. Gotcha. How old are your children?
13 A. 19 and 23.
14 Q. Could you give me their name, please,
15 and their ages?
16 A. Timothy Leon Myers, Jr.
17 Q. Right. And how old is he?
18 A. 23.
19 Q. Okay. All right.
20 A. Devontay Mileke Moore.
21 Q. Uh-huh.
22 A. And he's 19.
23 Q. Okay. All right. And do you have any
24 other children?
25 A. No.

1 Q. Okay. Does your husband have any other
2 children?
3 A. No.
4 Q. Okay. Just making sure. All right.
5 What is your current address?
6 A. 306 Unity Drive, Allendale, South
7 Carolina. That's the physical.
8 Q. Okay. And do you have a mailing
9 address?
10 A. P.O. Box 585, Allendale.
11 Q. Okay. And how long have you lived at
12 that physical address?
13 A. I would say about seven years.
14 Q. Okay. How long have you lived in
15 Allendale?
16 A. Okay, I've been in Allendale now over
17 20 -- over -- I came back when I was 18.
18 Q. Okay. Were you from here originally?
19 A. I'm originally from Philadelphia.
20 Q. Okay.
21 A. I've gone to school here --
22 Q. Okay.
23 A. -- and then we left, went back to
24 Philadelphia, and I came back when I was 18 and
25 I've been here ever since.

1 Q. Long time then?
2 A. Yes.
3 Q. Okay. All right. What part of
4 Philadelphia were you from?
5 A. North.
6 Q. North Philly, okay. And tell me a
7 little bit about your educational background, maybe
8 high school era on.
9 A. Okay. I graduated and --
10 Q. From where?
11 A. I graduated from Allendale Fairfax High
12 School.
13 Q. Okay. And what year was that?
14 A. 1989.
15 Q. All right. Okay. Did you do any
16 formal education after that?
17 A. I've done online classes.
18 Q. Okay.
19 A. At Everest.
20 Q. Everest, okay. Tell me about that.
21 What did you get?
22 A. I started out for a paralegal.
23 Q. Uh-huh.
24 A. And then I changed for child
25 psychology.

1 Q. Okay. Was this -- did you obtain a
2 degree?
3 A. I had to actually put it on hold, so
4 right now...
5 Q. It's on hold?
6 A. Yes.
7 Q. Okay. All right. When did you first
8 begin the pursuit of that degree?
9 A. Oh, gosh, I do not want to tell a lie.
10 I'm not sure what year.
11 Q. That's fine. I mean, approximately. I
12 mean...
13 A. Could have been about three years ago.
14 Q. Okay. And your goal originally was to
15 get a paralegal degree --
16 A. Yes.
17 Q. -- and then you changed your mind --
18 A. Uh-huh.
19 Q. -- to do something different? Child
20 psychology?
21 A. Yes.
22 Q. Okay. All right. And why did you kind
23 of put that on hold?
24 A. Because I had a lot going on with my
25 dad at the time when he was living.

1 Q. Oh, okay. Health situation?
2 A. Health issues.
3 Q. Oh, okay. All right. And you needed
4 to take care of him and that sort of thing?
5 A. Yes.
6 Q. Okay. All right. Do you intend to go
7 back and --
8 A. Yes.
9 Q. -- pursue that?
10 A. Yes.
11 Q. Okay. All right. Let's see, do you
12 have any other relatives here in Allendale County?
13 A. Yes, quite a few.
14 Q. Quite a few. Can you just give me --
15 say the last names of the kin you have here in
16 Allendale?
17 A. Butts and -- Butts, Badger, McClay.
18 Q. Okay. Just all the ones you can think
19 of. I know there's probably a few.
20 A. Yes. Butts, Badger, McClay, Sabb,
21 Young.
22 Q. Okay. Just all the ones you can think
23 of. Just take your time.
24 A. Right now that's all I can --
25 Q. Okay. Maybe it'd be easier to say the

1 ones you weren't related to. There you go.
2 Joking. All right.
3 So this is a civil lawsuit, obviously.
4 Have you been involved in any other civil lawsuits
5 like this?
6 A. No, sir.
7 Q. Okay. Have -- your attorney is --
8 Gooding and Gooding are your attorneys this case.
9 A. Yes.
10 Q. Have you been represented by them in
11 any previous situations?
12 A. Yes, years ago.
13 Q. Okay. And tell me about that.
14 A. I was in a car with my mother and
15 someone hit her car.
16 Q. Okay.
17 A. And that was basically -- I had a mild
18 concussion and...
19 Q. You had some injuries?
20 A. That -- just the mild concussion and --
21 Q. Okay. And what happened, did they --
22 did that end up in a lawsuit or did you end up
23 making a claim and settling the claim or...
24 A. It was so long ago, I don't want to
25 lie.

1 Q. That's okay. I mean, was -- how old
2 were you at the time?
3 A. I think in my early 20s.
4 Q. Okay. Do you remember who you made a
5 claim against? Who the other driver was?
6 A. No, I don't remember.
7 Q. Okay. Do you remember if it ended up
8 being -- a lawsuit ended up being filed?
9 A. I -- again, I don't want to lie. I
10 can't remember that.
11 Q. And that's absolutely fine. If you
12 don't remember, that's okay. Do you remember if
13 you received a settlement?
14 A. I did. It wasn't anything large, I can
15 remember that.
16 Q. Do you remember how much it was,
17 roughly?
18 A. No.
19 Q. I mean, are we talking 5,000? 100,000?
20 A. It might have been about five.
21 Q. Okay. All right. And the injuries you
22 had was a concussion, a slight concussion?
23 A. Uh-huh.
24 Q. Anything else?
25 A. No.

1 Q. Okay. All right. But that case was
 2 settled and resolved?
 3 A. Yes.
 4 Q. You didn't have to go to court or
 5 anything like that?
 6 A. No.
 7 Q. Okay. No depositions taken?
 8 A. No.
 9 Q. All right. Any other times where you
 10 were represented by any other counsel?
 11 A. No.
 12 Q. Okay. So the only time you ever had an
 13 attorney or had any representation was regarding
 14 this particular case and the prior accident which
 15 you just described?
 16 A. Yes.
 17 Q. Okay. I notice in your medical records
 18 somewhere that there was a reference to perhaps a
 19 workers' compensation claim that you may have
 20 filed.
 21 A. Yes.
 22 Q. Was that relative to an on-the-job
 23 injury you had at school?
 24 A. Yes.
 25 Q. Okay. And I think that was referenced

1 November of last year?
 2 A. Yes.
 3 Q. Okay. Did you have any related
 4 treatment other than with Laffitte --
 5 A. No.
 6 Q. -- and Warren? Okay.
 7 Did you heal up? There were no major
 8 problems that --
 9 A. No.
 10 Q. -- came from that? Okay.
 11 What happened to the worker's comp
 12 case? Was that filed or...
 13 A. As far as I know it's supposed to be
 14 filed there.
 15 Q. Okay. No further problems with your
 16 knee or anything like that?
 17 A. No.
 18 Q. Okay. All right. I'm going to talk a
 19 little bit -- this case that you've filed -- you
 20 understand you filed against TitleMax and
 21 Affordable Recovery, correct?
 22 A. Yes.
 23 Q. Those two defendants. Okay. And
 24 apparently this arises out of an incident where
 25 your car was repossessed at your home?

1 in the medical report that I got from Laffitte and
 2 Warren Medical Center?
 3 A. Yes.
 4 Q. And that was -- briefly, what happened
 5 there? There was a child --
 6 A. I worked with a special needs child --
 7 Q. Yeah.
 8 A. -- and he had an episode and kicked me
 9 in my knee.
 10 Q. Okay. Were you operating as like a
 11 shadow or a --
 12 A. Yes.
 13 Q. Okay. All right. And it looks like
 14 you had seen the -- you had been to that doctor
 15 previously regarding some stress issues?
 16 A. Yes.
 17 Q. Okay. Because -- work related?
 18 A. No.
 19 Q. What was it related to?
 20 A. Everything that I dealt with with my
 21 dad.
 22 Q. That was very stressful for you?
 23 A. Yes.
 24 Q. Okay. It looks like the work -- when
 25 the child kicked you in the knee, it was in

1 A. Yes.
 2 Q. Okay. And that was -- let me make sure
 3 I have this date right -- January 11th, 2013?
 4 A. Yes.
 5 Q. Okay. All right. Just -- I would like
 6 to go through a little -- some background issues
 7 that -- just so I'm straight on this. You were a
 8 customer of TitleMax?
 9 A. Yes.
 10 Q. Okay. And I have -- I'll just give you
 11 this, maybe this is probably the easier way to
 12 start. I've marked several of these documents that
 13 TitleMax has provided me. I think your attorney
 14 has provided me this as well, I'm not sure of it.
 15 I just want to make sure that these are correct.
 16 This is Exhibit Number 1, we've already
 17 marked this.
 18 MS. GOODING: That's fine.
 19 BY MR. HIGGINS:
 20 Q. Okay. This is a -- if you can just
 21 identify, is that -- there's a date on it I think.
 22 August 15th, '08?
 23 A. Yes.
 24 Q. Okay. This appears to be a customer
 25 application you filed out; is that right?

1 A. Yes.
 2 Q. All right. And I think attached to
 3 that, let me see -- I'm sorry, was -- was a
 4 supervised loan agreement. So there's really two
 5 documents there. You can take them apart. Is that
 6 correct?
 7 A. Yes.
 8 Q. Okay. Now, you've signed several of
 9 these. Was this the first one you signed with
 10 TitleMax?
 11 A. Yes.
 12 Q. Okay. Had you ever -- prior to this
 13 ever signed a similar type agreement with another
 14 company?
 15 A. Not to my knowledge.
 16 Q. Okay. All right. And what was the
 17 original purpose of your loan to go in there to get
 18 this loan? Was it anything in particular or you
 19 just needed some extra money or -- in '08?
 20 A. To take care of some personal things.
 21 Q. Some personal bills and that --
 22 A. Yes.
 23 Q. -- sort of thing you had to get done?
 24 Okay.
 25 And how did you hear about TitleMax?

1 Was it the television ads or a friend or --
 2 A. Yes.
 3 Q. Okay. All right. And you went in
 4 there and I believe you had a vehicle, right?
 5 A. Yes.
 6 Q. That they took a look at and appraised,
 7 the Nissan?
 8 A. Yes.
 9 Q. And that was the one that was actually
 10 repossessed; is that right?
 11 A. Yes.
 12 Q. Okay. All right. And just -- if you
 13 make sure, I just want to -- look through the
 14 application and make sure that was the one you
 15 signed and it is you that actually signed that and
 16 that is the correct information and it's accurate.
 17 A. Yes.
 18 Q. Okay. And this -- that was the
 19 customer application for '08. And look -- please
 20 look at that -- second half of that exhibit which
 21 is the -- I'm sorry, the agreement. And that's
 22 the -- that is your signature and that is your
 23 customer agreement too. So make sure it's not --
 24 it is yours.
 25 A. Yes.

1 Q. Okay. When you signed these documents,
 2 you were in the TitleMax office?
 3 A. Yes.
 4 Q. Okay. Do you remember who sat down
 5 with you and talked to you about them?
 6 A. Not the first...
 7 Q. Okay. You don't remember the first
 8 time?
 9 A. No, sir.
 10 Q. All right. And do you remember who --
 11 do you have people that you remember who you talked
 12 with at TitleMax that were kind of -- you can think
 13 of?
 14 A. I remember the faces, but I --
 15 Q. Okay.
 16 A. -- cannot remember the names. It's one
 17 particular name -- name that stands out.
 18 Q. Uh-huh.
 19 A. Miss Sherri.
 20 Q. Sherri, okay. You don't know whose
 21 signature that is on the agreement, do you? I
 22 can't read that, but maybe does that --
 23 A. (Shaking head from side to side.)
 24 Q. No? Doesn't help?
 25 A. No.

1 Q. Okay. All right. And tell me about
 2 the circumstances that -- was it just you and say
 3 Miss Sherri or some other employee of TitleMax was
 4 there in the office there or how was it done? I
 5 mean, where -- what was the situation when you were
 6 signing these documents?
 7 A. Okay, you go in and --
 8 Q. Uh-huh.
 9 A. -- you ask could you apply for a loan.
 10 Q. Right.
 11 A. And they ask to see your vehicle.
 12 Q. Okay.
 13 A. They look at your vehicle --
 14 Q. Right.
 15 A. -- inside and out, take pictures of it.
 16 Then they come back in and let you know if you're
 17 approved. And if you are, then you fill out your
 18 paperwork.
 19 Q. Gotcha. Okay. And they did appraise
 20 it, right, and they gave you the appraisal?
 21 A. Yes.
 22 Q. And they said the value of the car was
 23 \$2,000 and they could loan you 1,600 --
 24 A. Yes.
 25 Q. -- max, I guess? Okay.

1 And then at that point you said I would
 2 like to do that loan and then filled out the loan
 3 agreement?
 4 A. Yes, but I -- yes.
 5 Q. Okay. That was the sequence -- yeah.
 6 Okay. And then they said we can get you \$1,600,
 7 then you filled out this?
 8 A. Yes.
 9 Q. And do you get your cash the same day?
 10 Is that the way it worked?
 11 A. Yes.
 12 Q. Okay. All right. Or they give you a
 13 check, I guess?
 14 A. Yes.
 15 Q. Okay. All right. Do you actually give
 16 them the title of the vehicle or how does that
 17 work?
 18 A. Yes.
 19 Q. Okay. All right. And these two
 20 documents, you -- these are both signed by you,
 21 correct?
 22 A. Yes.
 23 Q. And you read through both of these?
 24 A. Yes.
 25 Q. All right. And you read through, first

1 of all, the customer application, right?
 2 A. Yes.
 3 Q. And you understood that?
 4 A. Yes.
 5 Q. And you read through the terms of
 6 the -- well, what is it called? Supervised loan
 7 agreement, you read that as well?
 8 A. Yes.
 9 Q. Okay. And you understood the terms of
 10 that?
 11 A. Yes.
 12 Q. Okay. These are basically the same
 13 thing, so I won't go through all the detail. But
 14 Number 2 looks like -- I don't have the
 15 application, but I have the loan agreement.
 16 For some reason, I don't -- this --
 17 could you identify that? That looks to be a year
 18 later, '09; is that right?
 19 A. Yes.
 20 Q. Okay. You did file another application
 21 though; is that right? Is that your recollection?
 22 Because I didn't see it in the file. I maybe
 23 just -- maybe didn't get a copy of it. But do you
 24 remember filling out another application?
 25 A. Again, I don't want to lie.

1 Q. That's okay. You may or may not have.
 2 One or the other. Okay. But you did fill out
 3 another loan agreement?
 4 A. Yes.
 5 Q. This was a new loan --
 6 A. Yes.
 7 Q. -- is that right?
 8 A. Yes.
 9 Q. Okay. It's basically the same terms?
 10 A. Yes.
 11 Q. Okay. And you understood this,
 12 correct?
 13 A. Yes.
 14 Q. This is Number 3. It looks like the
 15 date -- it says updated on the top and you signed
 16 it. It looks like that was the same documents from
 17 the Exhibit Number 1, you just updated them; is
 18 that right?
 19 A. Yes.
 20 Q. Okay. It looks like an updated
 21 application and if you read through there, there's
 22 also a -- appears to be an updated loan agreement;
 23 is that right? You can feel free to look through
 24 that, but that's what it appears to be.
 25 A. Yes.

1 Q. Okay. Same terms as the original?
 2 A. Yes.
 3 Q. Okay. Thank you. And the last one is
 4 Exhibit Number 4, which has a date -- it looks like
 5 May 4th, 2012, appears to be the same exact
 6 document, so if you can review that and see if you
 7 agree with me.
 8 It seems to be just the same documents
 9 you applied for a loan in May of 2012?
 10 A. Yes.
 11 Q. Okay. Same terms and conditions?
 12 A. Uh-huh.
 13 Q. All right. And, again, you understood
 14 what the terms and conditions were?
 15 A. Yes.
 16 Q. Okay. All right. Now, we've had -- it
 17 looks like you've had four loans --
 18 A. Yes.
 19 Q. -- is that correct? Okay.
 20 Have you had any other that we don't
 21 know about or I don't have record of?
 22 A. Not to my knowledge.
 23 Q. Okay. Do you currently have a loan
 24 with them?
 25 A. No.

1 Q. No, okay. So the one that the
2 repossession occurred on was this last loan, the
3 2012 loan?

4 A. Yes.

5 Q. All right. Okay. Now, it's my
6 understanding that at some point, and TitleMax has
7 these records, but at some point this loan went
8 into default; is that right?

9 A. From what I understood, we had an
10 agreement --

11 Q. Okay.

12 A. -- but if that's what they said, then
13 yes.

14 Q. Okay. I'm not -- I don't represent
15 TitleMax, so I'm not sure what they have in their
16 file about that. But my understanding, and you
17 correct me if I'm wrong, is that their opinion or
18 their position was that it went into default and
19 that's why they contacted my client to repossess
20 your vehicle.

21 A. Okay.

22 Q. Okay. Do you -- is it your position
23 that you were in default or not in default with
24 regards to this TitleMax loan?

25 MS. GOODING: Object to the form.

1 after they took the vehicle?

2 A. To my knowledge, yes.

3 Q. Okay. All right. But you knew you
4 were in default but you had an agreement --

5 A. Yes.

6 Q. -- with this gentleman at TitleMax?

7 A. Yes.

8 Q. But you don't know his name?

9 A. I -- again, I don't -- I don't want to
10 lie.

11 Q. I understand. And you don't know what
12 date this conversation took place?

13 A. I don't want to lie.

14 Q. Okay. All right. What was the -- what
15 was this agreement that you alleged occurred? What
16 was the terms of the agreement that you said that
17 you reached with this gentleman?

18 A. On what particular date I could in and
19 make a payment.

20 Q. Uh-huh. Okay. Do you know what that
21 date was?

22 A. On the 11th.

23 Q. Of what month, I'm sorry?

24 A. January.

25 Q. January 11th. So you were under the

1 BY MR. HIGGINS:

2 Q. Okay. You can answer the question.

3 A. I knew that I owed them.

4 Q. Okay.

5 A. But I had spoken with the person who
6 was the manager --

7 Q. Okay.

8 A. -- and we, from what I understood, had
9 an agreement on when I was to come in.

10 Q. Okay. And do you know who you spoke
11 with?

12 A. I cannot remember his name.

13 Q. Was it -- it was a male?

14 A. Yes.

15 Q. Okay. And do you remember what date
16 you spoke with this individual?

17 A. I do not want to lie.

18 Q. Okay. Because did -- you did
19 receive -- my understanding is, and you correct me
20 if I'm wrong, you did receive a letter from
21 TitleMax saying that you were in default; is that
22 correct or incorrect?

23 A. After everything took place.

24 Q. So -- and you're saying you didn't get
25 any notice from TitleMax you were in default until

1 impression that you could pay on January 11th?

2 A. Yes.

3 Q. Okay. All right. And this incident
4 was January 11th, wasn't it?

5 A. Yes.

6 Q. Okay. Did you go in and pay anything
7 on January 11th?

8 A. Didn't have the opportunity to.

9 Q. Okay. What time of day was this car
10 repossessed?

11 A. Early morning. That's -- I can't give
12 a specific time, because I did not look at the
13 clock.

14 Q. Okay. I mean, approximately what time?

15 A. Again, I don't want to lie.

16 Q. Okay. But it was -- you're certain it
17 was the morning of January 11th?

18 A. Yes.

19 Q. Okay. And you had planned to go ahead
20 and pay the amount that day?

21 A. Yes.

22 Q. Okay. All right. Now, the car was
23 repossessed by Affordable Recovery Solutions you're
24 saying early that morning, is that right, of
25 January 11th?

1 A. Yes.
 2 Q. Okay. Tell me -- just tell me a little
 3 bit about what happened and what you recall
 4 happening that night. Were you awoken? I mean,
 5 you were asleep, I'm assuming, at the time or...
 6 A. That night?
 7 Q. Oh, I'm sorry, that morning. I
 8 apologize, I didn't mean to -- you said this
 9 happened in the morning?
 10 A. Yes.
 11 Q. Okay. It was daylight?
 12 A. Yes.
 13 Q. Okay. Were you awake?
 14 A. Yes.
 15 Q. Okay. Were you working at that time?
 16 A. No.
 17 Q. Okay. Was anyone else in the house
 18 with you?
 19 A. No.
 20 Q. Okay. Tell me what you recall
 21 happening -- kind of just tell me from your point
 22 of view what occurred that morning.
 23 A. Okay. I was in the process of getting
 24 dressed to -- well, getting ready to take my shower
 25 to get dressed to go and make my payment.

1 Q. Okay.
 2 A. And my dog barked, which we have an
 3 inside dog.
 4 Q. Okay.
 5 A. She barked and that made me know that
 6 something -- or she heard something or someone. So
 7 I turned the shower off and put my slip -- my
 8 nightclothes back on.
 9 Q. Uh-huh.
 10 A. And by the time I'm walking to the
 11 door, the doorbell rings. And I look out and I
 12 have a man telling me his name as to who he is and
 13 what he's there for.
 14 Q. Okay. Where was he when you -- you say
 15 he -- did he tell you who he was or did you -- who
 16 spoke to who first I guess is what I want?
 17 A. I peeked through, we have a window like
 18 that at the door. (Indicating.)
 19 Q. Okay.
 20 A. And I peeked through and I said yes,
 21 and --
 22 Q. Okay.
 23 A. -- he in turn said what his first name
 24 was. I don't know his last.
 25 Q. Okay.

1 A. First name. And --
 2 Q. And what --
 3 A. -- what he was there for.
 4 Q. Okay. And tell me exactly what you
 5 recall him saying -- oh, first of all, you were
 6 talking to him at the first door. Was it open?
 7 A. Not in the beginning.
 8 Q. Okay. Can you talk -- I mean, do you
 9 have a screen door or I just --
 10 A. We have a storm door.
 11 Q. Oh, okay. So you can talk --
 12 A. But the beginning of the conversation
 13 happened through a door that has a glass at the top
 14 like this door. (Indicating.)
 15 Q. Oh, okay. And so you were talking to
 16 him through the glass. Okay.
 17 A. Yes.
 18 Q. Was he -- how far away was he? Was he
 19 in the yard or was he --
 20 A. He was on my porch.
 21 Q. On your porch, okay.
 22 A. Yes.
 23 Q. Which is on the road, right? Your
 24 house is on a road; is that correct?
 25 A. He was in my yard.

1 Q. I understand that, yeah.
 2 A. On --
 3 Q. Okay. His vehicle was parked where?
 4 A. Outside of my fence.
 5 Q. Okay. And then tell me about that. He
 6 said what?
 7 A. My name is Chris.
 8 Q. Chris, okay.
 9 A. I'm here for TitleMax.
 10 Q. Okay. All right. And then what
 11 happened after that?
 12 A. I saw no ID, no paperwork --
 13 Q. Uh-huh.
 14 A. -- so I opened the door, but the
 15 glass -- the other glass door is still there.
 16 Q. Okay.
 17 A. And I'm talking to him through the door
 18 and I noticed that my fence is open. And I said,
 19 well, why is my fence open? And he then said, his
 20 word against mine. When he pulled up, the fence
 21 was open.
 22 Q. So said he --
 23 A. And --
 24 Q. Did he say it's your word against mine?
 25 A. Uh-huh.

1 Q. Okay. So he says it's your word
2 against mine. The fence was open.
3 A. Yes.
4 Q. Okay. So what happened after that?
5 A. At this point I told him, okay, let me
6 try and get in touch with TitleMax. And by then a
7 tow truck comes plowing out of my backyard dragging
8 the car and just flew by. So then I'm saying,
9 okay, let me call the police.
10 Q. Uh-huh.
11 A. I get the phone to call the police and
12 I'm thinking he's going to wait. He begins to try
13 to leave.
14 Q. Okay. Now, you say -- when you say he,
15 this is Chris still, right?
16 A. Yes.
17 Q. Because as you earlier said, there's
18 two fellows there, two individuals?
19 A. I'm assuming it was a -- a man in the
20 tow truck.
21 Q. Okay. And he -- there was a tow truck
22 and then there was -- was it a pickup truck or what
23 other vehicle was he in -- or the other vehicle?
24 A. He was in a white Crown Vic.
25 Q. Gotcha. Oh, it was a vehicle. Okay

1 Q. All right.
2 A. He said quite a few things, but then at
3 the same time I'm saying -- I'm standing there
4 saying, please wait, the police are on their way.
5 Q. Uh-huh.
6 A. And by this time he takes his hand
7 and -- and I'm blocking because I don't know what's
8 going to happen, I'm in fear that you -- you're
9 about to hit me. (Gesturing.)
10 Q. Okay.
11 A. And at this point he gets in his car
12 after he scratches and bruises my hand and he pulls
13 off and gets to a certain point and stops and opens
14 the door and leans out and calls me a bitch and
15 then he sped off.
16 Q. Okay. Did he say anything else to you
17 other than calling you that name? Did he say
18 anything, other derogatory terms to you that you
19 can recall?
20 A. Again, he said quite a few things, but
21 I cannot recall everything that he said.
22 Q. But you do recall that one?
23 A. Yes.
24 Q. Okay. All right. You specifically
25 recall him calling you a bitch but don't

1 all right. Crown Vic. All right. And there
2 was -- so there was a white Crown Vic that Chris
3 was driving?
4 A. Yes.
5 Q. And there was a tow truck driven by
6 somebody else?
7 A. Yes.
8 Q. Okay. All right. Go ahead. I'm
9 sorry. Go ahead.
10 A. And I called the police and then I go
11 outside and I'm telling him to wait, the police are
12 on their way.
13 Q. Right.
14 A. And at this time, yes, I'm -- again,
15 like I said, I'm outside.
16 Q. Uh-huh.
17 A. And I'm asking him to wait, the police
18 are on their way.
19 Q. Right.
20 A. And he didn't want to wait.
21 Q. Okay. Chris did not want to wait. He
22 said, we're going? Or did he just leave or what --
23 I mean, what did he --
24 A. He -- he said quite a few things. I
25 don't want to lie about everything he said.

1 specifically recall him calling you anything else?
2 A. No.
3 Q. Okay. And you said that you had your
4 finger injured; is that right?
5 A. Yes.
6 Q. And I think we have pictures of that
7 and it's -- what finger was it?
8 A. Second finger. (Gesturing.)
9 Q. Gosh, let me see. I think we have some
10 pictures of that. On your right hand?
11 A. Yes.
12 MR. HIGGINS: Okay. Can we mark these,
13 please, as the next three? It doesn't matter what
14 order.
15 (DFT. EXH. 6, Photograph, was marked
16 for identification.)
17 (DFT. EXH. 7, Photograph, was marked
18 for identification.)
19 (DFT. EXH. 8, Photograph, was marked
20 for identification.)
21 BY MR. HIGGINS:
22 Q. Okay. We're talking about -- we have
23 Exhibits 6, 7, and 8 here. You can just take a
24 look at those. They appear to show your hand; is
25 that right?

1 A. Yes.
 2 Q. Okay. And they show the injury?
 3 A. Yes.
 4 Q. Okay. All right. And that is your
 5 right hand, obviously?
 6 A. Yes.
 7 Q. Who took those pictures?
 8 A. My husband.
 9 Q. Okay. When were they taken?
 10 A. That -- just moments afterwards,
 11 because he worked nights.
 12 Q. Uh-huh.
 13 A. And he had just pulled up after the
 14 police officer left.
 15 Q. Okay. The police officer was with the
 16 Allendale Police Department?
 17 A. Yes.
 18 Q. Okay. Do you know who he is?
 19 A. No.
 20 Q. Okay. All right. Can I see those
 21 again? Thank you. All right. Did you -- I'm
 22 sorry, did you receive any other injuries other
 23 than to your finger as depicted in the photographs?
 24 A. Could you be more...
 25 Q. What -- were you -- this apparently

1 you with?
 2 A. That I cannot -- I don't want to lie.
 3 All I'm -- when you're trying to block yourself...
 4 Q. Okay. Was -- do you think he was
 5 intentionally trying to hit you or was he gesturing
 6 and accidentally hit you or what or do you know?
 7 MS. GOODING: Object to the form.
 8 BY MR. HIGGINS:
 9 Q. You can answer the question.
 10 A. I felt like I was in danger.
 11 Q. Okay. He wanted to leave though,
 12 correct?
 13 A. Yes.
 14 MS. GOODING: Object to the form.
 15 BY MR. HIGGINS:
 16 Q. All right. Were you preventing him
 17 from leaving?
 18 A. No.
 19 Q. Okay. All right. But you asked him to
 20 not leave?
 21 A. I asked him to wait for the police.
 22 Q. Okay. All right. Did you ever put
 23 your hands up to strike him at all?
 24 A. No.
 25 Q. Okay. Did you ever physically contact

1 shows an injury to your finger --
 2 A. Uh-huh.
 3 Q. -- that you had suffered --
 4 A. Yes.
 5 Q. -- during the altercation that you
 6 referenced. Were there any other injuries that you
 7 received?
 8 A. Physical or...
 9 Q. Yeah.
 10 A. No.
 11 Q. And you said you got this injury on
 12 your finger. I'm sorry, how did that happen? You
 13 were blocking his hand?
 14 A. Yes, I'm -- I'm standing there saying,
 15 please don't leave, wait for the police and --
 16 Q. Right.
 17 A. -- by this time he swings his hand and
 18 I'm in defense --
 19 Q. Okay.
 20 A. -- because you're swinging your hand so
 21 I don't know if you're about to hit me, so I'm
 22 blocking my face. (Indicating.)
 23 Q. Right.
 24 A. And he scratched me.
 25 Q. All right. What hand did he scratch

1 him in any way?
 2 A. No.
 3 Q. All right. Okay. When the police
 4 came, tell me about that. He -- the police officer
 5 arrived at -- how long after this occurred?
 6 A. I don't want to lie.
 7 Q. Uh-huh.
 8 A. I'm not sure how long.
 9 Q. I mean --
 10 A. But it was not -- it was not an hour
 11 later.
 12 Q. Something less than an hour?
 13 A. Yes.
 14 Q. Okay.
 15 A. It was not 30 minutes later, but...
 16 Q. Okay. Say sometime -- and I don't --
 17 you don't need to specifically -- I know you
 18 probably don't specifically -- but it was sometime
 19 less than 30 minutes, approximately?
 20 A. Less than ten.
 21 Q. Okay. So relatively quick. Okay. And
 22 how long was he there talking with you before he
 23 left?
 24 A. I do not want to lie.
 25 Q. Okay. Do you -- like a few minutes?

1 Five, ten minutes?
 2 A. Again, I don't want to lie.
 3 Q. Don't know. Okay. Have you had any
 4 conversations with this officer since that day?
 5 A. No.
 6 Q. Has he contacted you at all?
 7 A. No.
 8 Q. All right. What did he advise you --
 9 did he advise you to do anything or to -- did he
 10 say anything to you before he left after you
 11 reported to him what happened?
 12 A. I don't want to lie. I do not recall.
 13 Q. Okay. And did you demonstrate to the
 14 officer what happened and how you were injured?
 15 A. I explained to him that I was asking
 16 could you please stay and wait for the police --
 17 Q. Uh-huh.
 18 A. -- please don't leave, the police are
 19 on their way.
 20 Q. Okay. And the question was: Did you
 21 demonstrate to him physically how you became
 22 injured --
 23 A. Yes.
 24 Q. -- and what happened? Okay. All
 25 right.

1 Did the officer say what actions, if
 2 any, he was going to take when he left?
 3 A. Again, I don't want to lie.
 4 Q. All right. You don't recall?
 5 A. (Shaking head from side to side.)
 6 Q. Okay. Did you follow-up with the
 7 police after that at any point?
 8 A. Yes.
 9 Q. Okay. When did you follow-up with the
 10 police?
 11 A. Same day.
 12 Q. Same day, okay. About what time did
 13 you follow-up?
 14 A. I do not want to lie. As soon as my
 15 husband got home.
 16 Q. Okay. When you say you followed-up
 17 with them, what did you do? Did you call them or
 18 what?
 19 A. We went to the police station.
 20 Q. Oh, you went down to the station.
 21 Okay. And what did you do there?
 22 A. Spoke with the chief.
 23 Q. Okay. And who was the chief?
 24 A. Chief Sullivan.
 25 Q. Okay. Do you know him?

1 A. Not personally.
 2 Q. Okay. And you talked to Chief Sullivan
 3 and you told him what happened?
 4 A. Yes.
 5 Q. Okay. Was the officer there as well?
 6 A. I wasn't looking for him, didn't see
 7 him.
 8 Q. Okay. And what did you talk to Chief
 9 Sullivan about? What was that conversation?
 10 A. I explained to him everything that had
 11 happened and I showed him my hand, and that was
 12 basically it.
 13 Q. Okay. And what did Chief Sullivan say
 14 to you?
 15 A. Again, I don't want to lie. I don't
 16 remember what was said word for word --
 17 Q. Uh-huh.
 18 A. -- but I do know that he just told me
 19 to get it checked.
 20 Q. Get it checked, okay. And you -- your
 21 hand?
 22 A. Yes.
 23 Q. And you ended up and did get it
 24 checked?
 25 A. Yes.

1 Q. Okay. Why did you feel that you needed
 2 to go get medical care?
 3 A. I didn't know this man. I don't know
 4 him. I don't know what he could have.
 5 Q. Okay. So you went to the doctor and
 6 what -- and they checked you out?
 7 A. Yes.
 8 Q. And what sort -- were you concerned
 9 about some --
 10 A. I had -- yes.
 11 Q. What were you concerned about?
 12 A. I mean, just, pointblank, I don't know
 13 him.
 14 Q. Okay. And what did they do at the
 15 doctor's office to ease your mind about that?
 16 A. They cleaned it up --
 17 Q. Uh-huh.
 18 A. -- and gave me a tetanus shot.
 19 Q. Okay. Did they do anything else
 20 besides that?
 21 A. Not on that particular day.
 22 Q. Okay. They gave you a tetanus shot.
 23 Why did they give you a tetanus shot?
 24 A. Again, I don't know this man.
 25 Q. Okay. I think you were charged \$10 for

1 that visit; is that correct?

2 A. Not sure.

3 Q. All right. Did you mention to anyone
4 at the doctor's office how you got the injury?

5 A. I cannot remember, because I was
6 just -- my mind was just -- I had so many things
7 going through my mind. I don't remember if I did
8 or I didn't.

9 Q. Okay. Well, the reason I ask, there's
10 nothing on the doctor's report that indicates
11 anything other than you had a scratch on your
12 second finger.

13 A. (Gesturing.)

14 Q. Okay. All right. We've got this as
15 Exhibit Number 5. Is that the medical report for
16 when you went in to have that scratch looked at?

17 A. Yes.

18 Q. Okay. All right. When you went and
19 talked to the chief, did you want him to do
20 anything in particular?

21 A. I just wanted to know who this man was.
22 You show me no ID --

23 Q. Uh-huh.

24 A. -- no, paperwork. For all I know, you
25 could have just came and stole my car.

1 that day?

2 A. After?

3 Q. Yeah.

4 A. I spoke with the young man --

5 Q. Uh-huh.

6 A. -- briefly --

7 Q. Okay.

8 A. -- but it wasn't anything...

9 Q. Was this the same young man that you
10 said had an agreement to --

11 A. Uh-huh.

12 Q. Is that correct?

13 A. Yes.

14 Q. Okay. And did he -- did he acknowledge
15 having that agreement or did he deny having that
16 agreement?

17 A. Again, I don't want to lie and I -- I
18 just -- I cannot remember.

19 Q. Okay. All right. Did you have any
20 further contact with anyone at TitleMax other than
21 talking with that young man later that day?

22 A. When they sent a letter for me to come
23 get my things.

24 Q. That's after they sold the vehicle,
25 right?

1 Q. I understand. And did he -- what did
2 he do with those concerns? Did he help you with
3 that or did he give you any information? What did
4 he do?

5 A. Again, I -- I cannot lie as far as what
6 he did when I left.

7 Q. Okay. But what did he tell you before,
8 you know? He said, I don't know who this person
9 was. Did he tell you who they were?

10 A. No. I explained to him how the young
11 man looked. And, again, I cannot -- I cannot
12 remember if or what else he said.

13 Q. Okay. All right. Did you talk to
14 anybody else with the police other than the chief
15 and the officer, I think his name is Tyson?

16 A. No.

17 Q. Okay. Have you had any contact with
18 anyone at the police department other than that day
19 with these two individuals?

20 A. No.

21 Q. All right. Do you know if anyone at
22 the police department contacted anyone from
23 TitleMax or the Affordable Recovery Solutions, ARS?

24 A. I don't know.

25 Q. Okay. Did you contact TitleMax later

1 A. I don't know if they had sold it.

2 Q. Oh, okay. That may have been before.
3 Okay. You're talking about your things that were
4 in the vehicle?

5 A. Yes.

6 Q. Okay. All right. Did you go get those
7 things?

8 A. They had them in a trash bag.

9 Q. At the TitleMax office?

10 A. Yes.

11 Q. Okay. And they sent you a letter
12 then --

13 A. That next day.

14 Q. Right. Okay. Did they send you a
15 letter indicating it was sold as well and that the
16 loan was satisfied from some of those proceeds?

17 A. Afterwards, yes.

18 Q. Okay. And was there any money leftover
19 for you or was that -- as far as after the loan was
20 paid off?

21 A. I never received anything.

22 Q. Okay. Anything other than your things
23 that were in the vehicle?

24 A. Possessions.

25 Q. Okay. Gotcha. After that day, did you

1 have any further contact with anyone from
 2 Affordable Recovery Solutions at all?
 3 A. Not to my knowledge.
 4 Q. Okay. You mentioned the one
 5 individual's name you believe was Chris. And do
 6 you know what the name of the other individual was?
 7 A. No.
 8 Q. Okay. How -- would you be able to
 9 describe the person in the -- who towed the
 10 vehicle?
 11 A. No.
 12 Q. Okay. How would you describe Chris?
 13 What does he look like? What is his general
 14 description?
 15 A. He's taller than I am.
 16 Q. Okay. Tall.
 17 A. He's a white male.
 18 Q. Okay.
 19 A. He's husky.
 20 Q. Uh-huh.
 21 A. And he has dark color hair and a
 22 mustache.
 23 Q. Okay. And was he wearing any certain
 24 clothing that you recall?
 25 A. He had on a dark jacket.

1 Q. Okay.
 2 A. Like fleece jacket.
 3 Q. All right.
 4 A. It could have been fleece or the
 5 windbreaker material.
 6 Q. Okay. You saw the tow truck too,
 7 correct?
 8 A. I saw a blur --
 9 Q. Okay.
 10 A. -- of the tow truck.
 11 Q. As it left?
 12 A. Yes.
 13 Q. Okay. So you saw it as it was leaving
 14 your property?
 15 A. Yes.
 16 Q. Okay. And then it was leaving and then
 17 he went and followed; is that right? Who left
 18 first I guess is what I'm asking?
 19 A. Tow truck.
 20 Q. Tow truck, okay. And then Chris
 21 followed in the white --
 22 A. Yes.
 23 Q. -- Ford? Okay.
 24 Is that right, it was a Ford?
 25 A. Crown Vic.

1 Q. Crown Vic, okay. All right. Do you
 2 know if the police contacted anyone from TitleMax
 3 though?
 4 A. I don't know.
 5 Q. And you may have already answered this,
 6 but you don't know if they've contacted anyone from
 7 ARS as well?
 8 A. I don't know.
 9 Q. Okay. All right. When did you first
 10 talk to a lawyer about this case? And I don't want
 11 to know what you talked about, but just when was
 12 the first time you contacted a lawyer.
 13 A. The same day.
 14 Q. The same day. And was that the Gooding
 15 firm?
 16 A. Yes.
 17 Q. Okay. And, again, I don't want to know
 18 anything of what you said to them, but about what
 19 time did you contact them?
 20 A. I don't remember.
 21 Q. Was it that morning?
 22 A. I don't want to lie.
 23 Q. Was it before you went to see the
 24 chief?
 25 A. After.

1 Q. After seeing the chief, okay. All
 2 right. Was it before you took the photographs?
 3 A. After.
 4 Q. Okay. All right. And how were you
 5 referred to the Gooding Law Firm, because of your
 6 prior representation?
 7 A. Yes.
 8 MR. HIGGINS: Okay. All right. Well,
 9 I'm going to stop for the moment and let these
 10 other attorneys make -- I may have some questions.
 11 I may -- I'm probably about done anyway and let
 12 y'all go. Thank you.
 13 MR. SAMS: Okay.
 14 EXAMINATION
 15 BY MR. SAMS:
 16 Q. Ms. Myers, I'm Toland Sams. We met
 17 before we got started here today and --
 18 A. Yes, sir.
 19 Q. -- and I'm representing TitleMax.
 20 A. Yes, sir.
 21 Q. I'm going to have a few questions for
 22 you too. If you don't understand any of my
 23 questions, please let me know. Okay?
 24 A. Okay.
 25 Q. All right. Earlier on you were talking

1 just in general about relatives you have in this
 2 area --
 3 A. Yes.
 4 Q. -- and you gave different family names
 5 of kinfolk. You mentioned the name Sabb?
 6 A. Uh-huh.
 7 Q. Are you related to the clerk of court?
 8 A. No.
 9 Q. Okay. That's a different Sabb?
 10 A. Yes, that's a different Sabb.
 11 Q. Okay. Just curious.
 12 A. Uh-huh.
 13 Q. This incident happened on -- what date
 14 was it? January 11th.
 15 MR. SAMS: Was it January 11th?
 16 MR. HIGGINS: Yeah I think that's
 17 correct.
 18 BY MR. SAMS:
 19 Q. Of 2013. At that time, you were behind
 20 in your payments on your loan with TitleMax; is
 21 that correct?
 22 A. Yes.
 23 Q. Okay. And you've been through a number
 24 of different agreements here, loan agreements that
 25 you entered into with TitleMax.

1 A. Yes.
 2 Q. -- a new payment schedule would be set
 3 up?
 4 A. Yes.
 5 Q. Okay. So by the time you did the
 6 May 2012 loan, that reflected -- the total amount
 7 owed at that time reflected loans that you had
 8 started back in 2008?
 9 A. Yes.
 10 Q. Okay. And at various times during the
 11 time you were dealing with TitleMax, would they
 12 occasionally send you a letter saying that you were
 13 behind in your payments and that you needed to get
 14 caught up?
 15 A. Yes.
 16 Q. Okay. And, in fact, this looks like it
 17 may have been the last letter, as far as I know,
 18 that was sent to you. This is a -- see if you
 19 recognize that. (Indicating.) Let me ask it --
 20 MR. SAMS: Well, maybe let's mark that
 21 so we'll know what we're referring to exhibit --
 22 whatever number is next.
 23 (DFT. EXH. 9, Notice of Default and
 24 Right to Cure letter dated June 15, 2012, was
 25 marked for identification.)

1 A. Yes.
 2 Q. Actually starting back in June of 2008
 3 I believe and going up through the most recent one
 4 was one that was done in May of 2012.
 5 A. I'm not sure as far as the month it
 6 started, but -- when my first loan was but --
 7 Q. Right.
 8 A. -- yes.
 9 Q. Okay. And there were four agreements
 10 over that period of time?
 11 A. Yes.
 12 Q. All right. And when you would enter
 13 into these new agreements, it looks to me like they
 14 were more or less sort of a continuation of the
 15 existing loan, sort of a restructuring of the loan;
 16 is that correct?
 17 A. Yes.
 18 Q. Okay. So you had never actually fully
 19 and completely paid off --
 20 A. No.
 21 Q. -- any of the loans?
 22 A. No.
 23 Q. All right. So you would maybe borrow a
 24 little bit more money and then the loan would be
 25 kind of refinanced or --

1 BY MR. SAMS:
 2 Q. Okay. We've marked that as Exhibit
 3 Number 9. Would you agree that looks like a letter
 4 addressed to you? Is that your address up at the
 5 top, your P.O. Box?
 6 A. Yes, it is.
 7 Q. Okay. Is that the type of letter that
 8 you might receive from time to time if you were
 9 behind in your payments?
 10 A. No.
 11 Q. You didn't receive letters like that?
 12 A. No.
 13 Q. But you did receive some sort of
 14 letters indicating you were behind in your
 15 payments?
 16 A. Just something saying that -- friendly
 17 reminder or we need you to contact the office.
 18 Q. Okay. That particular letter, Exhibit
 19 Number 9, looks like it was dated June 15th, 2012
 20 and addressed to you. You don't remember getting
 21 this letter?
 22 A. No.
 23 Q. Okay. And you don't remember getting
 24 any letters that were similar to this, this format,
 25 the way that one is set up?

1 A. I received letters after the fact, but
 2 I -- I don't want to lie and say...
 3 Q. Okay. It looks like this letter was
 4 sent certified mail. Do you remember signing a
 5 certified return receipt acknowledging that you
 6 received this letter?
 7 A. I don't want to lie.
 8 Q. All right. You may have?
 9 A. Again, like I said, I don't want to
 10 lie.
 11 Q. Okay. I understand. You -- so you're
 12 saying you don't know if you did or not?
 13 A. I don't know.
 14 Q. Okay. In any event, this particular
 15 letter that you don't recall receiving, it looks
 16 like it has reference to you being behind on your
 17 payments on the May 2012 loan; is that correct?
 18 A. Yes.
 19 Q. Okay. Thank you. Do you have any idea
 20 how far behind you were in your payments as of
 21 January 2013?
 22 A. I'm not sure.
 23 Q. All right. You indicate you had talked
 24 to some -- you've referred to him as a young man at
 25 TitleMax?

1 A. Yes.
 2 Q. About being behind on your payments?
 3 A. Yes.
 4 Q. And you referred to him as a young man.
 5 How do you know he was a young man?
 6 A. I -- I'd call you a young man.
 7 Q. Okay. All right. So you really don't
 8 know his age?
 9 A. No.
 10 Q. Okay. And you don't recall his name?
 11 A. Again, I don't want to lie --
 12 Q. Okay.
 13 A. -- and give the wrong name.
 14 Q. Okay. You don't remember a name then
 15 as far as your conversation with that particular
 16 person?
 17 A. I can show you faces, but I cannot
 18 remember...
 19 Q. Is it someone you think you had dealt
 20 with before, talked with before?
 21 A. Yes.
 22 Q. All right. And you talked with him
 23 over the phone?
 24 A. Yes.
 25 Q. All right. Do you think you ever

1 talked with him in person?
 2 A. Yes.
 3 Q. Okay. So you recognize the voice as
 4 someone you had actually talked to in person --
 5 A. Yes.
 6 Q. -- once before too, at least once?
 7 A. Uh-huh.
 8 Q. Okay. How many times had you ever
 9 talked to him in person?
 10 A. I don't want to lie.
 11 Q. Okay. At least once?
 12 A. At least once I know.
 13 Q. All right. And can you describe him
 14 for me? What did he look like?
 15 A. I don't want to lie about his height,
 16 but he's a black male.
 17 Q. Okay.
 18 A. Kind of the husky side.
 19 Q. All right.
 20 A. I cannot remember if he had a mustache
 21 or not --
 22 Q. All right.
 23 A. -- but he's a black male.
 24 Q. Okay. Anything distinctive about him?
 25 Markings or tattoos or his hairstyle or anything

1 that you can recall that would kind of stand out?
 2 Anything distinctive?
 3 A. No, but I -- I'm good at remembering
 4 faces.
 5 Q. Okay. And having seen him in person
 6 then, if you would to guess what age he was, just
 7 roughly, what would you say?
 8 A. I don't know. I don't like to...
 9 Q. Okay. All right. I mean, there's a
 10 difference in somebody in their 20s than somebody
 11 like me.
 12 A. I don't want to lie, because you can
 13 think they're in their 20s and they could be 40.
 14 Q. Okay. All right.
 15 A. You could think they're 40 and they
 16 could be 20.
 17 Q. Are you saying you think I might be in
 18 my twenties? Thank you.
 19 MR. HIGGINS: You're on the record now.
 20 MR. SAMS: Thank you very much.
 21 BY MR. SAMS:
 22 Q. All right. Do you remember when you
 23 had talked to him last about the late payments
 24 and -- before this vehicle was repossessed?
 25 A. It was at least three or four days

1 earlier.
 2 Q. Okay. And that's when you specifically
 3 spoke with him about trying to make arrangements to
 4 come in and make a payment?
 5 A. Yes.
 6 Q. Okay. And what did y'all decide at
 7 that time in that conversation?
 8 A. It was agreed upon that I could come on
 9 that particular day.
 10 Q. The -- January 11th?
 11 A. The 11th.
 12 Q. Okay. So that was the day that was set
 13 aside for you to come in and make a payment?
 14 A. Yes.
 15 Q. All right. And where would you have
 16 made that payment?
 17 A. At the Barnwell office.
 18 Q. All right. And does he work out of the
 19 Barnwell office?
 20 A. At the time, yes.
 21 Q. All right. Was it agreed how much you
 22 were going to pay that day?
 23 A. I'm not sure.
 24 Q. Okay. You don't remember or...
 25 A. I don't remember.

1 Q. Okay. Did you ever talk with anybody
 2 else at TitleMax about making a payment on January
 3 11th?
 4 A. No.
 5 Q. All right. He was the only one you
 6 dealt with about catching up your default --
 7 A. That particular time, yes.
 8 Q. -- at that point?
 9 A. Yes.
 10 Q. Okay. And so that morning you were
 11 getting up, getting dressed, getting ready to go
 12 out and one of the jobs you had that day was you
 13 were going to go over to Barnwell --
 14 A. Yes.
 15 Q. -- and make this payment to TitleMax?
 16 A. Yes.
 17 Q. And that's when the incident occurred?
 18 A. Yes.
 19 Q. Okay. And the first thing that drew
 20 your attention to it was you heard the dog barking;
 21 is that right?
 22 A. Yes.
 23 Q. All right. And so then -- and then did
 24 somebody come knock on the door?
 25 A. As I stated, I turned the shower off

1 and I put my nightclothes back on and in the
 2 process of me walking to the door to look out then
 3 the doorbell rang.
 4 Q. Okay. So you were in your nightclothes
 5 at this time?
 6 A. Yes.
 7 Q. You weren't dressed?
 8 A. No.
 9 Q. Okay. So you went to the door and you
 10 had a conversation with somebody by the name of
 11 Chris?
 12 A. Yes.
 13 Q. He identified himself as Chris?
 14 A. Yes.
 15 Q. And he was there he said for TitleMax
 16 to pick up your car?
 17 A. Yes.
 18 Q. And you told him that --
 19 A. Hold on one minute, let me --
 20 Q. Okay.
 21 A. -- call TitleMax, because I knew the
 22 agreement that --
 23 Q. Right.
 24 A. -- was --
 25 Q. Okay.

1 A. -- made.
 2 Q. Did you get TitleMax on the phone while
 3 Chris was there?
 4 A. No, I didn't.
 5 Q. All right. And why not?
 6 A. Because at this point the truck comes
 7 flying --
 8 Q. Okay.
 9 A. -- out of my back, so all I could think
 10 of is call the police.
 11 Q. All right. So you never actually got
 12 TitleMax on the phone while Chris was there?
 13 A. No.
 14 Q. All right. They were pulling your car
 15 out of the yard?
 16 A. Yes.
 17 Q. So you called the police?
 18 A. Yes.
 19 Q. All right. And then Chris was trying
 20 to leave at that time too?
 21 A. Yes.
 22 Q. All right. And he was leaving in the
 23 white Crown Victoria?
 24 A. Yes.
 25 Q. And did this incident where your finger

1 was injured, where were y'all standing when that
 2 happened?
 3 A. Outside of my fence. And, like I said,
 4 I have a sidewalk as well --
 5 Q. Okay.
 6 A. -- that comes to enter into the
 7 walkway. But we were outside of my fence and I was
 8 asking him, please, don't go --
 9 Q. Okay.
 10 A. -- the police are on their way.
 11 (Gesturing.)
 12 Q. All right. Now, you're gesturing like
 13 this, is that what you were doing? (Gesturing.)
 14 A. Yes.
 15 Q. Okay. And were you standing very close
 16 to him --
 17 A. No.
 18 Q. -- when you were doing that?
 19 Could he have taken that as a
 20 threatening gesture or --
 21 A. No.
 22 Q. -- could he have felt like he needed to
 23 block that gesture?
 24 A. No.
 25 Q. Okay. All right. But at some point he

1 threw his hand up --
 2 A. Yes, and I blocked. (Gesturing.)
 3 Q. Tried to block what you thought was a
 4 threatening gesture?
 5 A. Yes.
 6 Q. And that's when your finger was
 7 injured?
 8 A. Yes.
 9 Q. Okay. And that happened outside your
 10 fence. Was it near his car then or -- was he about
 11 to get in his car or was he just walking toward his
 12 car or...
 13 A. To my knowledge, he was walking towards
 14 his car.
 15 Q. Okay.
 16 A. And when I asked, please don't go, he
 17 stopped and said some things. As I stated, I don't
 18 want to lie about what else he said --
 19 Q. Okay.
 20 A. -- and I felt threatened, so...
 21 Q. All right. So your finger got hurt?
 22 A. Yes.
 23 Q. He then got in his car, is that what
 24 happened next?
 25 A. He got in the car.

1 Q. All right.
 2 A. And he pulled -- it's a curved part --
 3 and he pulled there. And when he pulled there, he
 4 stopped, opened his door, leaned out, called me a
 5 bitch, and then he sped off. (Gesturing.)
 6 Q. Okay. And that's the last you've seen
 7 of him?
 8 A. Yes.
 9 Q. Okay. And you can't identify the other
 10 person that was in the tow truck?
 11 A. No.
 12 Q. And it was shortly after he left that
 13 the police actually showed up?
 14 A. Yes.
 15 Q. Did they send anybody after him to try
 16 and stop him or bring him back?
 17 A. Not to my knowledge.
 18 Q. When did you next talk to anybody at
 19 TitleMax after the incident in your yard occurred?
 20 A. I called the same day, the same
 21 morning, and, like I said, spoke with the young man
 22 on the agreement we made.
 23 Q. Okay. And what did he say at that
 24 point?
 25 A. I don't want to lie. Again, don't

1 remember --
 2 Q. Okay.
 3 A. -- because of the conversation,
 4 everything just being so... (Gesturing.)
 5 Q. All right. You just don't remember how
 6 that conversation went?
 7 A. No.
 8 Q. But it was the same person --
 9 A. Yes.
 10 Q. -- you had talked to before?
 11 The same young man?
 12 A. Yes.
 13 Q. Did you ever talk to anybody else at
 14 TitleMax about the repossession?
 15 A. No.
 16 Q. And was that the last time you talked
 17 to anybody at TitleMax about the repossession?
 18 A. After I went and got my things, that
 19 was it.
 20 Q. All right. So you talked to him
 21 sometime on January 11th, after this incident at
 22 your house you talked to the young man --
 23 A. Yes.
 24 Q. -- on the phone?
 25 A. Yes.

1 Q. Okay. And then you talked to somebody
2 when you went and picked up your things?
3 A. Same young man.
4 Q. Same young man, okay. So he was there
5 when you went to pick up your possessions that were
6 in the vehicle?
7 A. I never saw the vehicle.
8 Q. Okay.
9 A. They put everything in a trash bag.
10 Q. Okay.
11 A. And it's still not everything.
12 Q. All right. But it was the same young
13 man that you met at the TitleMax office --
14 A. Yes.
15 Q. -- I assume --
16 A. Yes.
17 Q. -- where you picked up your
18 possessions?
19 A. Yes.
20 Q. Okay. All right. Did you talk to
21 anybody else at TitleMax about the situation?
22 A. No.
23 Q. He's been your contact, so to speak, at
24 TitleMax during the time --
25 A. I haven't --

1 Q. -- when this incident occurred?
2 A. At that time.
3 Q. Okay. And you say everything was not
4 there. What is missing?
5 A. Some things that belonged to my son,
6 and the camera, they -- there was a camera in there
7 and that's not there. And some other things that
8 my husband had, because he drove the car to work.
9 Q. Okay. All right. When you say a
10 camera, what sort of camera was it?
11 A. It was a digital camera.
12 Q. And what brand or...
13 A. I don't want to lie, because it was a
14 gift to me from him.
15 Q. From your husband?
16 A. Yes.
17 Q. All right. But you don't know any of
18 the details about what kind of camera it was other
19 than it was a digital camera?
20 A. That's it.
21 Q. You don't know the brand or the --
22 anything about it?
23 A. (Shaking head from side to side.)
24 Q. How long had you had it?
25 A. I don't want to lie, because it was a

1 gift.
2 Q. Okay. I mean, was it a Christmas gift?
3 Birthday gift? Or just an out-of-the-blue gift?
4 A. I get out-of-the-blue gifts, so...
5 Q. Okay. So you don't remember how long
6 you had had it?
7 A. (Shaking head from side to side.)
8 Q. I mean, had it been a year or less than
9 a year or...
10 A. I don't want to lie.
11 Q. You just have no idea, okay. And you
12 say some things that belonged to your son were
13 missing.
14 A. Uh-huh.
15 Q. What things?
16 A. Speakers, amps, things that they claim
17 were bolted down and they were not, because in
18 order for them to get the papers that they got,
19 they had to lift the speakers and the amp.
20 Q. To get what papers?
21 A. There were some papers that were
22 under -- like where the spare tire is, there was
23 some personal papers.
24 Q. In the -- you're talking about in the
25 trunk?

1 A. Yes.
2 Q. Okay.
3 A. And the speakers and the amp could have
4 been removed. They were gifts from his uncle to
5 him that he put in that car.
6 Q. So these were speakers and amps that
7 were set up that car for a sound system?
8 A. For him when he drove it.
9 Q. Okay. Do you know anything about what
10 brand or what --
11 A. Oh, gosh, no. Please don't...
12 Q. Okay. All right. And did you say
13 that -- did you say your husband had something in
14 there too that was missing?
15 A. He had some things in there that he
16 said were not in there.
17 Q. And what things?
18 A. I cannot -- that part --
19 Q. You don't know, okay.
20 A. He would have to be spoken to about
21 that, because I don't know.
22 Q. Okay. Did you tell the young man at
23 TitleMax that you were missing some property?
24 A. I did not hold a conversation.
25 Q. Okay.

1 A. I just thought it was best that I just
2 take the things and not...
3 Q. All right. So you really didn't have
4 any conversation with him that day?
5 A. No.
6 Q. Have you ever told anybody at TitleMax
7 that you were missing any items?
8 A. No.
9 Q. Did you ever see any -- well, let me
10 show you this. (Indicating.) Have you ever seen
11 that list of items?
12 A. Oh, yes, I signed off on this, because
13 at this time I don't want any more --
14 Q. All right.
15 A. -- confrontation.
16 Q. Because that list of items references a
17 camera, as if that was -- that was not in the bag
18 given to you though?
19 A. No.
20 Q. Okay. Let me see.
21 A. And now that might have been mentioned
22 to him once. I said, what about the speakers and
23 the amp.
24 Q. Both those were actually installed in
25 the vehicle --

1 A. No, they weren't.
2 Q. -- the speakers and the amp?
3 A. They weren't mounted down.
4 Q. Okay.
5 A. He didn't even have them connected.
6 Q. Okay. So it would have been --
7 A. He had just gotten them and they were
8 in the trunk --
9 Q. All right.
10 A. -- to be set up.
11 Q. Okay. So they weren't actually
12 installed then?
13 A. No.
14 Q. All right. When you were asked about
15 any other injuries you may have had other than your
16 finger, I sensed that maybe you had something you
17 wanted to say other than a physical injury. I
18 mean, is there any other injury that you sustained
19 as a result of that incident other than your -- the
20 injury to your finger?
21 A. Okay. Could you be...
22 Q. Yeah. I sensed you wanted to say that
23 you had something that was maybe not a physical
24 injury. Is there some injury that you sustained
25 that you would not call a physical injury but some

1 other type of injury?
2 A. Being...
3 Q. I don't know. I'm asking you. Is that
4 the only injury complaint you have as a result of
5 this accident, your finger?
6 A. Emotionally, I don't feel safe in my
7 own house.
8 Q. Okay.
9 A. I don't feel safe going in my yard.
10 Because I have private property signs, no
11 trespassing private property signs all across my
12 fence. This has taken something away from me. I
13 can't even go and workout now. I can't come
14 outside of my house to get in my vehicle without
15 thinking that somebody's come in my yard.
16 I close my fence every day for a
17 reason. If it's not closed, we're standing there
18 about to leave out of the yard. And now sometimes
19 I don't even feel like, what's -- what's the use of
20 closing it if someone is just going to come in and
21 do what they want to do. That's taken -- I set my
22 alarm when I'm in the house by myself.
23 Q. Uh-huh.
24 A. My dog is in the bed with me when I'm
25 home by myself. I never had to do this before.

1 This person has taken my feelings of being safe in
2 my own home away from me.
3 Q. Okay.
4 A. And I shouldn't have to feel like I
5 can't sit on my porch because someone's going to
6 come in my yard that's not welcome. If I have
7 these signs across my fence, why? Why come in and
8 then have someone else with you in my yard?
9 This man could have attacked me and --
10 to the point where it could have killed me, then
11 who could have explained anything to my family.
12 Q. Okay. So I -- and I understand that.
13 So that -- is there anything else then? Other
14 injuries that -- I understand that as an emotional
15 injury that you feel like you sustained. And then
16 you had the finger. Anything else we haven't
17 covered or talked about?
18 A. Again, I stated, I know that I owed
19 them.
20 Q. Right.
21 A. If this man had came with the proper ID
22 and paperwork, he could have gotten me to drive the
23 car to TitleMax for him no problem. This was the
24 way this was handled and how he made me feel as a
25 woman. Bitch is something you don't call a woman.

1 Around here I don't bother anybody,
2 nobody bothers me. (Gesturing.) So just like I
3 said, for this man to come and do these things,
4 yes, I felt threatened.

5 Q. Okay.

6 A. Do I still feel threatened? Yes.

7 Anybody can come now. I don't answer my door.
8 They can come blow the horn, ring the doorbell, if
9 I'm home by myself, I don't answer, and it should
10 not be that way.

11 MR. SAMS: Okay. I think that's all I
12 have right now. I don't know if Roopal -- I don't
13 know if you would let her.

14 MS. GOODING: Sorry.

15 MR. HIGGINS: Yeah. I just have one
16 thing.

17 MR. SAMS: I don't know if Roopal wants
18 to talk to me before I say I don't have anything
19 more. We could do that.

20 Roopal, do you want me --

21 MS. RUPARELIA: That's all right.
22 We're fine.

23 MR. SAMS: Okay. All right.

24 EXAMINATION

25 BY MR. HIGGINS:

1 her for anxiety?

2 A. Yes, and I'm also talking with a
3 therapist.

4 Q. Okay. And are those all damages that
5 you're claiming as a result of this incident you've
6 told us about today?

7 A. Yes, ma'am, because I -- I've never had
8 to -- I've had things going on, but it was never to
9 this point. The things that I've had going on had
10 to deal with being stressed with the situations
11 that I had going on with my dad at that particular
12 time before any of this happened.

13 MS. GOODING: Sure. Thank you. That's
14 all I have.

15 EXAMINATION

16 BY MR. HIGGINS:

17 Q. Ma'am, I just -- regarding that -- and
18 I'm sorry you're upset. I don't mean to upset you
19 any further. Are you okay?

20 A. (Nodding head up and down.)

21 Q. Okay. You said you're seeing a
22 therapist right now?

23 A. (Nodding head up and down.)

24 Q. And who are you seeing right now?
25 Who's your therapist?

1 Q. The only question I had to follow-up
2 was: The photographs, these -- did you take these
3 or your husband took these? (Indicating.)

4 A. My husband.

5 Q. Your husband did. Did he take them
6 with a camera?

7 A. His cell phone.

8 Q. Oh, these are cell phone -- okay. All
9 right.

10 MR. HIGGINS: All right. I don't think
11 I have any other questions. I thank you for your
12 time. I appreciate it.

13 MR. SAMS: Okay.

14 EXAMINATION

15 BY MS. GOODING:

16 Q. Just real quickly, Ms. Myers. You've
17 just told us about the emotional issues that you've
18 experienced. Have you gotten treatment for anxiety
19 and those issues you were just telling us since
20 this happened?

21 A. Yes, ma'am. She has me on -- I know
22 that I may not say it right, BuSpar.

23 Q. Okay. When you say she, who is that?

24 A. Dr. Stanley.

25 Q. Okay. Are you currently treating with

1 A. Dr. Mary.

2 Q. Dr. Mary.

3 A. I cannot --

4 Q. Her first name is Mary?

5 A. Yes.

6 Q. Okay. And you can't think of her last
7 name?

8 A. It starts with a W.

9 Q. It starts with a W. Is she with -- is
10 she on her own or is she with a --

11 A. She's on her own.

12 Q. On her own. Where is she located?

13 A. In Hampton.

14 Q. In Hampton, okay. Do you know, is she
15 a physician or a licensed counselor? Do you know
16 what I mean? Is -- do you know what her
17 credentials are?

18 Do you know if she's an actual doctor
19 that can prescribe medicine or is she more like a
20 family counselor or something like that?

21 A. I think she's more a family, single
22 person, marriage counselor.

23 Q. Okay. All right. And were you
24 directed to her by somebody or recommended to her?

25 A. Dr. Stanley.

1 Q. Dr. Stanley, okay. And, I'm sorry, Dr.
 2 Stanley is with Laffitte; is that right?
 3 A. Yes.
 4 Q. Okay. And you mentioned that Dr.
 5 Stanley has prescribed some medications for your
 6 stress and that sort of thing. What was the name
 7 of that medicine? I didn't catch it.
 8 A. BuSpar.
 9 Q. BuSpar or something like that?
 10 A. I -- I know that I'm not saying it
 11 right.
 12 Q. That's all right. We can figure that
 13 out. It's something like BuSpar, something like
 14 that?
 15 A. Yes.
 16 Q. And what pharmacy do you use?
 17 A. BI-LO in Hampton.
 18 Q. Okay.
 19 A. She started it out at a small dose and
 20 my last appointment she increased the dose.
 21 Q. Okay. And you're still taking that,
 22 right?
 23 A. Yes.
 24 Q. Okay. How many times have you seen Dr.
 25 Mary? The therapist Mary, I'm sorry.

1 medication?
 2 A. I -- I didn't have it before I started
 3 with it.
 4 Q. Huh. Okay. Are the only -- the only
 5 doctor that we're aware of that you've seen -- or
 6 doctors I guess, is Laffitte and Warren Medical
 7 Center?
 8 A. Uh-huh.
 9 Q. Is that where you go for your basic
 10 medical treatment?
 11 A. Yes.
 12 Q. Okay. And the only other care provider
 13 would be doctor -- I'm sorry, this counselor
 14 Mary --
 15 A. Yes.
 16 Q. -- is that right? Okay.
 17 Have you ever been a victim of a crime
 18 before?
 19 A. No.
 20 Q. Okay. Have you ever been diagnosed
 21 with any emotional disorders or anything?
 22 A. No.
 23 Q. Okay. Have you ever been treated for
 24 any sort of psychological or emotional disorders?
 25 A. No, being -- well --

1 A. Actually, only one, because she only
 2 had -- I had to get what she had open.
 3 Q. Okay. Do you remember when that was?
 4 A. I don't remember exactly what date, but
 5 I go back to her in two weeks.
 6 Q. In two weeks, okay. When you say you
 7 don't remember, was it within the last six months
 8 or was it longer than that?
 9 A. Within the last six months.
 10 Q. Okay. All right. And how about Dr.
 11 Stanley, when's the last time you saw Dr. Stanley?
 12 A. I think it was probably a couple weeks
 13 ago.
 14 Q. Okay.
 15 A. Because, again, I -- I'm not a woman
 16 who suffered with acne, but the medicine she put me
 17 on --
 18 Q. Right.
 19 A. -- did this to my face --
 20 Q. Oh. Yeah.
 21 A. -- so she had to give me something for
 22 it. (Indicating.)
 23 Q. Okay.
 24 A. I've never had acne.
 25 Q. And that causes problems with

1 Q. I know it's a broad question.
 2 A. The medicine that she's given me during
 3 the time that I endured everything with my dad as
 4 far as --
 5 Q. Yeah.
 6 A. -- him having prostate cancer, having a
 7 heart attack, and all of that.
 8 Q. Yeah.
 9 A. And me being the only child having to
 10 deal with that.
 11 Q. Okay. And that's fine. That was back
 12 it looks like --- the notes I have, and these may
 13 not be complete by any means, but what I saw you --
 14 there was reference back in February 2011 when we
 15 were dealing with some issues with your dad. Does
 16 that sound about right, in that area?
 17 A. Yes.
 18 Q. Okay. Just stress. Is that when they
 19 started prescribing you some medications?
 20 A. Not sure what date, but...
 21 Q. You don't need to be specific about a
 22 date, but it was around that period of time?
 23 A. Yes.
 24 Q. Okay. And this was to help with your
 25 anxiety and your stress levels and that sort of

1 thing generally?

2 A. I was stressed and wasn't --

3 Q. Sleeping?

4 A. -- really sleeping.

5 Q. Okay. I read -- I saw something there
6 you weren't sleeping very well and --

7 A. Yes.

8 Q. -- that sort of thing too. Were there
9 other things in your life stressing you at that
10 time? We're not talking about this now, we're
11 talking about before. Other than -- I know your
12 father was a very -- it obviously was a very
13 stressful time.

14 A. It was basically -- I mean, I lost my
15 sister, my only sister.

16 Q. Okay.

17 A. Then everything dealing with my dad.

18 Q. So it kind of accumulated?

19 A. Yes. Then to find out at the age of 42
20 you're not his biological daughter.

21 Q. Is that right?

22 A. I mean, that was stress.

23 Q. Yeah. Okay. And that came up when?
24 Was this during the time he was actually dying?

25 A. Yes.

1 Q. Okay. All right. When did he pass
2 away?

3 A. Two years ago.

4 Q. Okay. I'm sorry. It looks like -- and
5 you mentioned all this about this was another
6 stressful situation for you, correct, and I don't
7 want you to go into that. I understand that.

8 You also had some issues with the child
9 at school and that was a stressful situation for
10 you as well, apparently?

11 A. Yes.

12 Q. Is that -- are you still doing that,
13 shadowing?

14 A. No.

15 Q. Okay. You decided not to do that any
16 longer. Okay. All right.

17 A. My life was pretty much being
18 maintained. I was fine --

19 Q. Uh-huh.

20 A. -- until this incident.

21 Q. Okay.

22 A. Because if you can't feel safe in your
23 own home or yard --

24 Q. Right.

25 A. -- where can you be safe.

1 MR. HIGGINS: I understand. Okay. I
2 do think that's all I have. I do appreciate your
3 time, ma'am. Thank you.

4 MR. SAMS: Let me just follow up right
5 quick. Just a couple things.

EXAMINATION

7 BY MR. SAMS:

8 Q. You worked as a shadow in the Allendale
9 school system for a period. And that was with this
10 child, this autistic child?

11 A. Yes.

12 Q. Okay. And was that the same child that
13 kicked you when --

14 A. Kicked my knee, yes.

15 Q. Okay. So he was nine years old?

16 A. Yes.

17 Q. Okay. And was that the last job you
18 had?

19 A. Oh, no, I'm still working --

20 Q. Oh, okay.

21 A. -- there, but not with that child.

22 Q. You don't work with that child anymore?

23 A. No.

24 Q. Was that child a source of stress and
25 anxiety?

1 A. He -- I really don't know how to
2 explain it. When you're working -- I love
3 children, so when you're working with a child that
4 is going through something like he's going through,
5 you have to have patience and gather yourself to
6 understand, okay, he has a lot going on that he has
7 no control over. And the parts that made it
8 stressful was when he hit.

9 Q. Right.

10 A. Other than that, I love this child like
11 he was my own child and I still love him like he's
12 my own.

13 Q. Fair enough. Does he have a different
14 shadow now?

15 A. He does.

16 Q. Okay. Are you still working in the
17 same school?

18 A. Yes.

19 Q. Okay. What's your job there now?

20 A. ISS supervisor.

21 Q. Okay. Which school is that?

22 A. Fairfax Elementary.

23 MR. SAMS: All right. That's all I
24 have. Thank you.

25 MS. GOODING: Okay. Thank you. You're

1 done.

2 MR. HIGGINS: Thank you, ma'am.
3 (The deposition was concluded at 11:51

4 AM.)

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REQUESTED INFORMATION INDEX

(No Information Requested)

CERTIFICATE OF REPORTER

1 I, Kelly A. Ball, Court Reporter and
2 Notary Public for the State of South Carolina at
3 Large, do hereby certify that the foregoing transcript
4 is a true, accurate, and complete record.

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

8 Witness my hand, I have hereunto affixed
9 my official seal this 9th day of October, 2014 at
10 Charleston, Charleston County, South Carolina.

11
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22
23 Kelly A. Ball
My Commission expires
November 19, 2017

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REPOSSESSION AGREEMENT

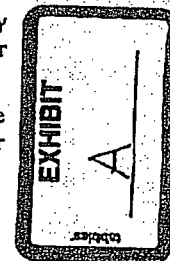
THIS REPOSSESSION AGREEMENT ("Agreement") is entered into this 10th day of Sept, 2010 by and between TMX FINANCE LLC, a Delaware limited liability company, and its subsidiaries and affiliates ("Company") whose corporate office is located at 15 Bull Street, Suite 200, Savannah, GA 31401, and ARS (AFFORDABLE RECOVERY SOLUTIONS), a(n) SOUTH CAROLINA ☒ sole proprietor, ☐ corporation, ☐ limited liability company, whose principal office is located at 2040 Commercial Drive, North Augusta, SC 29841 ("Repossession Vendor").

WHEREAS, Repossession Vendor is duly licensed to provide ☒ towing ☐ repossession services in the State of SOUTH CAROLINA;

WHEREAS, Repossession Vendor is a repossession agent duly licensed and operating within the State of SOUTH CAROLINA;

NOW THEREFORE, in consideration of the representations, agreements and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do mutually agree as follows:

1. **Term.** This Agreement shall begin on the date set forth in the first paragraph above and shall continue until terminated in accordance with the terms of this Agreement or upon a material breach by Repossession Vendor. Either party may terminate this Agreement by providing thirty (30) days advance written notice to the other party. Upon termination of this Agreement, Repossession Vendor shall discontinue all efforts to repossess property as assigned by Company and shall return any and all documents relating to Company's accounts to Company.
2. **Services-Repossessions.** The Repossession Vendor agrees to repossess vehicles upon a verbal or written request by Company within Repossession Vendor's sole discretion. Repossession Vendor agrees that all repossessions conducted for Company shall not be sub-contracted to another vendor. Repossession Vendor is the only firm authorized to conduct repossessions on behalf of Company. Company shall provide Repossession Vendor with 1) a description of the vehicle, including the color, year, make and model; 2) the VIN number ("Information"); and 3) a key to the vehicle, if available. Repossession Vendor will use Information provided by Company to identify the vehicle(s) to be repossessed and Repossession Vendor will use its best efforts to locate the vehicle. For each vehicle to be repossessed, Repossession Vendor warrants and agrees that the repossession will be accomplished without 1) the use of trick, fraud or other deceptive practices, including but not limited to impersonating a law enforcement or court official or other deceptive practices; 2) a breach of the peace; 3) force, threat or intimidation; or, 4) any other unlawful means. Repossession Vendor will comply with all applicable local, state and federal laws for each repossession.
3. **Services - Inventory of Items in Vehicle.** Immediately upon repossession, Repossession Vendor shall secure the vehicle by locking it and storing it in a secure location, and then contact the Company's Store Manager. Repossession Vendor shall inform Company's Store Manager of any issues arising during the repossession and note any physical damage to the vehicle or its contents between the time of repossession and delivery to the Company representative. A Company representative shall perform a complete inventory of all personal property located within or on the vehicle as soon as practicable. All personal property shall be itemized on an inventory list by the Company representative who shall store the personal property at the store location.
4. **Confidentiality.** Repossession Vendor agrees to maintain any and all Information provided by Company to Repossession Vendor confidential, and further agrees to return any and all Company documents to Company immediately when 1) the vehicle is repossessed, 2) the request to repossess is cancelled, or 3) the request is terminated for any other reason. Repossession Vendor agrees not to use any Information for any other purpose other than to provide services to Company, and agrees that it will not divulge Information to a third party unless required to do so by law.
5. **No Obligation.** Nothing herein obligates Company to use Repossession Vendor for every repossession nor does anything herein obligate Repossession Vendor to accept any particular assignment for repossession from Company.
6. **Compliance with Laws.** Repossession Vendor shall, in compliance with Section 1, retain complete discretion as to the time, place, manner and form of the repossession. Company shall exercise no control over any aspect of the transaction. Repossession Vendor is an independent contractor.



7. **Payment.** Company agrees to pay Repossession Vendor in accordance with the Fee Schedule (Exhibit C) attached hereto and made a part hereof.

8. **Insurance.** Repossession Vendor warrants that it maintains insurance covering premises, operations, product, completed operations and other liabilities as set forth in Exhibit A attached hereto and made a part hereof (endorsed to whatever extent is necessary to protect both Repossession Vendor and Company in the event of a claim, loss expense or damage as set forth in Section 5 Indemnification above) of at least \$1,000,000.00 per occurrence, providing coverage against claims for wrongful repossession and trespass. Repossession Vendor further warrants that it maintains insurance providing coverage for damage to the vehicle during 1) repossession, 2) delivery to Company or to a storage location designated by Company, or 3) storage on Repossession Vendor's premises, if applicable. Repossession Vendor will have Company named as an additional insured on Repossession Vendor's policies of insurance and will provide Company a certificate of coverage establishing such coverage for the current period and for subsequent periods throughout the term of this Agreement, all in accordance with Exhibit A (Insurance Specifications). Insurance is to be evidenced in a form satisfactory to Company, and Repossession Vendor shall, upon Company's request, provide complete copies of the required policies (whether current or expired), including all endorsements thereto.

9. **Trademark.** Repossession Vendor shall not use the name, trademark or logo of Company, or any of its subsidiaries or affiliates without the prior written consent of Company.

10. **Indemnification.** Repossession Vendor, its executors, administrators, successors and assigns agree to defend, indemnify and hold harmless Company, its agents, officers, employees and shareholders from any and all claims, demands, suits or civil actions brought by anyone regarding any aspect of the performance of, or failure to perform the repossession, including storage, if applicable (whether by Repossession Vendor, or any sub-contractor or vendor on its behalf) including, but not limited to, the manner in which the repossession was accomplished, the place at which the repossession was accomplished, or the time at which the repossession was accomplished, as well as all claims of whatever nature including, but not limited to, bodily injury, property damage (including the loss of use thereof), economic damage, personal injury, or any personal property alleged to have been present within or on the vehicle at the time of the repossession. This obligation includes personal injury (including death) of Repossession Vendor, its employees or sub-contractors. Any provision of this paragraph that is or has been judicially determined to be invalid or void under the laws of the state in which the contract is to be performed shall be deemed modified to the extent necessary, or deleted if absolutely necessary, so as to render the paragraph valid; and so that this provision shall apply to the maximum extent permitted under the state's laws and shall carry out the intentions of the parties, as expressed herein, to the maximum extent possible.

Company shall notify Repossession Vendor of any claims, demands or actions filed against Company which are subject to this Indemnification provision, and Repossession Vendor agrees to undertake the defense thereof, keeping Company fully informed regarding the status of any negotiations, offers of settlement, or litigation. Should the Repossession Vendor fail, neglect or refuse to undertake the defense of any claim or action, Company will select counsel and Repossession Vendor agrees to pay all reasonable costs associated with said defense or reimburse Company for all reasonable costs and attorney's fees incurred by Company in the defense of such action.

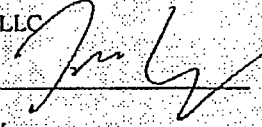
11. **Waiver and Enforceability.** The failure to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of such terms, covenants or conditions. The invalidity or unenforceability of any provision or clause of this Agreement in whole or in part, shall in no way impair or affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect.

12. **Entire Agreement.** The parties stipulate and agree that this Repossession Agreement constitutes the entire Agreement between them regarding repossession of vehicles. No other such Agreement exists. This Agreement may be amended from time-to-time by Company by providing thirty (30) days advanced written notice to Repossession Vendor. Repossession Vendor may not modify the terms of this Agreement without the express written consent of Company. No oral modification of this Agreement is allowed. This Agreement shall be governed by and construed in accordance with the state laws in which this business is being conducted. This Agreement may not be assigned by either party without the prior written consent of the other party in writing.

IN WITNESS WHEREOF, the parties hereby have caused their duly authorized representatives to enter into this Agreement effective as of the date first stated above.

COMPANY:

TMX Finance LLC

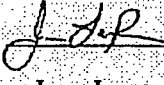
By: 

Name: Tracy Young

Title: Member

REPOSSESSION VENDOR:

ARS (AFFORDABLE RECOVERY SOLUTIONS)

By: 

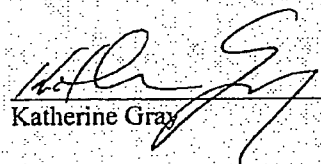
Name: Jason Larussa

Title: OWNER

STATE OF SOUTH CAROLINA	FILED FOR	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ALLENDALE	2013 NOV -4	) 2:51	
JOYCE MYERS,	CLERK	)	Civil Action No. 2013-CP-03-147
	ALLENDALE	)	
Plaintiff,		)	
		)	CERTIFICATE OF SERVICE
v.		)	
TITLEMAX OF SOUTH CAROLINA, INC.,		)	
AND AFFORDABLE RECOVERY		)	
SOLUTIONS a/k/a ARS,		)	
Defendants.		)	

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 30 day of October, 2013, caused the foregoing **Amended Answer and Cross Claim of TitleMax of South Carolina, Inc. and Cross Claim Summons** to be served via U.S. mail, postage prepaid, on all counsel of record at the address shown below:

H. Woodrow Gooding, Esquire
 Gooding and Gooding
 PO Box 1000
 Allendale, SC 29810
Attorneys for Plaintiff


 Katherine Gray

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court of Common Pleas
Civil Action No.: 2013-CP-03-00147
Honorable Perry M. Buckner

Appellate Case No.: 2015-001401

RECEIVED
FEB 01 2016
SC Court of Appeals

JOYCE MYERS.....Respondent,

-VS-

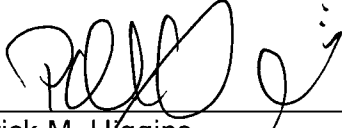
TITLEMAX OF SOUTH CAROLINA, INC. AND AFFORDABLE RECOVERY
SOLUTIONS, A/K/A ARS.....Defendants,

Of which AFFORDABLE RECOVERY SOLUTIONS A/K/A ARS is.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal contains all material
proposed to be included of any of the parties, and no other material.

HOWELL, GIBSON & HUGHES, P.A.

By: 
Patrick M. Higgins
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Appellant

Beaufort, South Carolina

January 29, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court of Common Pleas
Civil Action No.: 2013-CP-03-00147
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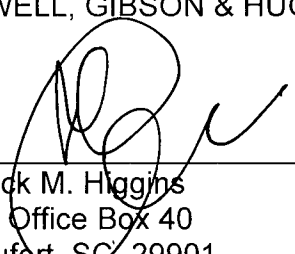
TITLEMAX OF SOUTH CAROLINA, INC. AND AFFORDABLE RECOVERY
SOLUTIONS, A/K/A ARS.....Defendants,

Of which AFFORDABLE RECOVERY SOLUTIONS A/K/A ARS is.....Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Record on Appeal has been reviewed
and redacted (where necessary) and complies with the Supreme Court's Order of
August 13, 2007.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Patrick M. Higgins
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Beaufort, SC 29901
(843) 522-2400
Attorney for Appellant

Beaufort, South Carolina

January 29, 2016

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