

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable R. Scott Sprouse, Circuit Court Judge

Case No. 2017-CP-23-03402
Appellate Case No. 2017-002259

RECEIVED
MAY 17 2018
SC Court of Appeals

Casey Masters Respondent,

v.

KOL, Inc. d/b/a Kia of Greenville.....Appellant.

AMENDED RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Casey Masters,

Plaintiff,

v.

KOL, Inc. d/b/a Kia of Greenville,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2017-CP-23-03402

**ORDER DENYING DEFENDANT'S
MOTION TO COMPEL ARBITRATION**

PRESIDING JUDGE:
DATE OF HEARING:
PLAINTIFF'S ATTORNEY:
DEFENDANT'S ATTORNEY:
COURT REPORTER:

R. SCOTT SPROUSE
AUGUST 23, 2017
J.J. ANDRIGHETTI
BRADFORD N. MARTIN
CHERYL SMITH

This matter comes before the Court by way of Defendant's Motion to Stay and Compel Arbitration, pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. §1, et. seq. The Motion was argued before me on August 23, 2017, with J.J. Andrighetti appearing on behalf of Plaintiff, Casey Masters, and Bradford N. Martin appearing on behalf of Defendant, KOL, Inc. d/b/a Kia of Greenville. For the reasons stated herein, the Court denies the Motion.

Plaintiff entered into a contract with the Defendant for the purchase and financing of a car on or about April 10, 2017. Several documents allegedly comprised the contract, including a document entitled "Arbitration Agreement." A dispute between the parties arose after the execution of the contract, and Ms. Masters filed a Complaint in the captioned matter on May 25, 2017. Thereafter, the Plaintiff and Defendant entered into a second contract for the purchase and financing of a car on or about June 2, 2017. Finally, the Defendant alleges the parties entered into a third contract regarding the disputes between the parties related to the first two contracts.

The Court has reviewed the pleadings, exhibits, arguments of counsel and the applicable law. I find the execution of subsequent contracts, as alleged by the Defendant, renders the original agreement and its Arbitration Agreement, moot and unenforceable. Wherefore, Defendant's motion to compel arbitration is denied.

IT IS SO ORDERED.

Judge's signature on following page



Greenville Common Pleas

Case Caption: Casey Masters vs. KOL Inc , defendant, et al

Case Number: 2017CP2303402

Type: Order/Other

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2017-10-12 09:49:12 page 3 of 3

ELECTRONICALLY FILED - 2017 Oct 12 12:03 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2303402

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Casey Masters,

Plaintiff,

v.

KOL, Inc. d/b/a Kia of Greenville,

Defendant.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-23-03402

ORDER DENYING DEFENDANT'S MOTION
FOR RECONSIDERATION

After careful consideration of the able argument and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Defendant's Motion, pursuant to Rule 59, SCRCP,¹ is DENIED.

AND, IT IS SO ORDERED.

R. SCOTT SPROUSE
Judge, Tenth Judicial Circuit

Walhalla, South Carolina
October 24, 2017

¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.



Greenville Common Pleas

Case Caption: Casey Masters vs. KOL Inc , defendant, et al

Case Number: 2017CP2303402

Type: Order/Other

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2017-10-24 14:19:00 page 2 of 2

ELECTRONICALLY FILED - 2017 Oct 25 8:36 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2303402

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Casey Masters,

Plaintiff,

v.

KOL, Inc. d/b/a Kia of Greenville,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2017-CP-23-_____

COMPLAINT

COMES NOW Plaintiff, complaining of the Defendant herein, and would allege and respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a citizen and resident of Greenville County, South Carolina.
2. Defendant KOL, Inc. ("Kia") is a corporation organized and existing under the laws of South Carolina and conducts business in Greenville County, South Carolina under the name Kia of Greenville.
3. The contract that is the subject matter of this action was formed and executed in Greenville County.
4. This Court is the proper venue and jurisdiction for this action.

FACTUAL BACKGROUND

5. Each and every allegation set forth hereinabove is incorporated by reference as if fully restated verbatim where not inconsistent herewith.
6. On April 11, 2017, the parties entered into a retail installment sale contract ("Contract") for the purchase of a 2017 Kia Forte ("Vehicle") in the amount of \$23,000.00.

7. Plaintiff tendered valuable consideration for the Vehicle in two forms; cash and the trade-in of her 2002 Chevrolet Cavalier ("Trade-in").

a. The cash payment was tendered via a \$500.00 personal check.

b. The Trade-in provided Plaintiff with a \$4,500.00 credit toward the purchase price. Additionally, Kia was to pay off the outstanding loan owed on the 2002 Chevrolet Cavalier in the amount of \$600.00.

8. Kia accepted Plaintiff's payment unconditionally.

9. After applying the cash payment and Trade-in credit, Plaintiff owed \$18,000.00 under the terms of the Contract. Plaintiff's first installment payment for the remaining amount was due on May 25, 2017.

10. Prior to executing the Contract, Kia required Plaintiff to provide it with various personal financial information, including paystubs.

11. Thereafter, Kia attempted to sell the Contract to Crescent Bank and employees of Crescent Bank called the Plaintiff to discuss her financial information. During their telephone conversation, the employees of Crescent Bank revealed to the Plaintiff that Kia had "fluffed" the Plaintiff's income and that Crescent Bank would not be able to purchase the Contract from Kia.

12. Approximately the same time, Rodney Higgins, employee of Kia, contacted Plaintiff to ask her to return the Vehicle to Kia for a "recall."

13. Plaintiff discovered that no such "recall" had been issued for the Vehicle and refused to bring it to Kia at that time.

14. Approximately one week later, Plaintiff took the Vehicle to Kia for service and Kia refused to return it to the Plaintiff.

15. Plaintiff demanded Kia return the Vehicle or refund her payment and provide her with the 2002 Chevrolet Cavalier. Kia refused to do either and informed the Plaintiff that it had sold the 2002 Chevrolet Cavalier and failed to pay off the associated loan.

16. Kia offered a different vehicle to Plaintiff, and Plaintiff was required to sign a test drive agreement. This test drive agreement does not include a date or an odometer reading or any other limitations requiring the return of that vehicle. Nevertheless, Kia has demanded the return of the loaner vehicle.

17. Kia failed to allow the Plaintiff to retrieve personal belongings, including her copy of the Contract, from the Vehicle for several weeks. Eventually, she was able to retrieve her belongings, but the Contract had been removed from the Vehicle. Plaintiff has not been refunded her consideration.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

18. Each and every allegation set forth hereinabove is incorporated by reference as if fully restated verbatim where not inconsistent herewith.

19. As stated previously, Plaintiff and Kia entered into a Contract. Plaintiff complied with all terms of the Contract.

20. Kia failed and refused to abide by the terms of the Contract without good reason or cause.

21. Plaintiff is entitled to a judgment against Kia for actual and consequential damages, plus pre-judgment interest.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act)

22. Each and every allegation set forth hereinabove is incorporated by reference as if fully restated verbatim where not inconsistent herewith.

23. As stated above, Kia breached its Contract with Plaintiff.

24. The representations made by Kia to Plaintiff were intentionally false.

25. Kia's repossession of the vehicle, despite the fact that Plaintiff was in full compliance with the Contract, was an attempt to deceive and defraud the Plaintiff and is a fraudulent act separate and distinct from their breach of contract.

26. Plaintiff is entitled to recover punitive damages as a result of Kia's breach of contract accompanied by a fraudulent act, plus pre-judgment interest.

FOR A THIRD CAUSE OF ACTION
(Fraud)

27. Each and every allegation set forth hereinabove is incorporated by reference as if fully restated verbatim where not inconsistent herewith.

28. As detailed previously, Kia made false and conflicting representations to Plaintiff, including the fact that Plaintiff could have uninterrupted possession of the vehicle.

29. Kia knew these representations were false and intended for the Plaintiff to act on the Kia's false representations.

30. These representations were material.

31. Plaintiff was ignorant of the falsity of these representations.

32. Plaintiff has suffered damages as a direct and proximate result of these false representations.

33. Plaintiff is entitled to actual, consequential and punitive damages flowing from this fraud, plus pre-judgment interest.

FOR A FOURTH CAUSE OF ACTION
(Conversion)

34. Each and every allegation set forth hereinabove is incorporated by reference as if fully restated verbatim where not inconsistent herewith.

35. Plaintiff had legal interest in the vehicle.

36. Kia had no legal right to the vehicle and converted this property without Plaintiff's permission.

37. Plaintiff is entitled to recover both actual and punitive damages as a result of Kia's conversion of her property.

FOR A FIFTH CAUSE OF ACTION
(Trespass to Chattel)

38. Each and every allegation set forth hereinabove is incorporated by reference as if fully restated verbatim where not inconsistent herewith.

39. Kia intentionally interfered with Plaintiff's lawful possession of the vehicle.

40. Plaintiff is entitled to recover both actual and punitive damages as a result of Kia's trespass to her chattel.

FOR A SIXTH CAUSE OF ACTION
(Violation of the South Carolina Dealer's Act)

41. Each and every allegation set forth hereinabove is incorporated by reference as if fully restated verbatim where not inconsistent herewith.

42. That Kia is a company within the meaning of § 56-15-10, *et seq.* of the South Carolina Code of Laws, (1976), as amended, commonly known as the South Carolina Dealers' Act.

43. That Kia has knowingly and willfully engaged in unfair and deceptive acts and practices in the conduct of its trade or commerce in violation of § 56-15-10, *et seq.* of the South Carolina Code of laws (1976), as amended.

44. That as a direct and proximate result of Kia's actions, Plaintiff has sustained an ascertainable loss.

45. That as a result of Kia's willful and knowing violation of § 56-15-10 *et seq.* of the South Carolina Code of Laws (1976), as amended, Plaintiff is entitled to double damages, attorney's fees, and the costs of this action.

FOR A SEVENTH CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act)

46. Each and every allegation set forth hereinabove is incorporated by reference as if fully restated verbatim where not inconsistent herewith.

47. That Kia is a company within the meaning of § 39-5-10, *et seq.* of the South Carolina Code of Laws (1976), as amended, commonly known as the South Carolina Unfair Trade Practices Act.

48. That Kia has willfully and knowingly engaged in unfair and deceptive acts and practices in the conduct of their trade or commerce in violation of § 39-5-20 of the South Carolina Code of Laws, (1976), as amended.

49. That upon information and belief, Kia regularly uses deceptive practices and it thus has the potential for repetition.

50. That Kia's actions have an adverse impact on the public's interest.

51. That as a direct and proximate result of Kia's actions, Plaintiff has sustained an ascertainable loss.

52. That as a result of Kia's willful and knowing violation of § 39-5-10 *et seq.* of the South Carolina Code of Laws (1976), as amended, Plaintiff is entitled to treble damages, attorney's fees, and the costs of this action.

FOR AN EIGHTH CAUSE OF ACTION
(Violation of the South Carolina Consumer Protection Code)

53. Each and every allegation set forth hereinabove is incorporated by reference as if fully restated verbatim where not inconsistent herewith.

54. That Kia is a company within the meaning of § 37-10-1, *et seq.* of the South Carolina Code of Laws (1976), as amended, commonly known as the South Carolina Consumer Protection Code.

55. That Kia has willfully and knowingly engaged in unfair and deceptive acts and practices in the conduct of their trade or commerce in violation of § 37 of the South Carolina Code of Laws, (1976), as amended.

56. That as a result of Kia's willful and knowing violation of § 37-10-1 *et seq.* of the South Carolina Code of Laws (1976), as amended, Plaintiff is entitled to recover damages, attorney's fees, and the costs of this action.

FOR A NINTH CAUSE OF ACTION
(Promissory Estoppel)

57. Each and every allegation set forth hereinabove is incorporated by reference as if fully restated verbatim where not inconsistent herewith.

58. That Kia, through its actions, made a clear and unambiguous promise to Plaintiff that her credit was approved and that the deal had been finalized.

59. That Plaintiff reasonably and foreseeably relied on Kia's promises to her detriment and has been injured in the following and other particulars:

a. Plaintiff showed her family and friends the newly-purchased vehicle, and later had to suffer embarrassment when her friends and family learned that the vehicle had been returned.

b. That Plaintiff purchased insurance for the vehicle, and was not fairly reimbursed for the time remaining on the policy after Kia took custody of the vehicle.

60. That failing to enforce the promises made by Kia would be sanctioning Kia's fraud and would result in injustice.

61. That plaintiff has been damaged and is entitled to compensation to the extent that justice so requires.

FOR A TENTH CAUSE OF ACTION
(Truth in Lending Act)

62. Each and every allegation set forth hereinabove is incorporated by reference as if fully restated verbatim where not inconsistent herewith.

63. That the transaction in question is subject to the requirements of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* (hereinafter referred to as "TILA") and the Federal Reserve Board Regulation Z, 12 C.F.R. § 226, promulgated pursuant to TILA.

64. That Kia regularly extends and offers to extend consumer credit for which a finance charge is or may be imposed, or which by written agreement is payable in more than four installments, and is the person in the present transaction to whom the obligation is initially payable, making Kia a creditor within the meaning of TILA, 15 U.S.C. § 1602(f) and Regulation Z § 226.2(a)(17).

65. That Plaintiff's purchase of the vehicle that is the subject of this action was a consumer credit transaction within the meaning of TILA, 15 U.S.C. § 1602 and Regulation Z § 226.2.

66. That Kia, through the actions and omissions of its servants, have violated TILA, 15 U.S.C. § 1601 *et seq.* and Regulation Z, 12 C.F.R. § 226 in the following and other respects:

- a. The signing of the contract and the date of consummation of the transaction was the date the Plaintiff became obligated on the credit transaction.
- b. Kia attempted to contact Plaintiff in an effort to "rescind" the contract that was in effect as of March 1, 2017.

67. That as a result of these violations of TILA and Regulation Z, the Kia is liable to the Plaintiff in an amount equal to the full value of twice the finance charges, actual damages to be established at trial, and attorney's fees and costs in accordance with 15 U.S.C. § 1640.

FOR AN ELEVENTH CAUSE OF ACTION
(Violation of Fair Credit Reporting Act)

68. Each and every allegation set forth hereinabove is incorporated by reference as if fully restated verbatim where not inconsistent herewith.

69. That in the course of this transaction, actions were taken by Kia which implicate the obligations and requirements imposed by the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (hereinafter referred to as "FCRA").

70. That Plaintiff is a consumer within the meaning of the act.

71. That when Plaintiff purchased the vehicle in question, Kia pulled and/or caused to be pulled Plaintiff's credit report from a consumer reporting agency. That furthermore, Plaintiff's credit report shows that Kia pulled Plaintiff's credit report in March of 2017.

72. That upon information and belief, Kia used the information contained in Plaintiff's credit report to determine whether to grant her an extension of credit to purchase the vehicle.

73. That based on information contained in Plaintiff's credit report, adverse actions were taken against Plaintiff by Kia. These adverse actions include, but are not limited to:

- a. Requesting that Plaintiff return the vehicle;
- b. Causing the unlawful repossession of the vehicle at the location of Plaintiff's employer.

74. The lack of notice given by Kia to Plaintiff of the adverse action taken did not conform to the requirements of FCRA, 15 U.S.C. § 1681(m) in that the notice failed to indicate a statement that the consumer reporting agency did not make the decision to take the adverse action and that this agency is not able to provide Plaintiff with specific reasons for the adverse action taken.

75. Kia's failure to comply with the FCRA when it obtained, used, and later took adverse action against the Plaintiff based on the information contained in the Plaintiff's credit report was willful, as contemplated under 15 U.S.C. § 1681(n) of the FRCA. As a result of said conduct, Plaintiff has been damaged.

76. Kia's failure to comply with the FCRA when it obtained, used, and later took adverse action against the Plaintiff based on the information contained in the Plaintiff's credit report was negligent, as contemplated under 15 U.S.C. § 1681(n) of the FRCA. As a result of said conduct, Plaintiff has been damaged.

77. That pursuant to 15 U.S.C. § 1681(o), any person who is negligent in failing to comply with any requirement imposed under the FCRA with respect to any consumer is liable to

that consumer in an amount equal to the sum of (i) any actual damages sustained by the consumer as a result of the failure and (ii) in the case of any successful action to enforce any liability under 15 U.S.C. § 1681(o), the costs of the action together with reasonably attorney's fees.

FOR A TWELFTH CAUSE OF ACTION
(Violation of Equal Credit Opportunity Act)

78. Each and every allegation set forth hereinabove is incorporated by reference as if fully restated verbatim where not inconsistent herewith.

79. That in the course of this transaction, actions were taken by Kia which implicate the obligations and requirements imposed by the Equal Credit Opportunities Act, 15 U.S.C. § 1691 *et seq.* (hereinafter referred to as "ECOA") and Regulation B, 12 C.F.R. § 202.

80. That the Plaintiff is an applicant within the meaning of the Act.

81. That Kia is a creditor within the meaning of the Act and is a creditor for purposes of the transaction in question.

82. That adverse actions were taken against Plaintiff and that the ECOA required Kia to provide a statement, in writing, of the specific reasons for the adverse actions taken directly to the Plaintiff.

83. That Kia did not comply with these requirements.

84. That as a result of the Kia's failure to comply with the obligations set forth in the ECOA, Plaintiff is entitled to recover, pursuant to 15 U.S.C. § 1691e: (i) any actual damages she sustained; (i) punitive damages in an amount not greater than \$10,000.00; and (iii) in the case of any successful action, the costs of the action, together with a reasonable attorney's fee as determined by the court.

WHEREFORE, Plaintiff prays for judgment against Kia for actual damages of \$5,000.00, to be doubled and/or tripled pursuant to SCUTPA, Truth in Lending Act, and the South Carolina Dealer's Act, punitive damages, pre-judgment interest, and attorney's fees. Plaintiff further prays for the costs of this action and any other relief the Court deems just and proper under the circumstances.

Respectfully submitted,

s/J. J. Andrighetti

J. J. Andrighetti (SC Bar # 72741)
KEHL CULBERTSON ANDRIGHETTI, LLC
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Attorney for Plaintiff

Greenville, South Carolina

May 25, 2017

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Case No. 2017-CP-23-03402

Casey Masters,

Plaintiff,

vs.

KOL, Inc. d/b/a Kia of Greenville,

Defendant.

**MOTION TO STAY AND
TO COMPEL ARBITRATION**

TO: J. J. ANDREGHETTI, ATTORNEY FOR PLAINTIFF CASEY MASTERS:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the notice of service hereof, or at such time and place as the Court may deem appropriate, the Defendant, KOL, Inc. d/b/a Kia of Greenville, will move the Court, pursuant to Rule 12(b)(1) (lack of jurisdiction over the subject matter) of the South Carolina Rules of Civil Procedure for an Order Staying the Case and Compelling Arbitration. Defendant's motions are based on the following grounds:

1. The Complaint alleges cause of action for breach of contract, breach of contract accompanied by a fraudulent act, fraud, conversion, trespass to chattel, violation of the Dealers' Act, violation of the Unfair Trade Practices Act, violation of the Consumer Protection Code, promissory estoppel, violation of the Truth in Lending Act, violation of the Fair Credit Reporting Act, and violation of the Equal Credit Opportunity Act against Kia of Greenville that all arise out of Plaintiff's purchase of a vehicle.

2. The car involved is a 2017 Kia Forte ("the Forte") manufactured in a state other than South Carolina and sold in South Carolina. Therefore this transaction involves interstate commerce.

2. Plaintiff was involved in the conditional sale of the Forte on April 10, 2017. Financing could not be obtained from the first lender and different lender was subsequently found. On each occasion Plaintiff signed a document entitled "Arbitration Agreement" which stated, in capital letters, on an 8 ½ X 11 sheet of paper:

PLEASE REVIEW – IMPORTANT- AFFECTS YOUR LEGAL RIGHTS

1. BOTH THE DEALER AND CUSTOMER(S) SHALL HAVE THE RIGHT TO HAVE ANY DISPUTE BETWEEN THEM DECIDED IN ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.

Exhibits A and B.

3. Plaintiff also read and agreed that the contract "shall be governed by the FAA."

4. The Arbitration Agreements state that they apply to:

Any claim, counterclaim, third party claim, cross-claim, dispute or controversy between Dealer and Customer, as well as between Customer and Dealer's employees, agents, affiliate companies or persons, successors and assigns, whether in contract, tort or otherwise, which arise out of or relate to Customer's credit application, purchase, lease, financing, condition of the vehicle, or any resulting transaction or relationship . . . shall be resolved by neutral, binding arbitration.

(Exhibits A and B) The claims asserted by Plaintiff are expressly covered by the terms of the Arbitration Agreements.

5. In the instant case, the parties specifically agreed that any dispute would be settled pursuant to the Federal Arbitration Act ("FAA"). Additionally, the sale of automobiles is considered commerce sufficient for the FAA to apply. *See Saturn Distribution Corp. v. Williams*, 905 F.2d 719 (4th Cir. 1990). Therefore, in accordance with 9 U.S.C. §1 *et seq.* and the Agreement, Kia of Greenville respectfully moves the Court to stay this action as to Kia of Greenville until completion of arbitration.

6. The Federal Arbitration Act preempts state law rules and holdings that invalidate the parties' agreement to arbitrate. *See AT&T Mobility v. Concepcion*, 131 S.Ct. 1740 (2011).

Therefore, pursuant 9 U.S.C. §4, Kia of Greenville seeks an order staying the case and compelling Plaintiff to proceed in the manner provided in the Arbitration Agreements, requiring her to arbitrate each and every claim she may have against Kia of Greenville, and awarding Kia of Greenville costs.

This Motion is based on the pleadings filed with the Court, the South Carolina Rules of Civil Procedure, the Federal Arbitration Act, and such other and further case and statutory law and supporting affidavits and memoranda as may be appropriate.

July 26, 2017

Respectfully submitted,

s/Bradford N. Martin

Bradford N. Martin, Esq., SC Bar No. 3658

Laura W. H. Teer, Esq., SC Bar No. 16698

Bradford Neal Martin & Associates, P.A.

Post Office Box 10410

Greenville, South Carolina 29603

(864) 552-9990

ATTORNEYS FOR DEFENDANTS

KOL, INC. d/b/a KIA OF GREENVILLE

ARBITRATION AGREEMENT**PLEASE REVIEW-IMPORTANT-AFFECTS YOUR LEGAL RIGHTS**

1. BOTH THE DEALER AND CUSTOMER(S) SHALL HAVE THE RIGHT TO HAVE ANY DISPUTE BETWEEN THEM DECIDED IN ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.
2. YOU AGREE TO GIVE UP THE RIGHT TO PARTICIPATE AS A PRIVATE ATTORNEY GENERAL, CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT.
4. THE AGREEMENT SUPERSEDES ALL PRIOR DISCUSSIONS, ARRANGEMENTS, NEGOTIATIONS AND OTHER COMMUNICATIONS, IF ANY, ON DISPUTE RESOLUTION.

In this Arbitration Agreement, "Customer," "you," and "your" refers to the customer(s) signing below. "Dealer," "we," "us," and "our" refer to the Dealer signing below as well as any other affiliated entity, parent or subsidiary, their successors and assigns and all of their owners, shareholders, managers and agents, and anyone to whom the Dealer assigns this Arbitration Agreement. You agree that Dealer's Policies and Procedures govern any arbitration between the parties. A copy of the Policies and Procedures is available upon request.

Any claim, counterclaim, third party claim, cross-claim, dispute or controversy between Dealer and Customer, as well as between Customer and Dealer's employees, agents, affiliate companies or persons, successors and assigns, whether in contract, tort or otherwise, which arise out of or relate to Customer's credit application, purchase, lease, financing, condition of the vehicle, or any resulting transaction or relationship (including any such relationship with third parties who do not sign your purchase or finance contract), or the validity, enforceability, or scope of this Agreement, shall be resolved by neutral, binding arbitration. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Agreement shall not apply to such claim or dispute. This Agreement evidences a "transaction involving commerce" under the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16 and shall be governed by the FAA. If and only if the FAA does not apply, then by any applicable state law concerning arbitration. You agree that there will be no right to participate as a class or group representative, private attorney general, or class or group member of any class or group claim against Dealer, including any right to class or group arbitration or any consolidation of individual arbitrations.

You and we retain any rights to self-help remedies, such as repossession. You and we retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Neither you nor we waive the right to arbitrate by using self-help remedies or filing suit. You and we retain any rights to bring an action individually to obtain provisional or ancillary remedies or injunctive relief (other than a stay of arbitration) to protect the rights or property of the party seeking such relief. However, the arbitrator(s) shall have the power to vacate and/or stay any such proceedings or orders granting provisional or ancillary remedies or injunctive relief, upon application by Dealer or Customer.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the Policies and Procedures. The arbitrator shall apply governing substantive law in making an award, but may not add to, modify, invalidate or ignore any provision of the Agreement or the Policies and Procedures. The arbitration hearing shall be conducted in the federal district where this Arbitration Agreement was executed. The party filing arbitration shall pay a \$250 filing fee. We will advance any additional administration, arbitration, or hearing fee up to a maximum of \$1,500, which may be reimbursed by decision of the arbitrator at the arbitrator's discretion. Thereafter, each party shall share equally in any administration, arbitration, or hearing fee. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. The arbitrator's award shall be final and binding on all parties, except that in the event the arbitrator's award for a party is \$0 or against a party is in excess of \$100,000 or includes an award of injunctive relief against a party, that party may request a new arbitration under the Policies and Procedures. The appealing party requesting new arbitration shall be responsible for any filing fee and other arbitration costs subject to a final determination by the arbitrator(s) of a fair apportionment of costs. Any court having jurisdiction may enter judgment on the arbitrator's award.

If any provision of this Agreement is determined to be unenforceable other than the waiver of the right to participate in a class or consolidated arbitration, then the remainder shall be given full force and effect. This Agreement shall survive the termination of any and all of Customer's business with Dealer. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, is agreed to be the last Agreement entered into with respect to its subject matter, and supersedes all prior discussions, arrangements, negotiations and other communications, if any, on dispute resolution.

04/10/2017

Date

CASEY LEIGH MASTERS

Customer

Customer

04/10/2017

Date

KOL, INC. dba KIA OF GREENVILLE

Dealer

3KPFK4A73HE044214

VIN

ARBITRATION AGREEMENT**PLEASE REVIEW-IMPORTANT-AFFECTS YOUR LEGAL RIGHTS**

1. BOTH THE DEALER AND CUSTOMER(S) SHALL HAVE THE RIGHT TO HAVE ANY DISPUTE BETWEEN THEM DECIDED IN ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.
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06/02/2017
Date

CASEY LEIGH MASTERS
Customer

Casey Masters
Customer

06/02/2017
Date

KOL, INC. dba KIA OF GREENVILLE
Dealer

3KPFK4A73HE044214
VIN

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

Case No. 2017-CP-23-03402

Casey Masters,

Plaintiff,

vs.

KOL, Inc. d/b/a Kia of Greenville,

Defendant.

**MEMORANDUM IN SUPPORT OF KOL, INC.
d/b/a KIA OF GREENVILLE'S
MOTION TO STAY AND
TO COMPEL ARBITRATION**

Defendant KOL, Inc. d/b/a Kia of Greenville ("Kia of Greenville") hereby submits this Memorandum in Support of its Motion to Stay and Compel Arbitration:

INTRODUCTION

The Arbitration Agreement is plainly enforceable, and the causes of action brought by Casey Masters fall squarely within its scope. Masters entered into a conditional purchase agreement for a 2017 Kia Forte, upon a contingency of approval of financing. Crescent Bank gave preliminary approval subject to proof of income. When the income criterion was not met, financing could not be obtained. Kia of Greenville continued to work with the Plaintiff and was able to eventually obtain financing for the Forte through Global Lending.

There is no dispute that Casey Masters signed an arbitration agreement in connection with both the conditional purchase of the Forte and the later finalized purchase. (Exhibits A and B) The stand-alone document entitled "Arbitration Agreement" stated, in capital letters:

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(Exhibits A and B) The claims asserted by Plaintiff are expressly covered by the terms of the Arbitration Agreement. Thus, Kia of Greenville requests this case be stayed and Plaintiff compelled to arbitration.

ARGUMENT

I. The Parties Entered into an Arbitration Agreement, therefore, this Court Lacks Jurisdiction over the Matter.

The parties contractually agreed that any dispute arising out of the purchase of the Forte from Kia of Greenville would be subject to the Federal Arbitration Act. Plaintiff signed the Arbitration Agreement, thereby agreeing to arbitrate “any claim . . . between Dealer and Customer”. Plaintiff’s Complaint alleges twelve causes of action against Kia of Greenville that all arise out of the purchase of the Forte.

The parties clearly contemplated this action would be subject to arbitration. The sale of automobiles is considered commerce sufficient for the FAA to apply. *See Saturn Distribution Corp. v. Williams*, 905 F.2d 719 (4th Cir. 1990). Therefore, federal law preempts state law and requires staying the action to pursue arbitration. *See AT&T Mobility v. Concepcion*, 563 U.S. 333, 131 S.Ct. 1740, 179 L.Ed.2d 742 (2011) (The FAA preempts state law rules and holdings that invalidate the parties’ agreement to arbitrate).

II. The Law Strongly Favors Arbitration.

There is a strong presumption in favor of the validity of arbitration agreements, because both federal and state laws favor them. *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*,

460 U.S. 1, 24 (1983); *Carolina Care Plan, Inc. v. United Healthcare Servs., Inc.*, 361 S.C. 544, 606 S.E.2d 752 (2004).

The agreement states that it involves interstate commerce and it is subject to the Federal Arbitration Act ("FAA") (9 U.S.C. § 1 *et seq.*), which preempts state law. The purpose of the Federal Arbitration Act "was to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law and has been adopted by American courts, and to place arbitration agreements upon the same footing as other contracts." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24, 111 S.Ct. 1647, 114 L.Ed.2d 26 (1991). "[Q]uestions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration." *Gilmer*, 500 U.S. at 26. To the extent any state law prohibits the agreement between the parties; it is preempted by the FAA. *AT&T Mobility v. Concepcion*, 563 U.S. 333 (2011).

III. Plaintiff's Causes of Action are Subject to the Arbitration Agreement

The arbitration provision explained that it was a method of resolving any dispute without filing a lawsuit in court. The Arbitration Agreement states that it applies to:

Any claim, counterclaim, third party claim, cross-claim, dispute or controversy between Dealer and Customer, as well as between Customer and Dealer's employees, agents, affiliate companies or persons, successors and assigns, whether in contract, tort or otherwise, which arise out of or relate to Customer's credit application, purchase, lease, financing, condition of the vehicle, or any resulting transaction or relationship . . . shall be resolve by neutral, binding arbitration.

(Exhibits A and B) The claims asserted by Plaintiff are expressly covered by the terms of the Arbitration Agreement.

Both federal and South Carolina state law are clear that if there is any interpretation of an arbitration clause that covers a dispute, then arbitration must be ordered. Unless a court can say

with positive assurance that the clause is not susceptible to an interpretation that covers the dispute, arbitration is required. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001); *S.C. Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 564, 437 S.E.2d 22, 25 (1993); *Chassereau v. Global-Sun Pools, Inc.*, 363 S.C. 628, 632, 611 S.E.2d 305, 307 (Ct.App.2005). Anyone challenging the enforceability of an arbitration agreement bears the burden of proving the provision is unenforceable. *Green Tree Fin. Corp. – Ala. v. Randolph*, 531 U.S. 79, 91 (2000).

The courts view arbitration as “a matter of contract, and the range of issues that can be arbitrated is restricted by the terms of the agreement.” *Palmetto Homes, Inc. v. Bradley*, 357 S.C. 485, 492, 593 S.E.2d 480, 484 (Ct.App.2004). 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, regardless of the label assigned to the claim. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985); *Hinson v. Jusco Co.*, 868 F. Supp. 145 (D.S.C. 1994). Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. *Towles v. United HealthCare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct.App.1999).

In her Complaint, Plaintiff alleges twelve causes of action (Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Fraud, Conversion, Trespass to Chattel, Violation of the South Carolina Dealer’s Act, Violation of the South Carolina Unfair Trade Practices Act, Violation of the South Carolina Consumer Protection Code, Promissory Estoppel, Truth in Lending Act, Violation of the Fair Credit Reporting Act, Violation of Equal Credit Opportunity Act) against Kia of Greenville that all arise out of Plaintiff’s conditional agreement for the

purchase of a vehicle. Therefore, this Court should uphold the liberal federal policy favoring arbitration and compel arbitration.

IV. The Arbitration Agreement is Enforceable

To determine whether a contract provision is unconscionable, a court must find both an “absence of meaningful choice on the part of one party due to the one-sided contract provisions” and “terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 395, 498 S.E.2d 898, 902 (Ct.App.1998). The South Carolina Supreme Court in *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663 (2007), emphasized “the importance of a case-by-case analysis” when evaluating an arbitration provision for unconscionability to address the unique circumstances and facts inherent in each consumer transaction.

A. Plaintiff had a Meaningful Choice

Plaintiff had a meaningful choice. Plaintiff voluntarily signed the stand-alone Arbitration Agreement, indicating she was agreeable to arbitration.¹ A person who can read is bound to read an agreement before signing it. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 542 S.E.2d 360 (S.C. 2001). There is no evidence in the record that Masters was incapable of understanding the clear language of the arbitration agreement and the fact it would affect her right to a jury trial.²

Plaintiff signed the Arbitration Agreement on two separate occasions. She had ample opportunity to review the documents and confirmed her consent by signing a second time when she entered into a conditional agreement with a new lender.

¹ Plaintiff has not established that the agreement in the present case is an adhesion contract. To establish that a contract is one of adhesion, a party must demonstrate both that the terms are non-negotiable *and* that the contracting party is unwilling to waive enforcement in order to deal. *See Wingard v. Exxon Co.*, 819 F.Supp. 497, 503 (D.S.C. 1992); *see also Lackey*, 330 S.C. at 394. Even if this Court were to find the arbitration agreement was a contract of adhesion, it would not be unconscionable *per se*. *See Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 498 S.E.2d 898 (Ct. App. 1998).

² See Exhibit C, Affidavit of Richard Canova.

The arbitration clause could not be any more conspicuous. It is a stand-alone agreement on a full sheet of paper, allowing all type on the page to be clearly readable. Plaintiff clearly had a meaningful choice in entering into the agreement and the Court should find it enforceable.

B. The Arbitration Agreement does not Contain One-Sided Provisions

Because Masters cannot show a lack of meaningful choice, the Court does not need to address the issue of oppressive terms, as both are needed to find a contract provision unconscionable. Even if this Court were to find a lack of meaningful choice, there are no “terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Simpson v. MSA Myrtle Beach, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663, 668 (2007).

Both the Plaintiff and Kia of Greenville are subject to the same terms in the arbitration agreement, thus there is no lack of mutuality of remedy. Either party can choose arbitration. Both parties retain the right to self-help remedies or to seek remedies in small claims court. The arbitrator will apply the governing substantive law in making any award; therefore, Calhoun will have all remedies otherwise available to her.

CONCLUSION

Plaintiff's causes of action are subject to the Arbitration Agreement. Federal law preempts state law and staying the action to pursue arbitration is the proper remedy. For the foregoing reasons, this Court should compel arbitration and stay the case.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

s/Bradford N. Martin

Bradford N. Martin, Esq. (SC Bar No. 3658)

Laura W. H. Teer, Esq. (SC Bar No. 16698)

BRADFORD NEAL MARTIN & ASSOCIATES, P.A.

Post Office Box 10410

Greenville, South Carolina 29603

(864) 552-9990

(864) 552-9992 Facsimile

**ATTORNEYS FOR KOL, INC. d/b/a KIA OF
GREENVILLE**

August 18, 2017

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04/10/2017

Date

CASEY LEIGH MASTERS

Customer

Customer

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Date

KOL, INC. dba KIA OF GREENVILLE

Dealer

3KPFK4A73HE044214

VIN

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Customer

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VIN

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COUNTY OF GREENVILLE

Case No. 2017-CP-23-03402

Casey Masters,

Plaintiff,

vs.

KOL, Inc. d/b/a Kia of Greenville,

Defendant.

AFFIDAVIT OF RICHARD CANOVA

1. My name is Richard Canova. I am the Finance and Insurance Manager at Kia of Greenville.

2. Plaintiff signed an Arbitration Agreement on April 10, 2017 (Exhibit A).

3. Plaintiff was aware that the purchase of her vehicle was contingent upon approval of financing.

4. I reviewed the documents signed by the Plaintiff with her, including the Arbitration Agreement. Plaintiff had the opportunity to read the Arbitration Agreement and to have any portions of the agreement explained to her.

5. The contingency of financing approval was not met and there was subsequently no contract between the parties for the purchase of the vehicle.

6. The Arbitration Agreement clearly states:

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(Exhibit A).

7. The dealership worked at length with the Plaintiff to obtain financing through another lender. At no time in my interactions with the Plaintiff did she seem incapable of understanding any paperwork.

8. Plaintiff did not state that she was under a doctor's care or unable to understand the transaction or the documents she was signing.

9. Plaintiff was given adequate time to review the documents before signing and would have been given additional time is requested.

10. If the Plaintiff had questions regarding any of the paperwork she signed, I would have answered those questions or brought in another manager to answer any questions.

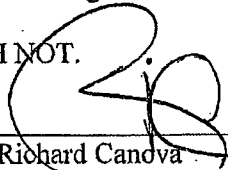
11. Plaintiff was not pressured to sign the arbitration agreement or any other paperwork related to the 2017 Forte.

12. Plaintiff signed a second Arbitration Agreement on June 2, 2017 in connection with the conditional purchase of the Forte through a new lender. (Exhibit B)

13. Kia of Greenville was able to get the Plaintiff financed with a different lender.

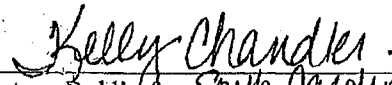
14. Plaintiff signed the Arbitration Agreement after negotiating and accepting a price to be paid for the subject vehicle. Plaintiff was free to shop different dealers for a vehicle and was free to reject the deal prior to entering into a contract with Kia of Greenville.

THE AFFIANT FURTHER SAYETH NOT.


Richard Candva

AFFIRMED THIS

11th day of August, 2017.


Notary Public for South Carolina
My Commission Expires: May 20, 2019

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You and we retain any rights to self-help remedies, such as repossession. You and we retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Neither you nor we waive the right to arbitrate by using self-help remedies or filing suit. You and we retain any rights to bring an action individually to obtain provisional or ancillary remedies or injunctive relief (other than a stay of arbitration) to protect the rights or property of the party seeking such relief. However, the arbitrator(s) shall have the power to vacate and/or stay any such proceedings or orders granting provisional or ancillary remedies or injunctive relief, upon application by Dealer or Customer.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the Policies and Procedures. The arbitrator shall apply governing substantive law in making an award, but may not add to, modify, invalidate or ignore any provision of the Agreement or the Policies and Procedures. The arbitration hearing shall be conducted in the federal district where this Arbitration Agreement was executed. The party filing arbitration shall pay a \$250 filing fee. We will advance any additional administration, arbitration, or hearing fee up to a maximum of \$1,500, which may be reimbursed by decision of the arbitrator at the arbitrator's discretion. Thereafter, each party shall share equally in any administration, arbitration, or hearing fee. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. The arbitrator's award shall be final and binding on all parties, except that in the event the arbitrator's award for a party is \$0 or against a party is in excess of \$100,000 or includes an award of injunctive relief against a party, that party may request a new arbitration under the Policies and Procedures. The appealing party requesting new arbitration shall be responsible for any filing fee and other arbitration costs subject to a final determination by the arbitrator(s) of a fair apportionment of costs. Any court having jurisdiction may enter judgment on the arbitrator's award.

If any provision of this Agreement is determined to be unenforceable other than the waiver of the right to participate in a class or consolidated arbitration, then the remainder shall be given full force and effect. This Agreement shall survive the termination of any and all of Customer's business with Dealer. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, is agreed to be the last Agreement entered into with respect to its subject matter, and supersedes all prior discussions, arrangements, negotiations and other communications, if any, on dispute resolution.

04/10/2017

Date

CASEY LEIGH MASTERS

Customer

Customer

04/10/2017

Date

KOL INC. dba KIA OF GREENVILLE

Dealer

3KPEK4A73HE044214

VIN

ARBITRATION AGREEMENT**PLEASE REVIEW-IMPORTANT-AFFECTS YOUR LEGAL RIGHTS**

1. BOTH THE DEALER AND CUSTOMER(S) SHALL HAVE THE RIGHT TO HAVE ANY DISPUTE BETWEEN THEM DECIDED IN ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.
2. YOU AGREE TO GIVE UP THE RIGHT TO PARTICIPATE AS A PRIVATE ATTORNEY GENERAL, CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT.
4. THE AGREEMENT SUPERSEDES ALL PRIOR DISCUSSIONS, ARRANGEMENTS, NEGOTIATIONS AND OTHER COMMUNICATIONS, IF ANY, ON DISPUTE RESOLUTION.

In this Arbitration Agreement, "Customer," "you," and "your" refers to the customer(s) signing below. "Dealer," "we," "us," and "our" refer to the Dealer signing below as well as any other affiliated entity, parent or subsidiary, their successors and assigns and all of their owners, shareholders, managers and agents, and anyone to whom the Dealer assigns this Arbitration Agreement. You agree that Dealer's Policies and Procedures govern any arbitration between the parties. A copy of the Policies and Procedures is available upon request.

Any claim, counterclaim, third party claim, cross-claim, dispute or controversy between Dealer and Customer, as well as between Customer and Dealer's employees, agents, affiliate companies or persons, successors and assigns, whether in contract, tort or otherwise, which arise out of or relate to Customer's credit application, purchase, lease, financing, condition of the vehicle, or any resulting transaction or relationship (including any such relationship with third parties who do not sign your purchase or finance contract), or the validity, enforceability, or scope of this Agreement, shall be resolved by neutral, binding arbitration. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Agreement shall not apply to such claim or dispute. This Agreement evidences a "transaction involving commerce" under the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16 and shall be governed by the FAA. If and only if the FAA does not apply, then by any applicable state law concerning arbitration. You agree that there will be no right to participate as a class or group representative, private attorney general, or class or group member of any class or group claim against Dealer, including any right to class or group arbitration or any consolidation of individual arbitrations.

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If any provision of this Agreement is determined to be unenforceable other than the waiver of the right to participate in a class or consolidated arbitration, then the remainder shall be given full force and effect. This Agreement shall survive the termination of any and all of Customer's business with Dealer. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, is agreed to be the last Agreement entered into with respect to its subject matter, and supercedes all prior discussions, arrangements, negotiations and other communications, if any, on dispute resolution.

06/02/2017
Date

CASEY LEIGH MASTERS
Customer

Customer

06/02/2017
Date

KOL, INC. dba KIA OF GREENVILLE
Dealer

3KPFK4A73HE044214
VIN

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

Case No. 2017-CP-23-03402

Casey Masters,

Plaintiff,

**SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF KOL, INC. d/b/a KIA OF
GREENVILLE'S
MOTION TO STAY AND
TO COMPEL ARBITRATION**

vs.

KOL, Inc. d/b/a Kia of Greenville,

Defendant.

Defendant KOL, Inc. d/b/a Kia of Greenville ("Kia of Greenville") hereby submits its Supplemental Memorandum in Support of its Motion to Stay and Compel Arbitration:

INTRODUCTION

Every day in America thousands of people enter into agreements to buy cars. If they cannot pay cash for the car, they may enter into a conditional agreement, based upon approval of financing. The Plaintiff requested to finance her car with Kia of Greenville and entered into a conditional Purchase Order for a 2017 Kia Forte, allowing her to drive the car until her financing was approved. She also agreed to return the car if it was not.

The conditional Purchase Order states in bold, underlined, capitalized letters at the top of the page that it is subject to arbitration. (Exhibit A) This same text informed Plaintiff that the arbitration would be governed by the Dealership's Policies and Procedures.

Because Plaintiff requested to finance the purchase of the Forte, she then signed a Retail Installment Sales Contract. The Retail Installment Sales Agreement stated that it could be modified in writing. Finally, Plaintiff signed an Arbitration Agreement. The Arbitration Agreement modified any prior documents to include arbitration. See *U.S. Bank Trustee Nat'l*

Ass'n v. Bell, 385 S.C. 364, 374, 684 S.E.2d 199, 204 (Ct. App. 2009) (stating a contract can be modified by another contract that includes a meeting of the minds on essential terms). Plaintiff was again informed in the Arbitration Agreement that it was subject to the Dealership's Policies and Procedures. Plaintiff had the opportunity to request a copy of the Policies and Procedures prior to signing any agreement.

The stand-alone document entitled "Arbitration Agreement" stated, in capital letters:

PLEASE REVIEW – IMPORTANT- AFFECTS YOUR LEGAL RIGHTS

1. BOTH THE DEALER AND CUSTOMER(S) SHALL HAVE THE RIGHT TO HAVE ANY DISPUTE BETWEEN THEM DECIDED IN ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.

(Exhibits B and C)

Kia of Greenville allowed Masters to take conditional delivery of the Forte based on the income she claims she made. Crescent Bank gave preliminary approval based on her representation but required proof of income. Plaintiff failed to disclose that her paycheck had child support payments being deducted; when the bank found out, financing could not be obtained.

Kia of Greenville continued to work with the Plaintiff and was able to eventually obtain financing for the Forte through another lender, Global Lending, at which time Plaintiff signed a new Purchase Order, which again stated that it was subject to arbitration. (Exhibit D). She also signed a new Arbitration Agreement. Despite having worked with Plaintiff for two months to get her financed in the car of her choice, Plaintiff has brought suit against Kia of Greenville.

Plaintiff is asking this Court to ignore the four documents she signed agreeing to arbitrate any disputes with Kia of Greenville. The claims asserted by Plaintiff are expressly covered by the terms of the Arbitration Agreement. Thus, Kia of Greenville requests this case be stayed and Plaintiff compelled to arbitration.

ARGUMENT

I. The Parties Entered into an Arbitration Agreement, therefore, this Court Lacks Jurisdiction over the Matter.

The parties contractually agreed that any dispute arising out of the purchase of the Forte from Kia of Greenville would be subject to the Federal Arbitration Act. Plaintiff signed the Arbitration Agreement, thereby agreeing to arbitrate “any claim . . . between Dealer and Customer.” Plaintiff’s Complaint alleges twelve causes of action against Kia of Greenville that all arise out of the purchase of the Forte.

The parties clearly contemplated this action would be subject to arbitration. The sale of automobiles is considered commerce sufficient for the FAA to apply. *See Saturn Distribution Corp. v. Williams*, 905 F.2d 719 (4th Cir. 1990). Therefore, federal law preempts state law and requires staying the action to pursue arbitration. *See AT&T Mobility v. Concepcion*, 563 U.S. 333, 131 S.Ct. 1740, 179 L.Ed.2d 742 (2011) (The FAA preempts state law rules and holdings that invalidate the parties’ agreement to arbitrate).

II. The Law Strongly Favors Arbitration.

There is a strong presumption in favor of the validity of arbitration agreements, because both federal and state laws favor them. *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983); *Carolina Care Plan, Inc. v. United Healthcare Servs., Inc.*, 361 S.C. 544, 606 S.E.2d 752 (2004).

The agreement states that it involves interstate commerce and it is subject to the Federal Arbitration Act (“FAA”) (9 U.S.C. § 1 *et seq.*), which preempts state law. The purpose of the Federal Arbitration Act “was to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law and has been adopted by American courts, and to place arbitration agreements upon the same footing as other contracts.” *Gilmer v.*

Interstate/Johnson Lane Corp., 500 U.S. 20, 24, 111 S.Ct. 1647, 114 L.Ed.2d 26 (1991).

"[Q]uestions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration." *Gilmer*, 500 U.S. at 26. To the extent any state law prohibits the agreement between the parties; it is preempted by the FAA. *AT&T Mobility v. Concepcion*, 563 U.S. 333 (2011).

III. The Arbitration Agreement is Enforceable

A. Plaintiff had a Meaningful Choice

Plaintiff had a meaningful choice. Plaintiff voluntarily signed the stand-alone Arbitration Agreement, indicating she was agreeable to arbitration.¹ A person who can read is bound to read an agreement before signing it. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 542 S.E.2d 360 (S.C. 2001). There is no evidence in the record that Masters did not have a meaningful choice when she entered in the Arbitration Agreement.

Plaintiff signed the Buyers Order and Arbitration Agreement on two separate occasions. She had ample opportunity to review the documents and confirmed her consent by signing a second time when she entered into a conditional agreement with a new lender. Plaintiff also had ample opportunity between the time she signed the first Arbitration Agreement in April and when she signed the second Arbitration Agreement in June to request the Arbitration Policies and Procedures.

The arbitration clause could not be any more conspicuous. Plaintiff was alerted to the Arbitration Agreement by a bold, capitalized, underlined statement at the top of the Purchase

¹ Plaintiff has not established that the agreement in the present case is an adhesion contract. To establish that a contract is one of adhesion, a party must demonstrate both that the terms are non-negotiable and that the contracting party is unwilling to waive enforcement in order to deal. See *Wingard v. Exxon Co.*, 819 F. Supp. 497, 503 (D.S.C. 1992); see also *Lackey*, 330 S.C. at 394. Even if this Court were to find the arbitration agreement was a contract of adhesion, it would not be unconscionable *per se*. See *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 498 S.E.2d 898 (Ct. App. 1998). Additionally, for an arbitration agreement to be voided as a contract of adhesion, there must be a showing of unfairness, undue oppression, or unconscionability. *Hooters of Am., Inc. v. Phillips*, 39 F.Supp.2d 582, 614 (D.S.C. 1998)

Order. She then separately signed a stand-alone agreement on a full sheet of paper, allowing all type on the page to be clearly readable. Plaintiff clearly had a meaningful choice in entering into the agreement and the Court should find it enforceable.

B. The Arbitration Agreement does not Contain One-Sided Provisions

Because Masters cannot show a lack of meaningful choice, the Court does not need to address the issue of oppressive terms, as both are needed to find a contract provision unconscionable. Even if this Court were to find a lack of meaningful choice, there are no "terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Simpson v. MSA Myrtle Beach, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663, 668 (2007).

Both the Plaintiff and Kia of Greenville are subject to the same terms in the arbitration agreement, thus there is no lack of mutuality of remedy. Either party can choose arbitration. Both parties retain the right to self-help remedies or to seek remedies in small claims court. See *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67 (S.C. Ct. App. Sept. 4, 2013) (finding mutuality where the arbitration agreement preserved certain self-help remedies for both parties).

The arbitrator will apply the governing substantive law in making any award; therefore, Masters will have all remedies otherwise available to her. The Policies and Procedures also allow mutuality of remedies. (Exhibit E) "There is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy is simply to ensure the enforceability, according to their terms, of private agreements to arbitrate." *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 476, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989). An Agreement to Arbitrate is enforceable and valid despite the fact that it does not establish a specific set of applicable rules and procedures. See *Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 89-92 (2000) (holding that an arbitration agreement's failure to designate a particular

controlling arbitration association, which resulted in a silence with respect to costs and fees, did not render the agreement unenforceable); *Sydnor v. Conseco Fin. Servicing Corp.*, 252 F.3d 302, 306 (4th Cir. 2001)(holding that "the district court erred in finding that the arbitration agreement was unconscionable because of unknown cost, fees, and procedures").

Objections to the nature of arbitral proceedings are generally for the arbitrator to decide. Only after arbitration may a party then raise a challenge to the procedures if they meet the narrow grounds set out in 9 U.S.C. § 10 for vacating an arbitral award. *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 941 (4th Cir. S.C. Apr. 8, 1999).

CONCLUSION

Plaintiff's causes of action are subject to the Arbitration Agreement. Federal law preempts state law and staying the action to pursue arbitration is the proper remedy. For the foregoing reasons, this Court should compel arbitration and stay the case.

Respectfully submitted,

s/Bradford N. Martin

Bradford N. Martin, Esq. (SC Bar No. 3658)

Laura W. H. Teer, Esq. (SC Bar No. 16698)

BRADFORD NEAL MARTIN & ASSOCIATES, P.A.

Post Office Box 10410

Greenville, South Carolina 29603

(864) 552-9990

(864) 552-9992 Facsimile

**ATTORNEYS FOR KOL, INC. d/b/a KIA OF
GREENVILLE**

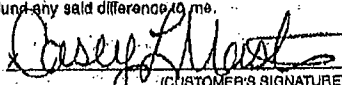
August 22, 2017

NOTICE: THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT ("FAA") 9 U.S.C. § 1, ET SEQ., OR IF AND ONLY IF THE FAA DOES NOT APPLY, THEN PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, S.C. CODE ANN. § 15-48-10, ET SEQ. THE TERMS AND CONDITIONS OF ARBITRATION ARE CONTAINED IN THE DEALERSHIP'S ARBITRATION POLICIES AND PROCEDURES.

CUSTOMER'S PURCHASE ORDER AND AGREEMENT

6420

Salesman **RODNEY HIGGINS** Customer No. **8649052746** Date **04/10/2017**
 Customer **CASEY LEIGH MASTERS** DOB **[REDACTED]** Driver's License # **[REDACTED]**
 Co-Customer **[REDACTED]** DOB **[REDACTED]** Driver's License # **[REDACTED]**
 Address **[REDACTED]** City **GREENVILLE** State **SC** Zip **29605**
 Resident Phone **864/[REDACTED]** Country **GREENVILLE** Business Phone **864/908-2746**
 Please Enter My Order for the following: ☒ New ☐ Demo
 Vehicle **KIA** Model **FORTE** Body Type **SD** Year **2017** Stock # **20725**
 Color **CLEAR WHITE** ID# **3K9FK4A73HE044214** Mileage **16** Key # **WD180**

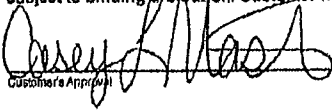
USED CAR TRADE-IN AND/OR OTHER CREDITS																	
MAKE	MODEL		TYPE		VEHICLE PRICE							21049.00					
CHEVROLET	CAVALIER		SD		DEALER INSTALLED OPTIONS:												
CYL	YEAR	MILEAGE ON TRADE		2	0	2	9	4	3								
VEH. I.D. NO.	1	G	1	J	F	5	2	4	2	2	7	1	5	0	9	4	0
AUTOMOBILE BILL OF SALE																	
As part of this agreement, I hereby sell and convey to Dealer the above-described vehicle of which I am sole owner and warrant said vehicle to be free and clear of all liens and encumbrances except those listed stated below. Furthermore, I understand that if the lien amount(s) or "Payoff" is greater than what is listed below I will be responsible for any such difference. The difference shall be paid within days of the sales date listed herein. If the lien amount or "Payoff" is less than what is listed below, I understand that the lien holder(s) will be responsible to refund any said difference to me.																	
 (CUSTOMER'S SIGNATURE)																	
PAYOFF TO: TITLE MAX																	
AMOUNT: 700.00																	
CLOSING FEE: Dealer charges a Closing Fee in the amount of \$175. It is a charge that is permitted but not required by law. The full cash price charged at any dealership depends on many factors, including all products and services bought with the vehicle.																	
☐ NEGATIVE EQUITY: If the Pay-off Balance on your trade-in exceeds the Trade Allowance from the Dealer, the excess amount, or "negative equity," must be either paid by you in cash or financed with your purchase. If financed with your purchase, the amount of any negative equity will be included in the Amount Financed and subject to Finance Charge under the Retail Installment Contract.																	
X _____ Initials																	
X N/A Initials																	
PRICE WITH OPTIONS:												21049.00					
TRADE ALLOWANCE:												5149.00					
NET DIFFERENCE:												15900.00					
CLOSING FEE:												399.00					
SUB TOTAL:												16299.00					
SALES TAX:												300.00					
TOTAL PRICE OF VEHICLE:												16599.00					
PAY-OFF BALANCE: CUSTOMER												700.00					
TITLE, LICENSE & REGISTRATION:												39.00					
SERVICE CONTRACT												1995.00					
LESS REBATE OF:												2500.00					
TOTAL:												16333.00					
CASH ON DELIVERY:												500.00					
BALANCE:												16333.00					

- DEFINITIONS.** As used in this Purchase Order, the terms (a) "Dealer," "Seller," "we," "us," and "our" shall mean the Dealer which is named on the Purchase Order, which shall become a party to this Agreement only when an authorized representative of the Dealer signs the Purchase Order; and (b) "Customer," "Customers," "Co-Customer," "You," and "Your" refers to the customer(s) signing below.
- This Customer's Lease Order is hereby entered into by and between the Customer and **KOL, INC. dba KIA OF GREENVILLE** ("Dealer"). Customer(s) has(have) read and understand(s) the terms, conditions, and disclosures set forth in this Purchase Order. This Purchase Order represents the final agreement between the parties related to the sale of the vehicle and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. Any Retail Installment Contract or other document executed by Customer in connection herewith is simply a means of satisfying Customer's obligations under this Purchase Order. The terms of this Agreement may be modified only in writing signed by the Customer and an authorized representative of Dealer. The interpretation and enforcement of this Purchase Order shall be governed by the laws of South Carolina, except as to arbitration, which shall be governed by the FAA.
- LIMITATIONS OF WARRANTY.** If You are purchasing a new vehicle then You will receive a warranty from the manufacturer. If You are purchasing a used vehicle, there may or may not be a manufacturer's warranty applicable to the vehicle. In either event, Dealer makes no warranties express or implied regarding the vehicle (new or used), and with respect to the vehicle (new or used). **UNLESS DEALER FURNISHES CUSTOMER WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY EXCLUDES ALL EXPRESS WARRANTIES, IMPLIED WARRANTIES OF MERCHANTABILITY, OR IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.** This disclaimer in no way affects the provision of the manufacturer's warranties or any specified used car warranty. Customer acknowledges receipt of any warranty information prior to the sale of the vehicle.
- To the extent allowed by law, Customer shall not be entitled to recover from the Dealer any consequential damages, damages to property, damages from loss of use, loss of time, loss of profits or income, or any other incidental damages.
- USED VEHICLES ONLY.** If You are purchasing a used vehicle, the Dealer is providing You a three (3) day guarantee on the purchase of the used vehicle described herein. Within three (3) calendar days from the date the vehicle is delivered to You, whether upon consummation of the purchase of the vehicle or pursuant to a conditional delivery as described herein, You may return the vehicle to the Dealer for any reason. If You choose to do so, the Dealer will apply 100% of the money previously paid by You toward the purchase of another vehicle. You must choose a replacement vehicle from the current "in stock" vehicle selection within seven (7) days of returning the used vehicle. This guarantee is contingent upon return of the vehicle described above in the same condition as delivered to You. If the original purchase was financed, this guarantee is also contingent upon Your obtaining financing for the purchase of the replacement vehicle. The used car that You are agreeing to purchase may have sustained damage prior to the time the Dealer took possession of it, and the Dealer makes no warranties as to its condition aside from those on the vehicle's window form. You acknowledge that You have the opportunity to examine the vehicle and/or to take the vehicle to be examined by anyone of your choosing prior to executing this Customer's Purchase Order.

Purchase Order, assigned to the Dealer. If this Purchase Order shows a discount or credit based on Customer's relationship with the Manufacturer, Customer must furnish Dealer with all necessary documentation, information, verification, and certificates.

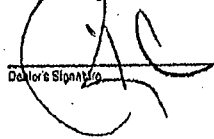
16. Customer(s) acknowledge(s) no one at the dealership has coerced them to provide false information.
17. THE DEALER EARNS OR RETAINS A FEE FOR ANY ADDITIONAL GOODS/SERVICES THAT THE DEALER OBTAINS ON YOUR BEHALF FROM ANY THIRD PARTY.
18. **SEVERABILITY AND SURVIVAL.** If any portion of this Agreement is determined to be unenforceable, then the remainder shall be given full force and effect. The Parties agree that this Agreement may not be amended or modified in any respect except in writing.

Customer hereby acknowledges that he/she has thoroughly read this Purchase Order, understands and agrees with its terms, including the fact this agreement is subject to binding arbitration. Customer has received a completely filled in copy of this order and agreement.



Customer's Approval

04/10/2017
Approval Date



Dealer's Signature

04/10/2017
Dealer's Approval Date

Customer's Approval

N/A

Approval Date

ARBITRATION AGREEMENT**PLEASE REVIEW-IMPORTANT-AFFECTS YOUR LEGAL RIGHTS**

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Any claim, counterclaim, third party claim, cross-claim, dispute or controversy between Dealer and Customer, as well as between Customer and Dealer's employees, agents, affiliate companies or persons, successors and assigns, whether in contract, tort or otherwise, which arise out of or relate to Customer's credit application, purchase, lease, financing, condition of the vehicle, or any resulting transaction or relationship (including any such relationship with third parties who do not sign your purchase or finance contract), or the validity, enforceability, or scope of this Agreement, shall be resolved by neutral, binding arbitration. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Agreement shall not apply to such claim or dispute. This Agreement evidences a "transaction involving commerce" under the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16 and shall be governed by the FAA. If and only if the FAA does not apply, then by any applicable state law concerning arbitration. You agree that there will be no right to participate as a class or group representative, private attorney general, or class or group member of any class or group claim against Dealer, including any right to class or group arbitration or any consolidation of individual arbitrations.

You and we retain any rights to self-help remedies, such as repossession. You and we retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Neither you nor we waive the right to arbitrate by using self-help remedies or filing suit. You and we retain any rights to bring an action individually to obtain provisional or ancillary remedies or injunctive relief (other than a stay of arbitration) to protect the rights or property of the party seeking such relief. However, the arbitrator(s) shall have the power to vacate and/or stay any such proceedings or orders granting provisional or ancillary remedies or injunctive relief, upon application by Dealer or Customer.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the Policies and Procedures. The arbitrator shall apply governing substantive law in making an award, but may not add to, modify, invalidate or ignore any provision of the Agreement or the Policies and Procedures. The arbitration hearing shall be conducted in the federal district where this Arbitration Agreement was executed. The party filing arbitration shall pay a \$250 filing fee. We will advance any additional administration, arbitration, or hearing fee up to a maximum of \$1,500, which may be reimbursed by decision of the arbitrator at the arbitrator's discretion. Thereafter, each party shall share equally in any administration, arbitration, or hearing fee. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. The arbitrator's award shall be final and binding on all parties, except that in the event the arbitrator's award for a party is \$0 or against a party is in excess of \$100,000 or includes an award of injunctive relief against a party, that party may request a new arbitration under the Policies and Procedures. The appealing party requesting new arbitration shall be responsible for any filing fee and other arbitration costs subject to a final determination by the arbitrator(s) of a fair apportionment of costs. Any court having jurisdiction may enter judgment on the arbitrator's award.

If any provision of this Agreement is determined to be unenforceable other than the waiver of the right to participate in a class or consolidated arbitration, then the remainder shall be given full force and effect. This Agreement shall survive the termination of any and all of Customer's business with Dealer. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, is agreed to be the last Agreement entered into with respect to its subject matter, and supersedes all prior discussions, arrangements, negotiations and other communications, if any, on dispute resolution.

04/10/2017
Date

CASEY LEIGH MASTERS
Customer

Customer

04/10/2017
Date

KOL INC. dba KIA OF GREENVILLE
Dealer

3KPEK4A73HE044214
VIN

ARBITRATION AGREEMENT**PLEASE REVIEW-IMPORTANT-AFFECTS YOUR LEGAL RIGHTS**

1. BOTH THE DEALER AND CUSTOMER(S) SHALL HAVE THE RIGHT TO HAVE ANY DISPUTE BETWEEN THEM DECIDED IN ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.
2. YOU AGREE TO GIVE UP THE RIGHT TO PARTICIPATE AS A PRIVATE ATTORNEY GENERAL, CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT.
4. THE AGREEMENT SUPERSEDES ALL PRIOR DISCUSSIONS, ARRANGEMENTS, NEGOTIATIONS AND OTHER COMMUNICATIONS, IF ANY, ON DISPUTE RESOLUTION.

In this Arbitration Agreement, "Customer," "you," and "your" refers to the customer(s) signing below. "Dealer," "we," "us," and "our" refer to the Dealer signing below as well as any other affiliated entity, parent or subsidiary, their successors and assigns and all of their owners, shareholders, managers and agents, and anyone to whom the Dealer assigns this Arbitration Agreement. You agree that Dealer's Policies and Procedures govern any arbitration between the parties. A copy of the Policies and Procedures is available upon request.

Any claim, counterclaim, third party claim, cross-claim, dispute or controversy between Dealer and Customer, as well as between Customer and Dealer's employees, agents, affiliate companies or persons, successors and assigns, whether in contract, tort or otherwise, which arise out of or relate to Customer's credit application, purchase, lease, financing, condition of the vehicle, or any resulting transaction or relationship (including any such relationship with third parties who do not sign your purchase or finance contract), or the validity, enforceability, or scope of this Agreement, shall be resolved by neutral, binding arbitration. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Agreement shall not apply to such claim or dispute. This Agreement evidences a "transaction involving commerce" under the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16 and shall be governed by the FAA. If and only if the FAA does not apply, then by any applicable state law concerning arbitration. You agree that there will be no right to participate as a class or group representative, private attorney general, or class or group member of any class or group claim against Dealer, including any right to class or group arbitration or any consolidation of individual arbitrations.

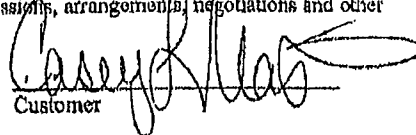
You and we retain any rights to self-help remedies, such as repossession. You and we retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Neither you nor we waive the right to arbitrate by using self-help remedies or filing suit. You and we retain any rights to bring an action individually to obtain provisional or ancillary remedies or injunctive relief (other than a stay of arbitration) to protect the rights or property of the party seeking such relief. However, the arbitrator(s) shall have the power to vacate and/or stay any such proceedings or orders granting provisional or ancillary remedies or injunctive relief, upon application by Dealer or Customer.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the Policies and Procedures. The arbitrator shall apply governing substantive law in making an award, but may not add to, modify, invalidate or ignore any provision of the Agreement or the Policies and Procedures. The arbitration hearing shall be conducted in the federal district where this Arbitration Agreement was executed. The party filing arbitration shall pay a \$250 filing fee. We will advance any additional administration, arbitration, or hearing fee up to a maximum of \$1,500, which may be reimbursed by decision of the arbitrator at the arbitrator's discretion. Thereafter, each party shall share equally in any administration, arbitration, or hearing fee. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. The arbitrator's award shall be final and binding on all parties, except that in the event the arbitrator's award for a party is \$0 or against a party is in excess of \$100,000 or includes an award of injunctive relief against a party, that party may request a new arbitration under the Policies and Procedures. The appealing party requesting new arbitration shall be responsible for any filing fee and other arbitration costs subject to a final determination by the arbitrator(s) of a fair apportionment of costs. Any court having jurisdiction may enter judgment on the arbitrator's award.

If any provision of this Agreement is determined to be unenforceable other than the waiver of the right to participate in a class or consolidated arbitration, then the remainder shall be given full force and effect. This Agreement shall survive the termination of any and all of Customer's business with Dealer. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, is agreed to be the last Agreement entered into with respect to its subject matter, and supersedes all prior discussions, arrangements, negotiations and other communications, if any, on dispute resolution.

06/02/2017
Date

CASEY LEIGH MASTERS
Customer


Customer

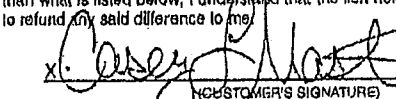
06/02/2017
Date

KOL, INC. dba KIA OF GREENVILLE
Dealer

3KPEK4A73HE044214
VIN

CUSTOMER'S PURCHASE ORDER AND AGREEMENT

6725

USED CAR TRADE-IN AND/OR OTHER CREDITS														
MAKE		MODEL		TYPE		VEHICLE PRICE								
CHEVROLET		CAVALIER		SD		15456		00						
YEAR 2002		MILEAGE ON TRADE		2 0 4 9 9 8		DEALER INSTALLED OPTIONS:								
VEH. I.D. NO.		1 Q 1 J F 5 2 4 2 2 7 1 5 0 9 4 0												
AUTOMOBILE BILL OF SALE														
As part of this agreement, I hereby sell and convey to Dealer the above-described vehicle of which I am sole owner and warrant said vehicle to be free and clear of all liens and encumbrances except those listed stated below. Furthermore, I understand that if the lien amount(s) or "Payoff" is greater than what is listed below I will be responsible for any such difference. The difference shall be paid within days of the sales date listed herein. If the lien amount or "Payoff" is less than what is listed below, I understand that the lien holder(s) will be responsible to refund any said difference to me.														
 (CUSTOMER'S SIGNATURE)														
PAYOFF TO: TITLE MAX														
AMOUNT: 700.00														
CLOSING FEE. Dealer charges a Closing Fee in the amount of \$175. It is a charge that is permitted but not required by law. The full cash price charged at any dealership depends on many factors, including all products and services bought with the vehicle.														
☐ NEGATIVE EQUITY: If the Pay-off Balance on your trade-in exceeds the Trade Allowance from the Dealer, the excess amount, or "negative equity" must be either paid by you in cash, or financed with your purchase. If financed with your purchase, the amount of any negative equity will be included in the Amount Financed and subject to Finance Charge under the Retail Installment Contract.														
X _____ Initials X _____ N/A Initials														
SUB TOTAL:		14155 00												
SALES TAX:		300 00												
TOTAL PRICE OF VEHICLE:		14455 00												
PAY-OFF BALANCE: CUSTOMER		700 00												
TITLE, LICENSE & REGISTRATION:		39 00												
SERVICE CONTRACT		1995 00												
LESS REBATE OF:		2500 00												
TOTAL:		14689 00												
CASH ON DELIVERY:		500 00												
BALANCE:		14189 00												

- 49350*1*KOL-FI
46

6. You acknowledge that You have the opportunity to examine the vehicle and/or to take the vehicle to be examined by anyone of your choosing prior to executing this Customer's Purchase Order.

7. Used Car Buyers Guide. The information You see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

8. You have thoroughly inspected, accepted, reviewed any history reports requested, and approved the vehicle described above in all respects. You may obtain an independent third-party inspection of the vehicle on Your own. YOU AGREE THAT YOU ARE NOT RELYING ON ANY STATEMENT MADE BY ANYONE AT THE DEALERSHIP AS TO THE CONDITION OR DAMAGE TO THE VEHICLE PRIOR TO COMING INTO THE POSSESSION OF THE DEALERSHIP.

[Signature] N/A
Buyer's Initials Co-Buyer's Initials

9. Note: This vehicle may have been delivered to a previous customer.

[Signature] N/A
Buyer's Initials Co-Buyer's Initials

10. EXTENDED SERVICE AGREEMENTS AND/OR MAINTENANCE CONTRACT. If You have agreed to purchase an extended service agreement and/or maintenance contract for Your vehicle (the terms of which are contained in a separate contract), You acknowledge and agree that the purchase of such contract(s) is optional and You have made such purchase(s) voluntarily. Unless paid in cash by You, the cost of such contract(s) will be included in the Amount Financed and subject to a Finance Charge under the Retail Installment Sales Contract. The Dealer earns or retains a portion of the cost of the contract as a commission from the extended service agreement and/or maintenance contract company, which is based on the type of coverage that You buy. Please refer to the separate service agreement and/or maintenance contract for the specific coverage, and terms and conditions of such agreement/contract.

11. GAP INSURANCE. If You have agreed to purchase Gap Insurance (the terms of which are contained in the insurance policy), You acknowledge and agree that the purchase of this insurance is optional and that You have made such purchase voluntarily. Further, You acknowledge that such Gap Insurance is not a policy for physical damage insurance for Your benefit, but it is intended for the benefit of the lender who provides financing for the purchase of the vehicle in the event that the amount of insurance paid for the total loss of the vehicle is less than the loan balance due from You under the Retail Installment Sales Contract. The premium for such insurance will be included in the Amount Financed and subject to a Finance Charge under the Retail Installment Sales Contract. The Dealer earns or retains a portion of the premium to be paid by You as its commission from the insurance company, which is based on the amount and type of insurance that You buy. Please refer to the insurance policy for the specific coverages, and terms and conditions of such insurance.

12. FINANCING.

- Unless You are paying cash for this vehicle or are arranging financing on Your own, You acknowledge and agree that You will enter into a Retail Installment Sales Contract which the Dealer intends to sell or assign to an independent third-party lending institution.
- You may secure financing through us or through any financing entity You choose. The financing terms You get could be more favorable than the terms we give You.
- If we sell You any ancillary products, such as an extended service plan, pre-paid maintenance or GAP insurance, we may receive part of the cost of the product and/or other compensation from the provider of the product.
- The Annual Percentage Rate in a Retail Installment Sales Contract may be negotiable with the Dealer. The Dealer may assign any Retail Installment Sales Contract to a finance source and retain its right to receive a part of the finance charge imposed on that contract.
- The Dealer may be paid an assignment fee by the third-party lending institution. The fee may be a set amount or it may be a yield spread representing the difference between the Dealer's discounted interest rate and the Customer's rate of interest.
- The Dealer may sell or assign the Retail Installment Sales Contract at a discount or for an amount less than the purchase price of the vehicle.
- You acknowledge and represent that You were never offered the vehicle at a price lower than that reflected in the Retail Installment Sales Contract.

13. DEALER'S RIGHT TO CANCEL - CONDITIONAL DELIVERY AGREEMENT

If You sign here, the provisions of the Dealer's Right to Cancel, which gives the Dealer the right to cancel if Dealer is unable to assign the Retail Installment Sales Contract signed with this Purchase Order, will apply. The right to cancel this Purchase Order will end when a third-party lending institution purchases the Retail Installment Sales Contract or on the date that is 60 days after the date of this Purchase Order, whichever occurs earlier.

[Signature] 06/02/2017 N/A
Customer's Approval Date Customer's Approval Date

You acknowledge and agree that the Dealer is permitting You to take conditional delivery and possession of the vehicle prior to the actual lease, subject to the following:

- You have been advised and understand that the purchase of the vehicle described herein is contingent upon (a) Your entering into a Retail Installment Sales Contract, and (b) the Dealer assigning or selling Your Retail Installment Sales Contract to a third party lending institution on terms and conditions acceptable to the Dealer;
- The Dealer agrees to "conditionally deliver" or place the vehicle in Your temporary possession and control, with the understanding and agreement that You will fully cooperate with the Dealer in attempting to sell or assign Your Retail Installment Sales Contract to a third party lending institution, including providing the lending institution(s) with any credit application submissions, documentation, proof of income, or other materials they may require;
- You represent and warrant that all material statements made in Your credit application are true and correct and contain Your entire credit history, and in consideration thereof and in reliance upon the truth and accuracy of Your credit application, the Dealer makes such conditional delivery of the vehicle to You. Any material misrepresentation in the credit application or any other related documents entitles the Dealer to cancel the conditional sale and delivery of the vehicle, or Dealer may, at its option, declare the entire balance due under the Purchase Order immediately due and payable;
- You acknowledge no one at the dealership has coerced you to provide false information;
- Customer(s) has (have) simultaneously with execution of the within contract, furnished to the dealer a credit application, in which application the customer represents and warrants that the said application contains the customer's entire credit history and that the information therein contained is true, correct and accurate. You agree, as an inducement to the Dealer to make immediate delivery of the automobile described in the within contract, prior to the ability of the Dealer to verify the truth and accuracy of the information contained in Your credit application, and in consideration of the Dealer making immediate delivery thereof, that if any of the information furnished to the Dealer is found to be false or untrue, You shall be considered to be in default under the contract and the Dealer may, at its option, declare the entire balance due under the Purchase Order immediately due and payable. Customer(s) acknowledge(s) no one at the dealership has coerced them to provide false information;
- In the event that, even though Your credit information is found to be accurate, true and correct, for any reason the sale or assignment of Your Retail Installment Sales Contract by the Dealer to a third-party lending institution is not completed, then the Dealer shall have the right to cancel the sale of the vehicle to You. Further, You agree that You will return the vehicle in its original condition to the Dealer within forty-eight (48) hours upon any notice, written or oral, that the Dealer has been unable to sell or assign Your Retail Installment Sales Contract;
- If You fail to return the vehicle within forty-eight (48) hours after receipt of the notice of cancellation, You agree Dealer may charge a fee of \$35.00 per day from the date of cancellation until the vehicle is returned or repossessed;
- Dealer shall return Your deposit and whatever trade-in vehicle that You gave to the Dealer in connection with this transaction; however, the parties agree that deductions from the deposit will be made for mileage in excess of that allowed under the Conditional Delivery Agreement or for damage to the vehicle;
- Under any and all circumstances, You will be responsible for insurance coverage and any deductibles if an accident or damage should occur;
- You agree and understand that: (i) You assume all risk of loss or injury to the vehicle, Yourself or third parties arising out of the operation and use of the vehicle while in Your possession; (ii) You are liable to the Dealer for all damage, destruction, and/or abuse of the vehicle while in Your possession; and (iii) You will indemnify the Dealer for any injury, cost, loss or damages to any third party whatsoever arising out of the operation or use of the vehicle while in Your possession;
- In the event that the Dealer is forced to seek legal action to enforce this agreement, to recover for losses, or to recover the vehicle, You agree to be responsible for and will pay all reasonable legal fees and other costs and expenses incurred by the Dealer;
- After return of the vehicle as described in paragraph 6, You will have the option of (i) re-contracting under alternate terms (if available), (ii) independently securing financing for the purchase of the vehicle within forty-eight (48) hours of returning the vehicle to Dealer, or (iii) purchasing the vehicle for cash within forty-eight (48) hours of returning the vehicle to Dealer in the amount(s) reflected in the Customer's Purchase Order; and
- While the vehicle is in Your possession under this conditional delivery, You shall limit Your usage to one hundred (100) miles per day.

14. Servicing, Collection, and Marketing Contacts. You agree that we may try to contact You in writing, by e-mail, or by using prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact You in these and other ways at any address or telephone number You provide us, even if the telephone number is a cell phone number or the contact results in a charge to You.

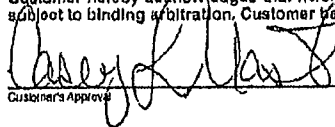
15. Rebates/Payment/Incentives. Dealer has no obligation to disclose to Customer the availability of incentives or rebates. All rebates, payments, and/or incentives are, by this

Purchase Order, assigned to the Dealer. If this Purchase Order shows a discount or credit based on Customer's relationship with the Manufacturer, Customer must furnish Dealer with all necessary documentation, information, verification, and certificates.

16. Customer(s) acknowledge(s) no one at the dealership has coerced them to provide false information.
17. THE DEALER EARNS OR RETAINS A FEE FOR ANY ADDITIONAL GOODS/SERVICES THAT THE DEALER OBTAINS ON YOUR BEHALF FROM ANY THIRD PARTY.
18. SEVERABILITY AND SURVIVAL. If any portion of this Agreement is determined to be unenforceable, then the remainder shall be given full force and effect. The Parties agree that this Agreement may not be amended or modified in any respect except in writing.

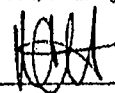
Customer hereby acknowledges that he/she has thoroughly read this Purchase Order, understands and agrees with its terms, including the fact this agreement is subject to binding arbitration. Customer has received a completely filled in copy of this order and agreement.

Customer's Approval



06/02/2017
Approval Date

Dealer's Signature



06/02/2017
Dealer's Approval Date

Customer's Approval

N/A

Approval Date

ARBITRATION POLICIES AND PROCEDURES

1. RULES GOVERNING ARBITRATION PROCEEDINGS. The Federal Rules of Civil Procedure shall govern all arbitration proceedings. All powers, rights, and obligations afforded arbitrators or the parties under the applicable federal or state arbitration code which conflict with any provision included in Dealer's Arbitration Policies and Procedures are expressly waived to the extent permitted by law.

2. FINALITY OF ARBITRATOR'S DECISION. The award of the Arbitrator may be changed or altered by the Arbitrator upon application of a party as allowed by the arbitration code governing the enforcement of the Agreement. Otherwise, the award of the Arbitrator shall be final and binding unless, within thirty (30) days of service of the Arbitrator's decision, either party serves notice of appeal to a second Arbitrator selected in accordance with Section 9, who shall, as far as practicable, proceed according to the law and procedures applicable to appellate review by a United States Court of Appeals of a civil judgment following a non-jury decision by a judge. The party moving for such appeal shall be responsible for any filing fee required. Thereafter, the parties shall share equally in any arbitration or hearing fee. The result of the appeal and any further proceedings pursuant to the appeal shall then constitute the final award, which may be enforced by a court as provided by law.

3. TIME LIMITS. All Disputes must be brought under the Agreement within the applicable limitations period for filing a lawsuit or agency claim beginning with the event or occurrence giving rise to the Dispute; if no claim is timely brought, that Dispute is waived and barred forever, and no action or suit may be brought in any court or other forum. If any party attempts to bring an untimely Dispute, that party shall reimburse the other party for all expenses, including attorneys' fees, incurred in responding to such untimely Dispute.

4. FILING OF LAWSUIT. In the event a party to the Agreement files a lawsuit involving a Dispute which is subject to arbitration, the other party shall give notice of the existence of this Agreement. If the lawsuit is not voluntarily stayed or dismissed within ten (10) calendar days of service of that notice, then the party filing the lawsuit shall be liable for any and all costs and attorneys' fees incurred by the other party in successfully staying or dismissing the lawsuit.

5. REQUEST FOR ARBITRATION.

a. Initiating Arbitration. A party desiring to submit a Dispute to arbitration (hereinafter "Claimant") must comply with the following:

1. To initiate arbitration, the Claimant must submit a written "Request for Arbitration" ("RFA") by hand delivery or certified mail with return receipt to the Arbitration Administrator who shall be Bob Hogan or his designee, and serve a copy of the RFA on the party or parties against whom the claim is brought (Respondents) by having it hand-delivered to each Respondent or by certified mail with return receipt.
2. An RFA form may be obtained from the Arbitration Administrator. The party requesting arbitration must identify persons having knowledge regarding the Dispute, the issue(s) to be arbitrated, the legal rights upon which the claims are founded (if known), the facts relevant to the Dispute, and the remedies sought. All related claims must be asserted in the same arbitration and failure to assert such a claim shall constitute a full release of the Respondent(s).
3. The Claimant must deposit a filing fee in the amount of \$250 with the Arbitration Administrator. The filing fee will be applied against the cost of the arbitration and any unused portion shall be returned. If the filing fee is not deposited as required, the Arbitration Administrator shall immediately so notify the delinquent Claimant by certified mail or hand delivery. If the Claimant does not make the required deposit within five (5) days of receipt of the notification, the RFA shall be void, the same as if it had never been filed. When the Claimant asserts financial inability to pay the filing fee, the Arbitrator shall determine whether to waive this requirement using the same standard applied by federal courts.

b. Limitations of Actions. The limitations period specified in the Arbitration Agreement runs until written RFA which complies with these Rules is submitted to the Arbitration Administrator.

6. RESPONSE, OTHER CLAIMS AND AMENDMENTS.

- a. When a Response is Due. Within thirty (30) calendar days of a Respondent's receipt of the RFA, Respondent shall serve a response on all parties and provide a copy to the Arbitration Administrator.
- b. Contents of the Response. The Response shall be on the form supplied by the Arbitration Administrator. The Response shall identify additional issues to be arbitrated, persons having knowledge regarding the Dispute, legal defenses which will be relied upon (if known), and facts relevant to the Dispute.
- c. Counter-RFA. If the Respondent has a Dispute with the Claimant which has not been identified in the RFA but arises out of the same factual circumstances as the RFA, the Respondent must assert the Dispute as a Counter-RFA, with failure to do so constituting a full release of the Claimant.
- d. Reply to the Counter-RFA. Within ten (10) calendar days from the service of the Counter-RFA, the Claimant shall serve a Response. The Reply shall conform to the content requirements of a Response.
- e. Adding and Changing Disputes. At any time prior to the Initial Conference, any party may amend, add, or withdraw a Dispute as of right. Thereafter, no Dispute or Claim may be added except by motion to the Arbitrator, upon showing that manifest injustice would result from failure to permit the amendment and that the party did not have notice of the facts and circumstances relating to such Dispute or Claim at the time of the Initial Conference.
- f. Additional RFAs. The Respondent to the Initial RFA may serve other non-parties who are subject to the Arbitration Agreement with an RFA if that person may be liable, in whole or in part, for the damages alleged in the initial RFA or Response. An "additional" RFA is treated the same as an initial RFA with regard to the receiving party.
- g. Unavailable Non-Parties. Where a non-party who is alleged by either party to be jointly or partly responsible for injuries alleged, or who is alleged to share a Claim, is not subject to the Arbitration Agreement or is otherwise unavailable, the arbitration shall proceed notwithstanding the absence of said party and the Arbitrator shall fashion an award which is fair and equitable to all parties, given the absence of the non-party. In order to protect a party against multiple or inconsistent judgments, the Arbitrator may, in the interest of justice, require a party to proceed with a claim against a non-party to a final resolution or waive any such Claim prior to proceeding with the arbitration.

7. SERVICE OF PAPERS. All documents and papers required to be served pursuant to these Rules shall, unless otherwise specified, be served by personal delivery to all parties or by first class mail, accompanied by a certificate of service. Documents and papers sent to Dealer shall be addressed to the President of MCE or his or her designee. If a party is represented by counsel, the papers must be served upon the party's counsel rather than the party. It will be the responsibility of each party to ensure that all other parties are kept advised of their or their attorney's current mailing address.

8. EXTENSION OF DEADLINES. Prior to the expiration of any time period for a party to act, the parties may agree to extend, or upon motion, the arbitrator may extend such deadline for good cause. This provision shall not apply to the time period required for initiating arbitration by submitting an RFA to the Arbitration Administrator.

9. SELECTION OF AN ARBITRATOR.

- a. Qualifications. The Arbitrator shall be: a former federal judge or federal magistrate judge, a former judge of a state court of general jurisdiction or state appellate court, or an experienced attorney, or such other individual as the parties may agree. The Arbitration Administrator shall provide to the prospective arbitrators copies of the Arbitration Agreement, these Rules and all RFAs and Responses thereto.

b. Disclosures Required of Arbitrators. Each prospective Arbitrator shall be required to disclose any circumstances that might preclude that person from rendering an objective and impartial determination. At a minimum, the prospective arbitrator shall disclose:

1. Prior employment history;
2. Any direct or indirect financial or personal interest in the outcome of the arbitration; and
3. Any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or might reasonably create an appearance of partiality or bias; and any relationships with any party or its counsel, or with any individual whom they have been told will be a witness.

c. Selecting the Arbitrator. The Administrator and the Claimant shall agree upon an Arbitrator. If no Agreement is reached, then each will select one. Then the selected Arbitrators shall select a third. This will comprise the panel. The parties will strike names from the panel of arbitrators. The Claimant requesting arbitration shall strike the first name; then, each Respondent and third party Respondent shall together strike one name. The Arbitrator who is not struck shall be the Arbitrator chosen to arbitrate the Dispute raised by the RFA and Responses thereto. The Administrator will notify the Arbitrator selected within a reasonable time thereafter of the selection. The "appeal" Arbitrator shall be selected in the same way.

d. Disqualification or Other Disability.

1. Challenge to Qualifications. Any party, upon learning of a reason that would disqualify the Arbitrator from deciding the Dispute, may request that the Arbitrator recuse herself or himself. The Arbitrator shall rule upon the request applying the standards a judge would use in deciding a motion to recuse in South Carolina.
2. Inability to Serve. In the event that an Arbitrator should resign, die, withdraw, or otherwise be unable to perform as an Arbitrator, the process for selecting an Arbitrator shall be repeated.

10. SCOPE OF ARBITRAL AUTHORITY.

a. Identification of Legal Basis for Claim. The Arbitrator must first identify the state or federal law upon which the Dispute relies. If any RFA or counter-RFA fails to identify such basis, the Arbitrator shall require the Claimant to more clearly and precisely identify the legal and factual basis of the Dispute. If the Claimant is unable to state a legally cognizable claim, the Arbitrator shall dismiss the RFA.

b. Decision Confined to Law Governing Claim. After identifying the state or federal basis for the Dispute, the Arbitrator's authority is strictly limited to resolving the Dispute on the basis of such applicable state or federal law. The Arbitrator may not resolve any Dispute by looking beyond the law upon which the claim or counterclaim is based and therefore may not invoke or rely upon concepts of just cause, seniority, or any other concept which is beyond that particular law.

c. Manner of Review. The Arbitrator shall decide the Dispute in the same manner as would a federal district court judge hearing the case without a jury, and the Arbitrator's decision shall be final and binding, except as otherwise provided in these Policies and Procedures or the parties' Arbitration Agreement.

11. HEARING LOCATION. The Arbitrator shall determine where the Arbitration will be held, giving proper consideration to such factors as the location of witnesses and evidence, and the parties' preferences.

12. REQUIRED CONFERENCES.

a. Initial Conference. As soon as possible following the selection of the Arbitrator, a teleconference will be scheduled by the Arbitrator with the parties for the purpose of organizing and expediting the arbitration, discussing its administrative aspects, discovery schedule, the issues to be arbitrated, allocation of the arbitration fees and costs, evidentiary issues, the location of the hearing, and any other issues the parties or the Arbitrator may deem appropriate.

b. Final Pre-Arbitration Conference. Prior to the arbitration hearing, the Arbitrator shall conduct a final conference to address and determine, at a minimum, the issues to be arbitrated, the form of the

award, evidentiary issues, dispositive motions, location, time, and date for the arbitration and any other issues relating to the subject matter or conduct of the arbitration.

13. DISCOVERY.

- a. Arbitrator's Authority to Order Discovery. The Arbitrator shall have the authority to order and enforce such discovery, by way of deposition, interrogatory, document production, independent medical examination, or otherwise (collectively referred to as "Information Requests"), as the Arbitrator considers necessary to a full and fair exploration of the issues in Dispute.
- b. Discovery Requests. Any party may conduct discovery after the Arbitrator is selected. Discovery need not be filed with the Arbitrator unless necessary for the resolution of any motion. Unless a greater time is allowed by the requesting party, Information Requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. The form and content of the request for discovery and responses thereto, shall be the same as required by Rules 26, 30, 32, 33, 34, and 35 of the Federal Rules of Civil Procedure.
- c. Limitations Upon Discovery. The discovery taken by each party shall be limited as set forth below, except that the parties may agree to modify these limitations, and absent an agreement, the Arbitrator may upon motion by a party which demonstrates a compelling need for additional discovery, expand these discovery limitations.
1. Depositions. The number of depositions to be taken by each party shall not exceed five (5).
 2. Interrogatories. The number of written interrogatories requested by a party at any one time or cumulatively shall not exceed thirty (30). Each subdivision of an interrogatory shall be construed as a separate interrogatory.
 3. Document Requests. The number of requests for documents by a party at any one time or cumulatively including by subpoena addressed to a party or the party's agent, shall not exceed thirty (30).
- d. Compelling Discovery. Upon written motion to the Arbitrator by a party whose information is unsatisfied, the matter will be resolved by the Arbitrator pursuant to this section and 13.g., below. Any request for resolution by the Arbitrator must be accompanied by a statement that the parties have attempted in good faith but failed to resolve their discovery dispute, and must explain what good faith efforts were made. Upon request, the Arbitrator shall issue subpoenas to compel the attendance and testimony of a witness and/or the production of documents. A party shall respond to a motion to compel within fourteen (14) days.
- e. Discovery of Experts. A party may through Information Requests require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to 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. A party may also depose the expert. Unless manifest injustice would result, the Arbitrator shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this Rule.
- f. Supplementation of Discovery. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:
1. A party is under a duty to seasonably supplement the response with respect to any question directly addressed to (a) the identity and location of persons having knowledge of discoverable matters, and (b) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the expert is expected to testify, and the substance of the expert testimony.
 2. A party is under a duty to seasonably amend a prior response if the party obtains information upon the basis of which (a) the party knows that the response was incorrect when made, or (b) the party knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment, or (c) a duty to supplement responses may be imposed by order of the

Arbitrator, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

g. Resolution of Discovery Disputes by the Arbitrator. All discovery disputes shall be resolved by the Arbitrator on the basis of the relevant motion, response thereto, and reply in support thereof. The Arbitrator may also conduct a teleconference with the parties to facilitate the speedy resolution of the dispute and to supplement any motion, response, or reply. A formal hearing should not be held to resolve discovery disputes, unless the parties otherwise agree in writing. In resolving any discovery dispute:

1. The Arbitrator should order production where the discovery request seeks evidence which is relevant or reasonably calculated to lead to the discovery of admissible evidence;
 2. The Arbitrator should refuse to order production of Information Requests which are unreasonably cumulative, burdensome, or duplicative, or which exceed the discovery limits set forth in 13.c.;
 3. The Arbitrator should refuse to order production of requests that seek documents which are prepared in anticipation of arbitration or litigation by or for a party or by or for that party's attorney, consultant, surety, indemnitor, insurer, or agent unless the requesting party shows that it has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Arbitrator shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the arbitration or litigation;
 4. The Arbitrator may make any ruling to protect any party to the arbitration from unreasonable discovery requests and may issue any other discovery order which justice requires;
 5. The Arbitrator should look to the terms of Rules 26, 30, 32, 33, 34, 35 and 37 of the Federal Rules of Civil Procedure and federal cases interpreting those Rules for guidance in resolving discovery disputes; and
 6. The Arbitrator may assess the Arbitrator's costs and/or award reasonable attorneys' fees and costs incurred in hearing and resolving any discovery dispute against the losing party to such discovery dispute, if the losing party's position was not substantially justified.
- h. Time Limitations for Discovery. Because it is the parties' intent that these procedures be expedited to the greatest extent possible, all requests for discovery must be initiated such that discovery can be completed no more than ninety (90) calendar days after the date of the Initial Conference.

14. SUMMARY JUDGMENT.

- a. Time Requirements. A party may, at any time after the expiration of thirty (30) calendar days from the Initial Conference, move for summary judgment upon all or any part of a disputed claim. A party must file a response or opposition to a motion for summary judgment within thirty (30) days of service of the motion. Any reply must be served within fifteen (15) days of service of the response.
- b. Standard. Supporting and opposing affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The Arbitrator may permit affidavits to be supplemented or opposed by depositions, answers to Information Requests, or further affidavits. When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided by this section, must set forth specific facts showing that there is a genuine issue for the hearing. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party. Summary Judgment is appropriate if the pleadings, depositions, and answers to information requests, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A party opposing summary judgment does not raise genuine issues of material fact by contradicting that party's own prior sworn statement

unless said party explains to the satisfaction of the Arbitrator the reason for the subsequent change and shows that the subsequent changed testimony or statement is more likely true than the former testimony or statement which the party would contradict. In construing and applying this section, the Arbitrator should look to Rule 56 of the Federal Rules of Civil Procedure.

15. ARBITRATION HEARING.

- a. **Hearing Requirement-Waiver of Hearing.** A hearing shall be held to resolve a Dispute which is not decided by dismissal or summary judgment, unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings, documentary evidence, and briefs submitted. The Arbitrator shall determine the time and date of the hearing which shall be held no later than one hundred eighty (180) days following the selection of the Arbitrator. Notice of the hearing date shall be given at least thirty (30) calendar days prior to the hearing.
- b. **Failure to Appear.** The arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement.
- c. **Attendance at Hearings.** The Arbitrator shall have the authority to exclude witnesses, other than a party, from the hearing during the testimony of any other witness. The Arbitrator shall exclude any persons whose presence is not necessary to the resolution of the Dispute. All parties, including corporate representative, shall have the right to be present during the proceedings.
- d. **Burden of Proof.** The parties shall bear the same burdens of proof and burdens of producing evidence as would apply if their Dispute had been brought in court.
- e. **Evidence.** The Arbitrator shall determine the materiality and relevance of any evidence proffered and shall be bound by rules governing the admissibility of evidence contained in the Federal Rules of Evidence.
- f. **Record of Proceedings.** A verbatim record of all arbitration hearings may be kept by stenographic reporter or tape recording. If a party or parties to a Dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless a non-requesting party subsequently requests a copy of the transcript in which case the total costs of transcription (including duplicate copies, court reporter's fee and Arbitrator's copy) shall be borne equally by all parties having access to the transcript.
- g. **Oaths of the Witnesses.** All testimony shall be under oath or affirmation administered by the Arbitrator.
- h. **Confidentiality of Hearings.** The Arbitrator shall maintain the confidentiality of the hearings and shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the law provides to the contrary.
- i. **Post-Hearing Briefs.** At any party's election, or at the discretion of the Arbitrator, the parties may submit post-hearing briefs to the Arbitrator, and the record shall not be deemed to be closed until the last day on which briefs could be timely submitted; provided, however, that no such briefs shall contain or refer to evidence not adduced at the hearing.
- j. **Privileged Communications.** The Arbitrator shall have the immunity of a judicial officer from civil liability, when acting in the capacity of an Arbitrator, which immunity supplements any other existing immunity. Likewise, all communications during or in connection with the arbitration proceedings are privileged in accordance with state law applicable to judicial proceedings.

16. AWARDS. The Arbitrator will render an award within thirty (30) days from the date the record is closed. All awards shall be in writing and signed by the Arbitrator. The Arbitrator will serve a copy by registered or certified mail upon all parties, or inform their counsel, at the address of record, or by personal delivery. All findings and awards issued by the Arbitrator must conform to the applicable law governing all such Disputes and any remedy must conform to the most restrictive of the limitations period set forth in these Rules, the Agreement, and applicable law. The award shall contain a summary of the issues in controversy, a statement of the Arbitrator's actual findings, the relief awarded, if applicable, the legal authority upon which the relief (and award) is based, and any fees and costs assessed. The parties may agree to a less formal summary award.

17. COSTS AND FEES.

- a. Filing Fee. Upon the filing of an RFA, the party so filing shall pay a filing fee of \$250.00 made payable to Dealer. The filing fee shall be applied to administrative costs and Arbitrator's fees and expenses.
- b. Expense of Arbitration. Dealer will advance any additional filing, administration, service or case management fee and your arbitration or hearing fee up to a maximum of \$1,500, which may be reimbursed by decision of the Arbitrator at the Arbitrator's discretion. Thereafter, the parties shall share equally in any arbitration or hearing fee.
- c. Costs and Attorneys' Fees. The prevailing party shall be awarded costs of the Arbitration, including the filing fee, subpoena service fees and witness fees, deposition and hearing transcription costs and similar expenses, but not including expert fees unless the expert testimony was necessary to establishing or refuting liability. In cases where a party asserts any claim, position or defense that is not substantially justified by the law or facts, the Arbitrator shall award to the opposing party that party's reasonable attorneys' fees incurred as a result of that party's defending any such claim, position or defense.

18. COMPUTATION OF TIME. In computing time hereunder, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. Papers are deemed received upon actual receipt (if by hand delivery), the date on which the U.S. Postal Service notifies the party of attempted service by certified or priority mail, or three days following first class mailing to Dealer or Claimant's record address.

19. SAVINGS CLAUSE: ENTIRE AGREEMENT. If any provision of the parties' Arbitration Agreement or these Policies and Procedures are found by a court to be invalid or otherwise unenforceable, the court shall enforce the remainder of the Agreement and Policies and Procedures. The parties' Agreement and these Rules constitute the full agreement of the parties and can be changed only in writing signed by the individual and an executive officer of Dealer.

20. REPRESENTATION. Unless appearing pro se, any party may only be represented by an attorney who is a member in good standing before any state bar. A party which is a business entity is entitled to designate a representative who shall be entitled to appear and participate in the proceedings. There shall be no ex parte communication with the Arbitrator, unless the parties and the Arbitrator agree to the contrary in advance of the communication.

21. APPEALS. The award of the Arbitrator shall be final and binding unless, within thirty (30) days after service of the decision, either party files for an "appeal" arbitrator. Once the "appeal" Arbitrator decides, the award shall be final and binding unless, within (30) days after service of the "Appeal" decision, either party files with a court a motion to vacate, modify, or correct the award. In any action to vacate, modify, set aside or enforce the award, the Arbitrator and "appeal" Arbitrator shall be deemed to have exceeded their powers if the award was premised on an error of law or clearly erroneous fact(s).

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
Case No. 2017-CP-23-03402

Casey Masters,

Plaintiff,

vs.

KOL, Inc. d/b/a Kia of Greenville,
Defendant.

MOTION TO ALTER OR AMEND

TO: PLAINTIFFS AND THEIR ATTORNEY, J.J. ANDRIGHETTI, ESQ.:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for Defendant, KOL, Inc. d/b/a Kia of Greenville, will move before the Honorable R. Scott Sprouse at such time and place as Judge Sprouse may designate, pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure, to reconsider, alter, or amend his Order filed October 12, 2017, denying Defendant's Motion to Compel Arbitration.

The Motion is based on the following:

1. The evidence in the record is that on April 10, 2017 Plaintiff signed a conditional Purchase Order which stated that the transaction was subject to arbitration and a stand-alone Arbitration Agreement.

2. The Arbitration Agreement signed on April 10, 2017 by Plaintiff stated in paragraph 4:

Any claim ...dispute or controversy between Dealer and Customer, as well as between Customer ... which arise out of or relate to Customer's credit application, purchase, lease, financing ... or any resulting transaction or relationship . . . shall be resolved by neutral, binding arbitration.

3. The Complaint filed by Plaintiff states claims and controversies arising out of the April 10, 2017 transaction.
4. Plaintiff also agreed to arbitrate "any resulting transaction." Therefore, the execution of subsequent contracts must be resolved by arbitration.
5. Plaintiff has not sued on the subsequent contracts, but only the original April 10, 2017 Purchase Order. Therefore, Plaintiff's agreement to arbitrate any dispute or controversy arising out of the April 10, 2017 purchase controls.
6. The Court's Order overlooks the fact that there is a strong presumption in favor of the validity of arbitration agreements because both federal and state policy favor them. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 111 S.Ct. 1647 (1991); *Carolina Care Plan, Inc. v. United Healthcare Servs., Inc.*, 361 S.C. 544, 606 S.E.2d 752 (2004).
7. The Court's Order overlooks the fact that anyone challenging the enforceability of an arbitration agreement bears the burden of proving the provision is unenforceable. *Green Tree Fin. Corp. – Ala. v. Randolph*, 531 U.S. 79, 91, 121 S.Ct. 513, 522 (2000).
8. The sale of automobiles is considered commerce sufficient for the FAA to apply. *See Saturn Distribution Corp. v. Williams*, 905 F.2d 719 (4th Cir. 1990). The Court's Order overlooks the fact that the FAA preempts state law rules and holdings that invalidate the parties' agreement to arbitrate. *See AT&T Mobility v. Concepcion*, 563 U.S. 333, 131 S.Ct. 1740, 179 L.Ed.2d 742 (2011).

9. The Court overlooks the fact that the contract language of both the Purchase Order and the Arbitration Agreement evidences the intent of the parties to have any disputes decided by arbitration.
10. Plaintiff agreed in writing that the Arbitration Agreement would survive any termination of other transactions between the parties. The Court overlooks the fact that the duty to arbitrate survives termination of a contract. *South Carolina Pub. Serv. Auth. v. Great Western Coal, Inc.*, 312 S.C. 559, 437 S.E.2d 22 (1993); *Jackson Mills, Inc. v. BT Capital Corp.*, 312 S.C. 400, 403, 440 S.E.2d 877, 879 (1993). Therefore, the failure of the conditional agreement to be completed did not render the Arbitration Agreement unenforceable.
11. The Court's Order overlooks the fact that even if the June documents are viewed as a modification of the April transaction, they evidence the same intent by the parties to arbitrate disputes.
12. The Court's Order overlooks the fact that the Plaintiff agreed in writing that the Arbitration Agreement was the last document entered into by the parties on the issue of arbitration, therefore its provisions are controlling. See *U.S. Bank Trustee Nat'l Ass'n v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 204 (Ct. App. 2009) (stating a contract can be modified by another contract that includes a meeting of the minds on essential terms).

WHEREFORE, the Defendant moves this Court for an Order altering or amending the October 12, 2017 Order denying Kia of Greenville's Motion to Compel Arbitration and granting Defendant's request to enforce the arbitration agreement as the parties agreed.

October 17, 2017

Respectfully submitted,

s/Bradford N. Martin

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ATTORNEYS FOR DEFENDANT

KOL, INC. d/b/a KIA OF GREENVILLE

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EXHIBITSNODESCRIPTIONIDEVD

There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings began at 11:39 a.m.)

THE CLERK: Case Number 2017-CP-23-03402, Casey Masters v. KOL, Inc.

THE COURT: Okay. Mr. Martin?

MR. MARTIN: May it please the Court. I'm here on behalf of Kia of Greenville asking for a stay and a motion to compel arbitration. This is a case where the plaintiff is Casey Masters, and, again, just like I remember telling my people at Boy Scout camp, do a good deed every day. We did another good deed, and we get responded with a lawsuit.

Ms. Masters came in in April, and she told us that she made \$2,500 a month. She got conditional approval by Crescent Bank. We gave her the Forte -- the Kia Forte. She drove off. She had the same conditional sales agreement, which as, just like yesterday, has Paragraph 13 where she signs a second time that says it's a conditional delivery agreement, that she only has it as long as she gets approval.

Would you like one handed up, Your Honor?

THE COURT: Yes, sir.

MR. MARTIN: I have one for you and one for my friend.

1 So she's got the Forte. She gets conditional
2 approval by Crescent Bank. They do the check, and they
3 find out, low and behold, she's not making \$2,500 a month
4 because she's having her wages garnished because she's
5 paying child support for children that she lost after a
6 domestic violence issue. So she's making \$1,000 less. So
7 Crescent Bank says at \$1,500 a month, we cannot finance
8 her. Well, instead of just kicking her out of the car,
9 before she got rejected by Crescent, we found out that
10 there was a recall on that new Kia Forte. So we had her
11 bring it back in and we gave her a free loaner in April.

12 So in April and in May she's in a free loaner, and we
13 can't get her financed because of this misrepresentation
14 of her income. But we still try to work with her, and we
15 find a second lender who, on June 2nd, agrees to approve
16 her.

17 Now -- oh, on April 10th, let me tell you that she
18 also signed a retail installment contract and an
19 arbitration agreement. So the first time around she knew
20 full well that she was going to arbitrate if she had any
21 fuss with us and fully agreed in April, again -- this is
22 in April where it clearly is a separate arbitration
23 agreement and clearly says in bold letters, "Both the
24 dealer and the customer shall have the right to have any
25 dispute between them decided in arbitration and not in a

1 court or by a jury." So that's done on April 10th.

2 She's in the Forte. The Forte comes back in to do
3 the recall. She's in the loaner. She gets disapproved by
4 Crescent Bank, but by God's grace we get her into another
5 lender who approves it. And the second time she comes in,
6 she signs the second retail installment contract, and this
7 retail installment -- oh, the first purchase order. The
8 purchase order for the second time has the same language
9 as the purchase order for the first time in April, which
10 on the top, Your Honor, says, "Notice, this agreement is
11 subject to binding arbitration pursuant to the Federal
12 Arbitration Act." So she knew from April and in June that
13 she was agreeing to arbitration, and it's exactly the same
14 car. It's the same Kia Forte with the same VIN number.

15 So she then signs a second arbitration agreement,
16 just like the first, on June 2nd in which, again, she's
17 agreeing, just like she said on her buyer's order that if
18 she has a fuss, everything gets to be arbitrated under the
19 Federal Arbitration Act.

20 So the retail installment contract for the second
21 one, actually, she saves about \$5,000 in the second deal
22 over the first deal. Because in order to get her
23 financed, we had to drop the price significantly in order
24 to get her financed. Now, her payment went from \$391 a
25 month to \$398 a month. It went up \$7 a month, but her

1 overall payment went from 72 months down to 60 and she
2 saved about \$5,000 in the overall deal. So she was in the
3 same car that she had in April, the recall was fixed. And
4 let me give you the April deal first, the April retail
5 installment.

6 If you remember from yesterday, the buyer's order is
7 what she signs with the dealership. If you have the
8 money, you don't sign anything else, but if you need to
9 finance it, you sign the retail installment contract.
10 This is the one for April.

11 So then because of the fact that she couldn't get
12 financed with the first one, we get a second one. And if
13 you look at the difference between the two, basically, the
14 payments drop from 72 months to 60 months, she saves about
15 \$5,000 in the deal, and her monthly payment goes up from
16 \$391 to \$398. So it's a really good deal. She's very
17 happy. She's in the car. She's in the car today. She's
18 driving this car and she's making her payments. And we
19 don't know how we're in court, but we're being sued.

20 So it's not for you to decide why we're in court
21 today. It's you only decide whether we should arbitrate.

22 But as I said, no good deed goes unpunished. Here we
23 are, and we're saying if she claims she has a beef for
24 getting a better deal in getting this car and having a
25 two-month free loaner, we can let the arbitrator decide

1 that.

2 South Carolina law and the United States law makes it
3 clear. As you know, AT&T Mobility, United States Supreme
4 Court has made it clear that arbitration is favored.

5 There must be -- there's a strong presumption in favor of
6 arbitration. There's a significant burden in order to
7 overcome arbitration. There's absolutely no evidence in
8 the record on April 10th or June 2nd that she had any
9 problems in signing, any problems in reading. And under
10 the Munoz case, which we talked about yesterday, you are
11 required to read and sign and understand what you sign.
12 And she did.

13 She has filed an affidavit that came in this morning,
14 which is late under the rules. And she says that on
15 June 15th, she went to the hospital and she didn't know
16 what she was doing on June 15th. But we're talking about
17 April 10th and June 2nd. We are saying that this is the
18 time that these agreements were entered into. It's clear
19 and unequivocal from the buyer's order from day one that
20 she was going to agree to arbitrate. It's clear and
21 unequivocal from the arbitration agreement itself that she
22 agreed to arbitrate, and did it twice. Did it in April
23 and did it on June 2nd. So there is never a situation
24 here where there is any problem in how this arbitration
25 was agreed to or how it was handled. The fact that the

1 last time we were here she wasn't given the policy and
2 procedures, we have found a case and cited it in our
3 brief, our supplemental brief, and there's a McNeal case
4 from the Federal District Court of Virginia.

5 THE COURT: The same policy and procedures you handed
6 up yesterday.

7 MR. MARTIN: Yes. Same ones.

8 THE COURT: Okay.

9 MR. MARTIN: I'll be glad to hand them if you'd like
10 to see them again.

11 THE COURT: I don't need another copy of it.

12 MR. MARTIN: But the case in Virginia is right on
13 point and says the guy objected that the policies and
14 procedures were not handed up, and the Virginia court,
15 which is relying on two United States Supreme Court cases,
16 said the only issue before the Court is whether there is
17 an agreement to arbitrate, whether the procedures and how
18 they're going to do it is not relevant and does not defeat
19 an agreement to arbitrate. And that case goes into
20 four-part harmony about that. Glad for you to read it in
21 your leisure. And as I said, it relies upon two United
22 States Supreme Court opinions that says exactly the same
23 thing.

24 And the truth of the matter is, I've been doing this
25 for, I hate to tell you, about 40 years, and I've probably

1 had hundreds of these cases. And most of these
2 arbitration agreements say they're subject to the AAA
3 rules. AAA rules are never in the case, they're never
4 given to the client or the customer when they buy the car.
5 They're basically online today. In the old days, you had
6 to call up AAA and get them. So the fact that the rules
7 and procedures on how it works has never been the issue
8 for the courts.

9 The issue for you is was there a meeting of the
10 minds, was there an offer, was there an acceptance, was
11 there consideration, did she contractually agree that when
12 she bought the car on April 10th and then got this better
13 financing on June 2nd, did she agree to arbitrate. And
14 the record is absolutely clear that she did. The fact
15 that she didn't have the procedures, as you can see from
16 that case -- and that case also cites -- the Virginia case
17 also cites the United States Supreme Court cases that we
18 cite in our supplemental brief.

19 So the other issue is, is was there any duress. And
20 the elements of economic duress are the coerced party must
21 show that they have been a victim of wrongful or unlawful
22 conduct, act or threat. There's nothing in this case in
23 her affidavit that she was threatened or that there was
24 anything wrongful. Such act or threat must be one which
25 deprives the victim of unfettered will.

1 She claims in her affidavit, that, well, I had to
2 sign the document or I couldn't get my kids home. Well,
3 A, she's got taxis; B, if we gave her a rental car for two
4 months for free, don't you think we would have let her
5 have that rental car for another day if she got back?
6 There's no evidence to say that I asked for -- to get my
7 kids home. She just says, "I signed it because I had to
8 get my kids home." She doesn't say any other reasons.
9 She doesn't say whether she had any parents or friends
10 that couldn't come pick her up. But certainly, it doesn't
11 get to the level that it would deprive her of unfettered
12 will.

13 3, as a direct result of the coerce, party must be
14 compelled to make a disproportionate exchange of values or
15 give up something for nothing. What she was signing on
16 June 2nd was saving her \$5,000 on this deal. Yeah, she
17 had to pay \$8 more a month, but wouldn't you do that in a
18 New York minute, get the car for \$5,000 less because she
19 got financed by this other company? I mean, it was a
20 great deal for her. There's no evidence that the Number 3
21 requirement that as a direct result, the coerced party
22 must be compelled to make a disproportionate exchange of
23 values or give up something for nothing.

24 And Number 4, the payment or exchange must be made
25 solely for the purpose of protecting the coerced party's

1 business or property interest, and the coerced party must
2 have no adequate legal remedy. Again, she can sue us for
3 anything she wants in arbitration. The arbitration
4 agreement makes it clear that there is no limitation on
5 her causes of action, there's no limitations like there
6 was in Simpson on her remedies, she's not limited by
7 punitive damages, she's not limited to triple damages or
8 double damages like in Simpson. She has the absolute
9 right to sue us with the kitchen sink and all 12 causes of
10 action. All she has to do is go to arbitration as she
11 agreed. So it just doesn't meet the requirements.

12 And Dodgeland made it clear, the Dodgeland case, the
13 York vs. Dodgeland case, which was a car case that made it
14 clear that mutuality of remedies, if you don't have a
15 problem with that, that's the end of the discussion. But
16 because the arbitration agreement does not incorporate
17 oppressive or one-sided terms, it is not unconscionable
18 despite the fact that it exists within an adhesion
19 contract or was tainted by lack of meaningful choice. So
20 even if she could prove meaningful choice, you can't say
21 it's unconscionable, because unconscionable means that no
22 one in the world would sign it.

23 And for heaven's sake, she's getting a car for \$5,000
24 less, she had two full months of free use of a loaner that
25 we bent over backwards to get her in it, and she's got the

1 car now and she's got the deal. I mean, she's in a
2 brand-new Kia Forte, and there's no way you could say any
3 of this is so oppressive that no reasonable person would
4 sign it, because a reasonable person would say, "Oh, you
5 mean I'm going to have to pay \$8 more a month, instead of
6 72 months, 60 months, and I get to save \$5,000?" Is that
7 so oppressive that no reasonable person would agree to
8 that?

9 And the whole idea of an arbitration is it will save
10 all of us money because it's a short way to do litigation.
11 And that's why the Federal Arbitration Act was passed,
12 that's why the AT&T vs. Concepcion was made the law of the
13 land. And our Supreme Court itself, as you may know of
14 the closing fee cases, I was involved in those, I had
15 94 clients in that case, and the Century BMW people had an
16 arbitration agreement, and it said you couldn't have a
17 class action. You might remember that.

18 And Judge Kittredge wrote an opinion and said it's
19 unconscionable to knock someone's right out to bring a
20 class action. Then that AT&T Mobility case came down.
21 Then they vacated the decision of Judge Kittredge and said
22 you've got to redecide it based on AT&T Mobility. And
23 Judge Kittredge, in his second opinion, said you're right.
24 If you had raised federal preemption under the Federal
25 Arbitration Act, we couldn't say that this

1 unconscionability knocks out your no class action. But
2 the lawyers in that case didn't raise it, so they affirmed
3 their decision.

4 But even Judge Kittredge and our Supreme Court in the
5 Heron cases dealing with the closing fee matter clearly
6 said that we understand that we have to comply with the
7 United States Supreme Court opinions that arbitration is
8 enforceable.

9 And we, of course, have raised the Federal
10 Arbitration Act clearly before you. It's in our memo. It
11 clearly says it on top of the buyer's order, "This is
12 subject to Federal Arbitration Act." And when you buy a
13 car, like I said yesterday, it is certainly involving
14 interstate commerce because this car came from Korea and
15 it involves interstate commerce.

16 So it's as clear as a bell. She actually signed four
17 times buyer's order on April 10th, I agree to arbitration;
18 arbitration agreement separate, April 10th, I agree to
19 arbitration; June 2nd buyer's order, I agree to
20 arbitration; and then June 2nd standalone arbitration
21 agreement. And there's nothing in the record, not even in
22 her last-minute affidavit, that says I didn't know what I
23 was doing on April 10th, I didn't know what I was doing on
24 June 2nd. We are saying under the very strong
25 requirements of the United States Supreme Court and our

1 Supreme Court recognizing even in Judge Kittredge's
2 opinion in the Heron case that this is a case for
3 arbitration, and we can fuss about it even though she's
4 driving that car and got a better deal.

5 THE COURT: Thank you, Mr. Martin.

6 Mr. Andrighetti?

7 MR. ANDRIGHETTI: Thank you, Your Honor. We will try
8 not to repeat too many of our arguments from yesterday,
9 but this situation presents itself a little different than
10 the story yesterday because there were attempts to correct
11 the problem by the dealership. Interestingly, all of
12 those attempts to correct this problem were made after
13 opposing counsel's notice of the lawsuit and asked him to
14 accept service, after receiving no response, service was
15 made on the dealership, and after my client had resisted
16 their communications for several weeks at that point in
17 time.

18 So let me be clear. On May 25th, I e-mailed opposing
19 counsel asking him to accept service. The reason I did so
20 is they had already been noticed in the case that they
21 were of counsel in the case that we were here on
22 yesterday.

23 Having not received a response May 31st, and as
24 you'll see from the certificate of service, it was the
25 matter was served, I believe, effective June 1st is

1 actually when they got out there, but that's when it was
2 sent. June 2nd they get her in there to sign this.

3 Now, ignoring those improper contacts, let's talk
4 about the issue of my clients as to which contract
5 controls. They've presented to you a deal from April 10th
6 and a deal from June 2nd. We contend there is also a deal
7 from June 15th, and that is what we addressed in my
8 client's memo. As evidence of that, I received a letter
9 from opposing counsel in July stating that this matter had
10 been settled between the parties and a copy of a release
11 that was signed on June 15th, a release of litigation done
12 without consultation with counsel, done without notice to
13 counsel, and as the affidavit contends, with the actual
14 active denial of consultation with counsel.

15 We contend in this affidavit, as clearly stated, that
16 the June 2nd documentation was incorrect as represented by
17 Kia's employees. They requested over the next couple of
18 weeks after June 2nd that my client come back out there
19 and receive her refund and sign the new documents.
20 Clearly laid out. We have a document indicating that she
21 was there on June 15th, yet we don't have the contracts
22 that were there on June 15th.

23 And then let's just take a step back and look at the
24 big picture. Under their scenario, there are two
25 contracts executed -- six contracts executed, two contract

1 dates, three contracts per day. Under our scenario, there
2 would be nine over three days. If that's a proper
3 transaction and a transaction that forms a contract and a
4 meeting of the minds, then that is something that will be
5 new in South Carolina law, because obviously, if they
6 can't get it right the first or second time and they're
7 going to a third time, they're not getting it right at
8 all. They're not in agreement on this.

9 We contend that, in fact, she's not in the same car.
10 It's a different car, it's a different VIN number, even
11 though this paperwork shows it. So there is no meeting of
12 the minds by any stretch in this.

13 Now, returning to yesterday's arguments briefly, in
14 addition to the arguments I raised yesterday, having had
15 more time to look at the rules and procedures that they
16 added, we would note for the Court that there are limits
17 on discovery, there are notice requirements, and that
18 there are two notice requirements, one of which is for an
19 entity I have not identified but we are to notify the
20 dealer for service of any documents via president of MCE.
21 I'm not sure of any corporate entity that's associated
22 with Kia of Greenville. The holding company or the parent
23 company is KOL, Inc. So we don't even know if we have the
24 right parties as parties to this contract that they allege
25 exists.

1 And, again, we are talking about a process wherein
2 this charity/car dealership called my client for at least
3 eight weeks, called her while she was in the hospital, had
4 her come by after she was in the hospital the same day and
5 have her sign allegedly a release as to all litigation,
6 but certainly a new contract that corrected the errors
7 that they made on April 10th and on June 2nd.

8 Now, the other thing I will finally point out is
9 yesterday, counsel made a point of noting that there was
10 not an affidavit in the record. Today there is an
11 affidavit in the record. But the notion that most of what
12 opposing counsel has just testified to is in the record on
13 their side is completely inaccurate. We may have these
14 documents. We don't know what order they were signed in,
15 we don't know what the representations were made, we don't
16 have original copies to demonstrate that they're
17 originals.

18 What we do have is the allegations contained in the
19 verified complaint that my client didn't get a copy of any
20 of it ever, and that my client felt pressured at all times
21 throughout this process, particularly on the June 2nd and
22 on the June 15th dates. And finally, I believe it is in
23 Paragraph 11 of the plaintiff's complaint wherein my
24 client, after having talked with Crescent Bank, was
25 informed she wasn't denied because of the child payments

1 -- child support payments. She was denied because there
2 were misrepresentations made by Mr. Higgins and employees
3 of Kia regarding her financial picture. She didn't fill
4 out the application that went to Crescent Bank. She gave
5 them her financial information. They filled it out and
6 sent it off. They didn't get a good result, so the issue
7 came up.

8 Now, again, the whole notion that this is a
9 contingent contract is new to me as of yesterday. I
10 didn't -- none of my clients contended that it was
11 contingent, and I spoke with representatives of Global --
12 of the second bank they sold it to. I can't remember the
13 name. Global ---

14 MR. MARTIN: It's Global.

15 MR. ANDRIGHETTI: They did not raise the notion that
16 it was contingent. They just raised the notion that we
17 buy these or we don't buy them. It's up to the dealer if
18 we don't buy them to find someone else to do it, but we
19 don't know that they resend the contract.

20 So everyone I spoke with didn't allege any sort of
21 contingent nature to this. But assuming there even is a
22 contingency, the ultimate issue still goes back to this
23 arbitration clause and the fact that most of it and a good
24 substance of parts of it were kept from my client. If
25 mere filing procedures are all that are in the policies

1 and procedures, I can understand the argument under the
2 law that's been -- under the cases that have been
3 presented to you. But there are substantive rights that
4 are being waived under this -- under these policies and
5 procedures.

6 And just finally, I would note, one of them that I
7 discovered I think on the last page of the arbitration
8 clause allows anyone -- any attorney in good standing
9 before any state bar to represent a party in this action
10 in South Carolina. It doesn't have to be a South Carolina
11 Lawyer.

12 So now not only, as I raised yesterday, is my client
13 to arbitrate matters with third parties, including
14 warranty claims with Kia, which had nothing to do with
15 this, but they're now also to arbitrate with a lawyer from
16 a state who doesn't follow the rules here, so to the
17 extent that this matter is appealed -- I mean, they are
18 stretching to even now affect the state bar, how it
19 governs its admission policies.

20 So, again, just to get to the final point on all of
21 this, this arbitration clause, contract, whatever you want
22 to call it, is so vague -- excuse me. Not vague. So
23 grand, so all-encompassing, so monumental to the deal as
24 they're alleging here that to not provide as a part of the
25 contract is to keep clients in the dark and from there

1 being an ultimate agreement as to -- or a meeting of the
2 minds as to the contract.

3 For those reasons, we, again, contend the arbitration
4 clause does not provide, the litigation should be allowed
5 to proceed, discovery should be allowed to be conducted.
6 Alternatively, as we proposed yesterday, at a minimum,
7 some discovery as to the origination of these contracts
8 that we don't have copies of and that my clients didn't
9 have copies of and that third parties have represented to
10 counsel that they did not know about should at least be
11 conducted so that there can be some understanding as to
12 what occurred out there.

13 Again, despite what counsel has said, there is no
14 indication as to which contract of the three were signed
15 first, and there's conflicting and controlling language in
16 each of these. The order in which they signed would be
17 important. That's not been established. So at a minimum,
18 what we are looking here for is at least in discovery as
19 to the issue.

20 Thank you.

21 THE COURT: Okay. Thank you.

22 Mr. Martin, I'll give you last word.

23 MR. MARTIN: Thank you, Your Honor.

24 His last point about which one was signed last, he
25 says there's no evidence. Well, his client signed an

1 agreement that said, "This agreement constitutes the
2 entire agreement of the parties with respect to its
3 subject matter, is agreed to be the last agreement entered
4 into with respect to the subject matter." I think that's
5 about game, set and match if you're a tennis fan. So that
6 is clear. And she signed it on April 10th and she signed
7 it on June 2nd.

8 We didn't know about the -- oh, about the release.
9 This is not part of the arbitration agreement. The
10 release, what happened, apparently -- and this is totally
11 out of the record, is not before you, has nothing to do
12 with this arbitration issue. Apparently, she wanted the
13 car. She was excited she could save \$5,000, and she came
14 and got the car on June 2nd. And she told us that she had
15 fired her lawyer, she didn't want to have any litigation,
16 and she was happy to sign it. I didn't have anything to
17 do with it. My office had nothing to do with it. The
18 people at Kia have every right to talk to her. The only
19 ethical rule is is that a lawyer can't talk to someone
20 they know is represented. We have nothing to do with
21 that. She on her own came in there. She fired this
22 fellow. Somehow he got her back on. I don't know how.
23 We can get into that some other time. That's not for you.

24 The issue is what happened on April 10th and what
25 happened on June 2nd. And it clearly and unequivocally

1 says that what she signed was an arbitration agreement
2 that she agreed that if she had any fusses with us, she
3 would arbitrate. She agreed that on the day that she
4 signed it, okay?

5 There is not -- and this idea of contingency, once
6 you get the credit approved and once the retail
7 installment contract comes into play, there's no more
8 contingency. And on June 2nd -- now, the first lender,
9 Crescent, and the reason why Crescent didn't, we can get
10 into that, that's not before you, is because she failed to
11 disclose her criminal violence background, lost her kids
12 and she had her -- and she apparently was even arrested
13 for not paying child support so they started garnishing
14 her wages. She didn't tell us any of that. Crescent
15 found out about it and said, "We're not going to have
16 anything to do with this lady." Global was far more
17 understanding than -- and they said if you whack the price
18 down, way down, which we did. She got the same car, the
19 VIN numbers are the VIN numbers, are the VIN numbers.
20 It's a federal offense to sell a car with a different
21 number. We're in business for 15 years providing lots of
22 jobs in Greer -- or Greenville. We would have never done
23 that.

24 So it is not contingent once it's funded. And she's
25 now in the car, she's a happy camper, and apparently this

1 lawyer talked her back into bringing the lawsuit back to
2 light. We had nothing to do with that, and our client has
3 every right and she has every right to go in and do
4 business with them and tell her lawyer she didn't want to
5 go forward with it.

6 But the bottom line is, she agreed on that day that
7 it was signed on June 2nd that if I got a fuss, it's
8 arbitration. And that's all we're asking. And if she
9 wants to go into whether this release is good or not, she
10 can do that.

11 All these issues are for the arbitrator as to whether
12 it can be properly released or not released.

13 And who can be the lawyer, it doesn't say anything
14 about a South Carolina lawyer. What it clearly says is,
15 and I'll read it to you, it says, "Arbitrator shall be
16 attorneys or retired judges and shall be selected pursuant
17 to policies and procedures. The arbitrator shall apply
18 governing substantive law in making an award but may not
19 add, modify or invalidate or ignore any provision of the
20 agreement or the policies and procedures."

21 So the arbitration hearing is simply a fair hearing.
22 And under the representation, it says, "Unless appearing
23 pro se, any party may only be represented by an attorney
24 who is a member in good standing before any state bar."
25 That's in the policies and procedures. So his

1 representation, I'm not quite sure what point he was
2 making with that.

3 But the bottom line is, this is a very fair
4 situation. She has every right to take all of this stuff
5 before the arbitrator. But this is a jurisdictional
6 motion. We've got the Supreme Court on our side, we've
7 got the South Carolina Supreme Court on our side, we have
8 no facts are even remotely close to the Simpson case that
9 I'm very familiar with. This person had the right to
10 decide, she had the ability to decide, she agreed to
11 arbitrate, and that's all I want to do, Your Honor.

12 THE COURT: Well let me ask -- I'm going to ask each
13 of you this question. The contract that the plaintiff
14 operates under, what you're stating is the plaintiff is
15 making her payments on the vehicle; is that correct,
16 Mr. Andrighetti?

17 MR. ANDRIGHETTI: That's correct. Well, I'm not sure
18 if the payments have begun yet or not. I think there's
19 typically a 45-day period.

20 THE COURT: But she has a vehicle. I understand
21 you're alleging that a different VIN number.

22 MR. ANDRIGHETTI: Correct.

23 THE COURT: But she has a vehicle from this dealer.

24 MR. ANDRIGHETTI: Correct.

25 THE COURT: So the contract that is in effect now was

1 signed after the institution of this litigation; is that
2 correct?

3 MR. MARTIN: No, it's not.

4 THE COURT: June ---

5 MR. MARTIN: It was signed on June 2nd.

6 MR. ANDRIGHETTI: This litigation was instigated in
7 May -- instituted in May.

8 THE COURT: It looks like the summons and complaint
9 was filed May 25th.

10 MR. MARTIN: And I think our people were served
11 June 2nd.

12 MR. ANDRIGHETTI: They were served June 1st,
13 according to the certificate.

14 THE COURT: Well, I'm not asking when they were
15 served. The date of the litigation.

16 MR. MARTIN: The litigation apparently was before she
17 signed the second agreement on June 2nd. Yes. That's
18 correct.

19 THE COURT: Okay. But the ---

20 MR. ANDRIGHETTI: And our contention is there was an
21 agreement signed on June 15th, that they are, in fact, not
22 presenting to the Court.

23 THE COURT: I understand your argument, but the
24 complaint deals with contracts that were signed prior to
25 the filing of the complaint.

1 MR. ANDRIGHETTI: Correct.

2 THE COURT: So we have a June 2nd contract that
3 everybody agrees was signed, then there's a contention
4 about a June 15th. So how were those covered under the
5 same litigation?

6 MR. ANDRIGHETTI: We believe -- they may not be, Your
7 Honor. My contention is this. There were
8 misrepresentations made that affects upon my client. If
9 you'll read the allegations in the complaint, they also,
10 to this date, my understanding is, they still haven't paid
11 off -- she had a trade-in. They haven't paid off the car
12 loan on that yet.

13 THE COURT: All right.

14 MR. ANDRIGHETTI: And so those -- certainly, the
15 damages have greatly changed because they've been willing
16 to do some things.

17 MR. MARTIN: If I can respond.

18 THE COURT: Yeah. Right. I understand.

19 MR. MARTIN: If I can quickly respond.

20 You're right. If, indeed, this complaint was filed
21 on May 25th, the only contracts before you are the
22 April 10th contracts. And on April 10th, she signed a
23 buyer's order that said, "I agree to arbitration under the
24 Federal Arbitration Act." Then she signed a retail
25 installment sale contract that did not get funded because

1 of the misrepresentation. And the third document and the
2 last document she signed is an arbitration agreement. So
3 any complaint that she has that's contained in the four
4 corners of the complaint are controlled by those three
5 April 10th documents. And the last one is the arbitration
6 agreement, and the first one says, "I agree to arbitrate."
7 So any way you cut it, she's got to go to arbitration.

8 THE COURT: I think I understand everyone's argument.
9 I'm going to consider this one under advisement along with
10 the other one. Y'all have given me a lot of material to
11 read.

12 Thank you, gentlemen.

13 (WHEREUPON, proceedings concluded at 12:13 p.m.)
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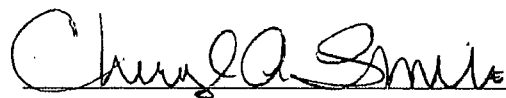
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the
Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Greenville County, South Carolina, on the
23rd day of August, 2017.

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

November 7, 2017



Cheryl A. Smith, CVR-M

Court Reporter

BRADFORD NEAL MARTIN & ASSOCIATES, PA

ATTORNEYS AT LAW

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FAX: (864) 552-9992

August 23, 2017

The Honorable Paul B. Wickensimer
Greenville County Clerk of Court
305 East North Street
Greenville, South Carolina 29601

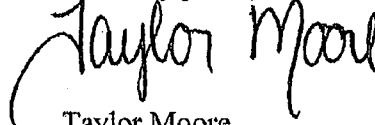
RE: *Casey Masters v. Kia of Greenville*
2017-CP-23-3402

Dear Mr. Wickensimer:

I write to request the attached Exhibit A be substituted for the Exhibit A to Defendant's Supplemental Memorandum in Support of KOL, Inc. d/b/a Kia of Greenville's Motion to Stay and to Compel Arbitration which was filed on August 22, 2017. This filing inadvertently was missing a page when scanned and we respectfully request your office to substitute for the proper document.

I appreciate your assistance in this matter.

Sincerely yours,



Taylor Moore
Paralegal to Bradford N. Martin

/tm
enclosure

ELECTRONICALLY FILED - 2017 Aug 23 11:26 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2303402

Exhibit A

NOTICE: THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT ("FAA") 9 U.S.C. § 1 ET SEQ. OR IF AND ONLY IF THE FAA DOES NOT APPLY THEN PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, S.C. CODE ANN. § 15-36-10, ET SEQ. THE TERMS AND CONDITIONS OF ARBITRATION ARE CONTAINED IN THE DEALERSHIP'S ARBITRATION POLICIES AND PROCEDURES.

CUSTOMER'S PURCHASE ORDER AND AGREEMENT

Salesperson **RODNEY HIGGINS** Customer No. **8848082748** Date **04/10/2017**
Customer **CASEY LEIGH MASTERS** DOB **[REDACTED]** Driver's License # **[REDACTED]**
Co-Customer **[REDACTED]** DOB **[REDACTED]** Driver's License # **[REDACTED]**
Address **[REDACTED]** City **GREENVILLE** State **SC** Zip **29606**
Resident Phone **804/ [REDACTED]** Country **GREENVILLE** Business Phone **804/900-2748**
Please Enter My Order for the following: ☒ New ☐ Demo
Vehicle **KIA** Model **FORTE** Body Type **SD** Year **2017** Stock # **20728**
Color **GLASS WHITE** ID# **3KPRK4A79H6044214** Mileage **16** Key # **W0160**

USED CAR TRADE-IN AND/OR OTHER CREDITS									
MAKE	MODEL	TYPE	VEHICLE PRICE						
CHEVROLET	CAVALIER	SD	21049.00						
CYL	YEAR	2002	DEALER INSTALLED OPTIONS						
1	0	2							
2	0	2							
3	0	2							
4	0	2							
5	0	2							
6	0	2							
7	0	2							
8	0	2							
9	0	2							
0	0	2							
AUTOMOBILE BILL OF SALE									
As part of this agreement, I hereby sell and convey to Dealer the above described vehicle of which I am sole owner and warrant said vehicle to be free and clear of all liens and encumbrances except those listed below. Furthermore, I understand that if the loan amount(s) or "Payoff" is greater than what is listed below I will be responsible for any such difference. The difference shall be paid within days of the sales date listed herein. If the loan amount or "Payoff" is less than what is listed below, I understand that the loan holder(s) will be responsible to refund any said difference to me.									
<i>Casey L. Masters</i> (CUSTOMER'S SIGNATURE)									
PAYOFF TO: TITLE MAX									
AMOUNT: 700.00									
CLOSING FEE: Dealer charges a Closing Fee in the amount of \$175. It is a charge that is permitted but not required by law. The full cash price charged at any dealership depends on many factors, including all products and services bought with the vehicle.									
☒ NEGATIVE EQUITY: If the Pay-off Balance on your trade-in exceeds the Trade Allowance from the Dealer, the excess amount, or "negative equity," must be either paid by you in cash or financed with your purchase. If financed with your purchase, the amount of any negative equity will be included in the Amount Financed and subject to Finance Charge under the Retail Installment Contract.									
X _____ Initials									
X N/A Initials									
SUB TOTAL: 18299.00									
SALES TAX: 800.00									
TOTAL PRICE OF VEHICLE: 18899.00									
PAY-OFF BALANCE: CUSTOMER 700.00									
TITLE, LICENSE & REGISTRATION: 30.00									
SERVICE CONTRACT: 1995.00									
LESS REBATE OF: 2500.00									
TOTAL: 16334.00									
CASH ON DELIVERY: 800.00									
BALANCE: 15534.00									

1. **DEFINITIONS.** As used in this Purchase Order, the terms (a) "Dealer," "Seller," "we," "us," and "our" shall mean the Dealer which is named on the Purchase Order, which shall become a party to this Agreement only when an authorized representative of the Dealer signs the Purchase Order; and (b) "Customer," "Customer(s)," "Co-Customer," "you," and "your" refer to the customer(s) signing below.
2. This Customer's Lease Order is hereby entered into by and between the Customer and **GREENVILLE** ("Dealer"). Customer(s) has(have) read and understands the terms, conditions, and disclosures set forth in this Purchase Order. This Purchase Order represents the final agreement between the parties related to the sale of the vehicle and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. Any Retail Installment Contract or other document executed by Customer in connection herewith is simply a means of satisfying Customer's obligations under this Purchase Order. The terms of this Agreement may be modified only in writing signed by the Customer and an authorized representative of Dealer. The interpretation and enforcement of this Purchase Order shall be governed by the laws of South Carolina, except as to arbitration, which shall be governed by the FAA.
3. **LIMITATIONS OF WARRANTY.** If you are purchasing a new vehicle then you will receive a warranty from the manufacturer. If you are purchasing a used vehicle, there may or may not be a manufacturer's warranty applicable to the vehicle. In either event, Dealer makes no warranties express or implied regarding the vehicle (new or used), and with respect to the vehicle (new or used), UNLESS DEALER FURNISHES CUSTOMER WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF. DEALER HEREBY EXCLUDES ALL EXPRESS WARRANTIES, IMPLIED WARRANTIES OF MERCHANTABILITY, OR IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. This disclaimer in no way affects the provision of the manufacturer's warranty or any specified agent or warranty. Customer acknowledges receipt of any warranty information prior to the sale of the vehicle.
4. To the extent allowed by law, Customer shall not be entitled to recover from the Dealer any consequential damages, damages to property, damages from loss of use, loss of time, loss of profits or income, or any other incidental damages.
5. **USED VEHICLES ONLY.** If you are purchasing a used vehicle, the Dealer is providing you a three (3) day guarantee on the purchase of the used vehicle described herein. Within three (3) calendar days from the date the vehicle is delivered to you, whether upon consummation of the purchase of the vehicle or pursuant to a conditional delivery as described herein, you may return the vehicle to the Dealer for any reason. If you choose to do so, the Dealer will apply 100% of the money previously paid by you toward the purchase of another vehicle. You must choose a replacement vehicle from the current "in-stock" vehicle selection within seven (7) days of returning the used vehicle. This guarantee is contingent upon return of the vehicle described above in the same condition as delivered to you. If the original purchase was financed, this guarantee is also contingent upon your continuing financing for the balance of the replacement vehicle. The used car that you are agreeing to purchase may have sustained damage prior to this time the Dealer took possession of it, and the Dealer makes no warranties as to its condition aside from those on the vehicle's window (or, you acknowledge that you have the opportunity to examine the vehicle and/or to take the vehicle to be examined by anyone of your choosing prior to executing this Customer's Purchase Order).

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6. You acknowledge that You have the opportunity to examine the vehicle and/or to take the vehicle to be examined by anyone of your choosing prior to executing this Customer's Purchase Order.

7. Used Car Buyers Guide. The information You see on the window form for this vehicle is part of this contract. Information on the window form overrides any contract provisions in the contract of sale.

Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrato contenida en el contrato de venta.

8. You have thoroughly inspected, accepted, reviewed any history reports requested, and approved the vehicle described above in all respects. You may obtain an independent third-party inspection of the vehicle on Your own. YOU AGREE THAT YOU ARE NOT RELYING ON ANY STATEMENT MADE BY ANYONE AT THE DEALERSHIP AS TO THE CONDITION OR DAMAGE TO THE VEHICLE PRIOR TO COMING INTO THE POSSESSION OF THE DEALERSHIP.

Buyer's Initials N/A
Co-Buyer's Initials

9. Note: This vehicle may have been delivered to a previous customer.

Buyer's Initials N/A
Co-Buyer's Initials

10. **EXTENDED SERVICE AGREEMENTS AND/OR MAINTENANCE CONTRACT.** If You have agreed to purchase an extended service agreement and/or maintenance contract for Your vehicle (the terms of which are contained in a separate contract), You acknowledge and agree that the purchase of such contract(s) is optional and You have made such purchase(s) voluntarily. Unless paid in cash by You, the cost of such contract(s) will be included in the Amount Financed and subject to a Finance Charge under the Retail Installment Sales Contract. The Dealer earns or retains a portion of the cost of the contract as a commission from the extended service agreement and/or maintenance contract company, which is based on the type of coverage that You buy. Please refer to the separate service agreement and/or maintenance contract for the specific coverage, and terms and conditions of such agreement/contract.

11. **GAP INSURANCE.** If You have agreed to purchase Gap Insurance (the terms of which are contained in the Insurance policy), You acknowledge and agree that the purchase of this insurance is optional and that You have made such purchase voluntarily. Further, You acknowledge that such Gap Insurance is not a policy for physical damage insurance for Your benefit, but it is intended for the benefit of the lender who provides financing for the purchase of the vehicle in the event that the amount of insurance paid for the total loss of the vehicle is less than the loan balance due from You under the Retail Installment Sales Contract. The premium for such insurance will be included in the Amount Financed and subject to a Finance Charge under the Retail Installment Sales Contract. The Dealer earns or retains a portion of the premium to be paid by You as its commission from the insurance company, which is based on the amount and type of insurance that You buy. Please refer to the insurance policy for the specific coverages, and terms and conditions of such insurance.

12. FINANCING.

- Unless You are paying cash for this vehicle or are arranging financing on Your own, You acknowledge and agree that You will enter into a Retail Installment Sales Contract with the Dealer intended to sell or assign to an independent third-party lending institution.
- You may secure financing through us or through any financing entity You choose. The financing terms You get could be more favorable than the terms we give You.
- If we sell You any ancillary products, such as an extended service plan, pre-paid maintenance or GAP insurance, we may receive part of the cost of the product and/or other compensation from the provider of the product.
- The Annual Percentage Rate in a Retail Installment Sales Contract may be negotiable with the Dealer. The Dealer may assign any Retail Installment Sales Contract to a financing source and retain its right to receive a part of the finance charge imposed on that contract.
- The Dealer may be paid an assignment fee by the third-party lending institution. The fee may be a set amount or it may be a yield spread representing the difference between the Dealer's discounted interest rate and the Customer's rate of interest.
- The Dealer may sell or assign the Retail Installment Sales Contract at a discount or for an amount less than the purchase price of the vehicle.
- You acknowledge and represent that You were never offered the vehicle at a price lower than that reflected in the Retail Installment Sales Contract.

13. DEALER'S RIGHT TO CANCEL - CONDITIONAL DELIVERY AGREEMENT

If You sign here, the provisions of the Dealer's Right to Cancel, which gives the Dealer the right to cancel if Dealer is unable to assign the Retail Installment Sales Contract signed with this Purchase Order, will apply. The right to cancel this Purchase Order will end when a third-party lending institution purchases the Retail Installment Sales Contract or on the date that is 60 days after the date of this Purchase Order, whichever occurs earlier.

Customer's Approval 04/10/2017 N/A
Date Date

You acknowledge and agree that the Dealer is permitting You to take conditional delivery and possession of the vehicle prior to the actual lease, subject to the following:

- You have been advised and understand that the purchase of the vehicle described herein is contingent upon (a) Your entering into a Retail Installment Sales Contract, and (b) the Dealer assigning or selling Your Retail Installment Sales Contract to a third-party lending institution on terms and conditions acceptable to the Dealer;
- The Dealer agrees to "conditionally deliver" or place the vehicle in Your temporary possession and control, with the understanding and agreement that You will fully cooperate with the Dealer in attempting to sell or assign Your Retail Installment Sales Contract to a third-party lending institution, including providing the lending institution(s) with any credit application submissions, documentation, proof of income, or other materials they may require;
- You represent and warrant that all material statements made in Your credit application are true and correct and contain Your entire credit history, and in consideration thereof and in reliance upon the truth and accuracy of Your credit application, the Dealer makes such conditional delivery of the vehicle to You. Any material misrepresentation in the credit application or any other related documents entitles the Dealer to cancel the conditional sale and delivery of the vehicle, or Dealer may, at its option, declare the entire balance due under the Purchase Order immediately due and payable;
- You acknowledge no one at the dealership has coerced you to provide false information;
- Customer(s) has (have) simultaneously with execution of the within contract, furnished to the dealer a credit application, in which application the customer represents and warrants that the said application contains the customer's entire credit history and that the information therein contained is true, correct and accurate. You agree, as an inducement to the Dealer to make immediate delivery of the automobile described in the within contract, prior to the ability of the Dealer to verify the truth and accuracy of the information contained in Your credit application, and in consideration of the Dealer making immediate delivery thereof, that if any of the information furnished to the Dealer is found to be false or untrue, You shall be considered to be in default under the contract and the Dealer may, at its option, declare the entire balance due under the Purchase Order immediately due and payable. Customer(s) acknowledge(s) no one at the dealership has coerced them to provide false information;
- In the event that, even though Your credit information is found to be accurate, true and correct, for any reason the sale or assignment of Your Retail Installment Sales Contract by the Dealer to a third-party lending institution is not completed, then the Dealer shall have the right to cancel the sale of the vehicle to You. Further, You agree that You will return the vehicle in its original condition to the Dealer within forty-eight (48) hours upon any notice, written or oral, that the Dealer has been unable to sell or assign Your Retail Installment Sales Contract;
- If You fail to return the vehicle within forty-eight (48) hours after receipt of the notice of cancellation, You agree Dealer may charge a fee of \$35.00 per day from the date of cancellation until the vehicle is returned or repossessed;
- Dealer shall return Your deposits and whatever trade-in vehicle that You gave to the Dealer in connection with this transaction; however, the parties agree that deductions from the deposit will be made for mileage in excess of that allowed under the Conditional Delivery Agreement or for damage to the vehicle;
- Under any and all circumstances, You will be responsible for insurance coverage and any deductibles if an accident or damage should occur;
- You agree and understand that: (i) You assume all risk of loss or injury to the vehicle, Yourself or third parties arising out of the operation and use of the vehicle while in Your possession; (ii) You are liable to the Dealer for all damage, destruction, and/or abuse of the vehicle while in Your possession; and (iii) You will indemnify the Dealer for any injury, cost, loss or damages to any third party whatsoever arising out of the operation or use of the vehicle while in Your possession;
- In the event that the Dealer is forced to seek legal action to enforce this agreement, to recover for losses, or to recover the vehicle, You agree to be responsible for and will pay all reasonable legal fees and other costs and expenses incurred by the Dealer;
- After return of the vehicle as described in paragraph a., You will have the option of (i) re-contracting under alternate terms (if available), (ii) independently securing financing for the purchase of the vehicle within forty-eight (48) hours of returning the vehicle to Dealer, or (iii) purchasing the vehicle for cash within forty-eight (48) hours of returning the vehicle to Dealer in the amount(s) reflected in the Customer's Purchase Order; and
- While the vehicle is in Your possession under this conditional delivery, You shall limit Your usage to one hundred (100) miles per day.

14. **Servicing, Collection, and Marketing Contacts.** You agree that we may try to contact You in writing, by e-mail, or by using prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact You in these and other ways at any address or telephone number You provide us, even if the telephone number is a cell phone number or the contact results in a charge to You.

15. **Rebates/Payment/Incentives.** Dealer has no obligation to disclose to Customer the availability of incentives or rebates. All rebates, payments, and/or incentives are, by this

Exhibit A

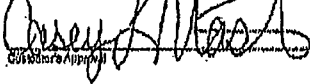
Purchase Order, assigned to the Dealer. If this Purchase Order shows a discount or credit based on Customer's relationship with the Manufacturer, Customer must furnish Dealer with all necessary documentation, information, verification, and certificates.

15. Customer(s) acknowledge(s) no one at the Dealership has coerced them to provide false information.

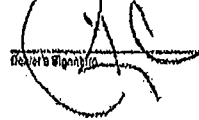
17. THE DEALER EARNS OR RETAINS A FEE FOR ANY ADDITIONAL GOODS/SERVICES THAT THE DEALER OBTAINS ON YOUR BEHALF FROM ANY THIRD PARTY.

18. SEVERABILITY AND SURVIVAL. If any portion of this Agreement is determined to be unenforceable, then the remainder shall be given full force and effect. The Parties agree that this Agreement may not be amended or modified in any respect except in writing.

Customer hereby acknowledges that he/she has thoroughly read this Purchase Order, understands and agrees with its terms, including the fact this agreement is subject to binding arbitration. Customer has received a completely filled in copy of this order and agreement.



04/10/2017
Approval Date



04/10/2017
Dealer Approval Date

Customer's Approval

N/A

Approval Date

ELECTRONICALLY FILED - 2017 Aug 23 11:26 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2303402
ELECTRONICALLY FILED - 2017 Aug 22 4:30 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2303402

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Casey Masters,

Plaintiff,

v.

KOL, Inc. d/b/a Kia of Greenville,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2017-CP-23-03402

AFFIDAVIT OF CASEY MASTERS

PERSONALLY appeared before me, a Notary Public for South Carolina, the undersigned, who being first duly sworn, deposes and says:

1. I am the plaintiff in the above-captioned matter, and I have reviewed the Complaint filed in this matter. All allegations contained in the Complaint are true, based upon personal knowledge except those stated to be based upon information and belief, and as to those, I believe them to be true.
2. After the Complaint was filed, representatives of the Kia dealership contacted me directly to tell me they would refund my down payment, pay off the loan on my traded-in vehicle and finance a new car for me. They also promised that my new monthly payments would be lower than my current monthly payment; however, they said I had to return the loaner vehicle to them.
3. I agreed to do so on or about June 2, 2017. I drove to the dealership with the loaner vehicle and gave a Kia representative my car keys upon arrival. I was taken to an office to sign new documents to finance a new vehicle, where I learned that my down payment would not be refunded that day as promised, and that my monthly payments would be higher, not lower.

4. I was told that I had to sign the new contract if I wanted a car. I felt pressured to sign the documents they gave me because I had no way of getting home without a car, and my children were with me. So, I signed the documents they gave me so I could take my children home.

5. Over the following few days, Kia representatives called me to tell me that they had given me the incorrect documents on June 2, and that I had to sign new documents. They also told me that my down payment refund was ready.

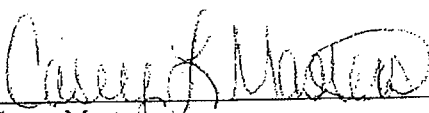
6. I was sick and distressed, and went to the hospital on June 15 for hives and a severe rash. The doctor was concerned about my level of stress.

7. Kia representatives continued to call me while I was at the hospital. They told me they would give me my down payment back if I would sign the new documents.

8. After I left the hospital, and while under the influence of medicine that affected my ability to understand what I was doing, I agreed to sign the new documents. I do not know what I signed, and I was not provided with copies of anything. I told them that I wanted to talk to my lawyer first, but they said they couldn't give me the refund check if I wanted to talk to my lawyer.

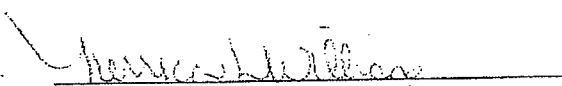
9. Representatives of Kia continued to communicate directly with me despite the fact that they were fully aware that I was represented by counsel.

FURTHER AFFIANT SAYETH NAUGHT.



Casey Masters

SWORN to before me this
22nd day of August, 2017.



Notary Public for South Carolina
My commission expires: July 13, 2021

LAW 553-SC-eps-14 7/14

RETAIL INSTALLMENT SALE CONTRACT SIMPLE FINANCE CHARGE

Dealer Number _____ Contract Number 025675

DEAL# 6420

Buyer Name and Address (Including County and Zip Code) CASEY LEIGH MASTERS 609 CHURCHILL CIR GREENVILLE, SC 29605 COUNTY: GREENVILLE	Co-Buyer Name and Address (Including County and Zip Code)	Seller-Creditor (Name and Address) KOL, INC. dba KIA OF GREENVILLE 2424 LAURENS RD GREENVILLE, SC 29607
---	--	--

You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements in this contract. You agree to pay the Seller - Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-in-Lending Disclosures below are part of this contract.

New/Used	Year	Make and Model	Vehicle Identification Number	Primary Use For Which Purchased
NEW	2017	KIA FORTE	3KPFK4A73HE044214	Personal, family, or household use unless otherwise indicated below ☐ business ☐ agricultural ☐ N/A

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment of
19.65 %	\$ 11822.60	\$ 16333.00	\$ 28155.60	\$ 7449.00 is \$5604.60

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due
72	391.05	Monthly beginning 05/25/2017
N/A	N/A	N/A

Or As Follows:

N/A

Late Charge. If a payment is not received in full within 10 days after it is due, you will pay a late charge of 5% of the part of the payment that is late, with a minimum charge of \$7.20. The charge will not exceed \$18.00 if you bought the vehicle primarily for personal, family, or household use. We may charge the maximum and minimum late charge dollar amounts as allowed by S.C. Code Ann. 37-1-109 of the South Carolina Consumer Protection Code.

Prepayment. If you pay off all your debt early, you will not have to pay a penalty.

Security Interest. You are giving a security interest in the vehicle being purchased.

Additional Information: See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date and security interest.

WARRANTIES SELLER DISCLAIMS
Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date this contract, the Seller makes warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or fitness for a particular purpose. This provision does not affect a warranty covering the vehicle that the vehicle manufacturer may provide.

Used Car Buyers Guide. The information you see on the window form of this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.
Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

APPLICABLE LAW

Federal law and the law of the state of South Carolina address shown above apply to this contract.

SERVICING AND COLLECTION CONTACTS

You agree that we may try to contact you in writing, by e-mail, or using prerecorded/artificial voice messages, text messages, and automated telephone dialing systems, as the law allows. You also agree that we may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you.

☐ **VENDOR'S SINGLE INTEREST INSURANCE (VSI Insurance):** If the preceding box is checked, the Creditor requires VSI Insurance for the initial term of the contract to protect the Creditor for loss or damage to the vehicle (collision, fire, theft). VSI Insurance is for the Creditor's sole protection. This insurance does not protect your interest in the vehicle. You may choose the insurance company through which the VSI is obtained. If you elect to purchase VSI Insurance through the Creditor, the cost of this insurance is \$ N/A and is also shown in item 4B of the Itemization of Amount Financed. The coverage is for the initial term of the contract.

NO COOLING OFF PERIOD

State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply to home solicitation sales.

HOW THIS CONTRACT CAN BE CHANGED This contract contains the entire agreement between the parties.

ITEMIZATION OF AMOUNT FINANCED

1 Cash Price (Including \$ 300.00 sales tax and \$ 399.00 closing fee) \$ 1748.00 (1)

2 Total Downpayment =

Trade-in 2002 CHEVROLET
(Year) (Make) (Model)

Gross Trade-In Allowance

\$ 5149.00

Less Pay Off Made By Seller

\$ 700.00

Equals Net Trade In

\$ 4449.00

+ Cash

\$ 500.00+ Other CONSUMER REBATE\$ 2500.00

(If total downpayment is negative, enter "0" and see 4) below)

\$ 7449.00 (2)

3 Unpaid Balance of Cash Price (1 minus 2)

\$ 4299.00 (3)

4 Other Charges Including Amounts Paid to Others on Your Behalf

(Seller may keep part of these amounts):

A Cost of Optional Credit Insurance Paid to
Insurance Company or Companies.

Life

\$ N/A

Disability

\$ N/A\$ N/A

B Vendor's Single Interest Insurance Paid to Insurance Company

\$ N/A

C Other Optional Insurance Paid to Insurance Company or Companies

\$ N/A

D Optional Gap Contract

\$ N/A

E Official Fees Paid to Government Agencies

to N/Afor N/A\$ N/Ato N/Afor N/A\$ N/Ato N/Afor N/A\$ N/A

F Government Taxes Not Included in Cash Price

\$ N/A

G Government License and/or Registration Fees

LIC/REG FEES\$ 24.00

H Government Certificate of Title Fees

\$ 15.00I Other Charges (Seller must identify who is paid and
describe purpose)to N/A

for Prior Credit or Lease Balance

\$ 0.00to N/Afor SERVICE CONTRACT\$ 1995.00to N/Afor N/A\$ N/Ato N/Afor N/A\$ N/Ato N/Afor N/A\$ N/Ato N/Afor N/A\$ N/Ato N/Afor N/A\$ N/Ato N/Afor N/A\$ N/Ato N/Afor N/A\$ N/A

Total Other Charges and Amounts Paid to Others on Your Behalf

\$ 2034.00 (4)

5 Amount Financed (3 + 4)

\$ 6333.00 (5)OPTION: ☐ You pay no finance charge if the Amount Financed, Item 5, is paid in full on or before
N/A, Year N/A. SELLER'S INITIALS N/A

OPTIONAL GAP CONTRACT. A gap contract (debt cancellation contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in Item 4D of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term N/A Mos. N/A
Name of Gap Contract

I want to buy a gap contract.

Buyer Signs X N/A

Returned Check Charge: You agree to pay a charge of \$30.00 if any check you give us is dishonored.

**The Annual Percentage Rate may be negotiable with the Seller.
The Seller may assign this contract and retain its right to receive
a part of the Finance Charge.****NOTICE TO RETAIL BUYER: Do not sign this contract in blank. You are entitled to a copy of the contract at the time you sign. Keep it to protect your legal rights.**

Insurance. You may buy the physical damage insurance this contract requires from anyone you choose who is acceptable to us. You also provide the physical damage insurance through an existing policy owned or controlled by you that is acceptable to us. You are not required to buy any other insurance to obtain credit unless the box indicating Vent Single Interest Insurance is required is checked on page 1 of this contract. If any insurance is checked below, policies or certificates from named insurance companies will describe the terms and conditions.

Check the insurance you want and sign below:

Optional Credit Insurance

☐ Credit Life: ☐ Buyer ☐ Co-Buyer ☐ Both☐ Credit Disability: ☐ Buyer ☐ Co-Buyer ☐ Both

Premium:

Credit Life \$ N/ACredit Disability \$ N/A

Insurance Company Name

N/A

Home Office Address

N/A

CONSUMER CREDIT INSURANCE IS NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COST. Your decision to buy or not buy credit life insurance and credit disability insurance will not be a factor in the credit approval process. If you choose this insurance, the cost is shown in Item 4A of the Itemization of Amount Financed. Credit life insurance is based on your original payment schedule. This insurance may not pay all you owe on this contract if you make 12 payments. Credit disability insurance does not cover an increase in your payment or in the number of payments due for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown below.

Other Optional Insurance

☐ N/A Type of Insurance N/A TermPremium \$ N/A

Insurance Company Name

N/A

Home Office Address

N/A☐ N/A Type of Insurance N/A TermPremium \$ N/A

Insurance Company Name

N/A

Home Office Address

N/A

Other optional insurance is not required to obtain credit. Your decision to buy or not buy other optional insurance will not be a factor in the credit approval process. It will not be provided unless you sign and agree to pay the extra cost.

I want the optional credit insurance and other insurance checked above.

X N/A Buyer Signature N/A DateX N/A Co-Buyer Signature N/A Date☐ IF CHECKED, THE TERM OF OPTIONAL CREDIT INSURANCE IS LESS THAN THE TERM OF THE CONTRACT, AS DESCRIBED ABOVE.X N/A Buyer Signature N/A Date**THIS INSURANCE DOES NOT INCLUDE INSURANCE ON YOUR LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE.**

1. N/A
 2. N/A
 3. N/A
 4. N/A
 5. Amount Financed (3 + 4)

OPTION: ☐ You pay no finance charge if the Amount Financed, Item 5, is paid in full on or before
 N/A Year N/A SELLER'S INITIALS N/A

OPTIONAL GAP CONTRACT. A gap contract (debt cancellation contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in Item 4D of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term N/A Mos. N/A
 Name of Gap Contract

I want to buy a gap contract.

Buyer Signs X N/A

Returned Check Charge: You agree to pay a charge of \$30.00 if any check you give us is dishonored.

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.

NOTICE TO RETAIL BUYER: Do not sign this contract in blank. You are entitled to a copy of the contract as the sign you sign. Keep it to protect your legal rights.

You agree to the terms of this contract. You confirm that before you signed this contract, you were free to take it and review it. You confirm that you received a complete copy of this contract and you agree to it.

Buyer Signs X *[Signature]* Date 04/10/2017 Co-Buyer Signs X N/A Date N/A

Co-Buyers and Other Owners — A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

Other owner signs here X N/A Address N/A

Seller signs KOL, INC. dba KIA OF GREENVILLE Date 04/10/2017 By X N/A

Seller assigns its interest in this contract to CRESCENT BANK & TRUST (Assignee) under the terms of Seller's agreement(s) with Assignee

☐ Assigned with recourse ☒ Assigned without recourse ☐ Assigned with limited recourse

Seller KOL, INC. dba KIA OF GREENVILLE Title

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 THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO CONTENT OR FITNESS FOR PURPOSE OF THIS FORM. CONSULT YOUR OWN LEGAL COUNSEL.

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 LA/V 553-SC-eps-14 7/14 v1 Page 3

ILAW 553-SC-eps-14 7/14

RETAIL INSTALLMENT SALE CONTRACT SIMPLE FINANCE CHARGE

Dealer Number _____ Contract Number 025899

DEAL# 6725

Buyer Name and Address (Including County and Zip Code) CASEY LEIGH MASTERS 609 CHURCHILL CIR GREENVILLE, SC 29605 COUNTY: GREENVILLE	Co-Buyer Name and Address (Including County and Zip Code)	Seller-Creditor (Name and Address) KOL, INC. dba KIA OF GREENVILLE 2424 LAURENS RD GREENVILLE, SC 29607
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You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements in this contract. You agree to pay the Seller - Creditor (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-in-Lending Disclosures below are part of this contract.

New/Used	Year	Make and Model	Vehicle Identification Number	Primary Use For Which Purchased
NEW	2017	KIA FORTE	3KPFK4A73HE044214	Personal, family, or household unless otherwise indicated below ☐ business ☐ agricultural ☐ N/A

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment of
22.45 %	\$ 9761.20	\$ 14189.00	\$ 23950.20	\$ 4000.00 is \$ 27950.20

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due
60	399.17	Monthly beginning 07/17/2017
N/A	N/A	N/A

Or As Follows:

N/A

Late Charge. If a payment is not received in full within 10 days after it is due, you will pay a late charge of 5% of the part of the payment that is late, with a minimum charge of \$7.20. The charge will not exceed \$18.00 if you bought the vehicle primarily for personal, family, or household use. We may charge the maximum and minimum late charge dollar amounts as allowed by S.C. Code Ann. 37-1-109 of the South Carolina Consumer Protection Code.

Prepayment. If you pay off all your debt early, you will not have to pay a penalty.

Security Interest. You are giving a security interest in the vehicle being purchased.

Additional Information: See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date and security interest.

WARRANTIES SELLER DISCLAIMS

Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide.

Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

APPLICABLE LAW

Federal law and the law of the state of our address shown above apply to this contract.

SERVICING AND COLLECTION CONTACTS

You agree that we may try to contact you in writing, by e-mail, or using prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you.

☐ **VENDOR'S SINGLE INTEREST INSURANCE (VSI Insurance):** If the preceding box is checked, the Creditor requires VSI Insurance for the initial term of the contract to protect the Creditor for loss or damage to the vehicle (collision, fire, theft). VSI Insurance is for the Creditor's sole protection. This insurance does not protect your interest in the vehicle. You may choose the insurance company through which the VSI is obtained. If you elect to purchase VSI Insurance through the Creditor, the cost of this insurance is \$ N/A and is also shown in Item 4B of the Itemization of Amount Financed. The coverage is for the initial term of the contract.

NO COOLING OFF PERIOD

State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply to home solicitation sales.

HOW THIS CONTRACT CAN BE CHANGED. This contract contains the entire agreement between you and us. Any change to this

Prepayment: If you pay off all your debt early, your lender may charge a prepayment penalty.
Security Interest: You are giving a security interest in the vehicle being purchased.
Additional Information: See this contract for more information, including information about prepayment, default, any required repayment in full before the scheduled date and security interest.

Exposición en garantía contenida en el contrato de venta.

APPLICABLE LAW

Federal law and the law of the state of our address shown above apply to this contract.

SERVICING AND COLLECTION CONTACTS

You agree that we may try to contact you in writing, by e-mail, or using prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you.

☐ **VENDOR'S SINGLE INTEREST INSURANCE (VSI Insurance):** If the preceding box is checked, the Creditor requires VSI insurance to the full term of the contract to protect the Creditor for loss or damage to the vehicle (collision, fire, theft). VSI insurance is for the Creditor's sole protection. This insurance does not protect your interest in the vehicle. You may choose the insurance company through which the VSI is obtained. If you elect to purchase VSI insurance through the Creditor, the cost of this insurance is \$ N/A and is also shown in item 4B of the Itemization of Amount Financed. The coverage is to the full term of the contract.

NO COOLING OFF PERIOD

State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply to home solicitation sales.

HOW THIS CONTRACT CAN BE CHANGED. This contract contains the entire agreement between you and us relating to the contract. Any change to the contract must be in writing and we must sign it. No oral changes are binding. Buyer Signs X CLM DEB ALL 1/1/15
If any part of this contract is not valid, all other parts stay valid. We may delay or refrain from enforcing any of our rights under this contract without losing them. For example, we may extend the time for making some payments without extending the time for making others. See the rest of this contract for other important agreements.

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

The preceding NOTICE applies only to goods or services obtained primarily for personal, family, or household use. In all other cases, buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

☐ If this box is checked, the following late charge applies to vehicles purchased primarily for business or agricultural use.
If a payment is not received in full within N/A days after it is due, you will pay a late charge of \$ N/A or N/A % of the part of the payment that is late, whichever is less.
If this box is not checked, the late charge in the "Federal Truth-in-Lending Disclosures" still applies.

Buyer Initials CLM Co-Buyer Initials N/A

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ITEMIZATION OF AMOUNT FINANCED

1 Cash Price (Including \$ 300.00 sales tax and \$ 399.00 closing fee) \$ 16155.00 (1)

2 Total Downpayment =

Trade-In 2002 CHEVROLET
(Year) (Make) (Model)Gross Trade-In Allowance \$ 1700.00Less Pay Off Made By Seller \$ 700.00Equals Net Trade In \$ 1000.00+ Cash \$ 500.00+ Other CONSUMER REBATE \$ 2500.00(If total downpayment is negative, enter "0" and see 41 below) \$ 4000.00 (2)3 Unpaid Balance of Cash Price (1 minus 2) \$ 12155.00 (3)

4 Other Charges Including Amounts Paid to Others on Your Behalf

(Seller may keep part of these amounts):

A Cost of Optional Credit Insurance Paid to

Insurance Company or Companies.

Life \$ N/ADisability \$ N/A \$ N/AB Vendor's Single Interest Insurance Paid to Insurance Company \$ N/AC Other Optional Insurance Paid to Insurance Company or Companies \$ N/AD Optional Gap Contract \$ N/A

E Official Fees Paid to Government Agencies

to N/A for N/A \$ N/Ato N/A for N/A \$ N/Ato N/A for N/A \$ N/AF Government Taxes Not Included in Cash Price \$ N/A

G Government License and/or Registration Fees

LIC/REG FEES \$ 24.00H Government Certificate of Title Fees \$ 15.00

I Other Charges (Seller must identify who is paid and

describe purpose)

to N/A for Prior Credit or Lease Balance \$ 0.00to FIDELITY for SERVICE CONTRACT \$ 1995.00to N/A for N/A \$ N/Ato N/A for N/A \$ N/Ato N/A for N/A \$ N/Ato N/A for N/A \$ N/Ato N/A for N/A \$ N/Ato N/A for N/A \$ N/Ato N/A for N/A \$ N/Ato N/A for N/A \$ N/ATotal Other Charges and Amounts Paid to Others on Your Behalf \$ 2034.00 (4)5 Amount Financed (3 + 4) \$ 14189.00 (5)OPTION: ☐ You pay no finance charge if the Amount Financed, Item 5, is paid in full on or beforeN/A, Year N/A, SELLER'S INITIALS N/A

OPTIONAL GAP CONTRACT. A gap contract (debt cancellation contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in Item 4D of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term N/A Mos. N/A
Name of Gap Contract

I want to buy a gap contract.

Buyer Signs X N/A

Returned Check Charge: You agree to pay a charge of \$30.00 if any check you give us is dishonored.

The Annual Percentage Rate may be negotiable with the Seller.
The Seller may assign this contract and retain its right to receive a part of the Finance Charge.

NOTICE TO RETAIL BUYER: Do not sign this contract in blank. You are entitled to a copy of the contract at the time you sign. Keep it to protect your legal rights.

Insurance. You may buy the physical damage insurance this contract requires from anyone you choose who is acceptable to us. You may also provide the physical damage insurance through an existing policy owned or controlled by you that is acceptable to us. You are not required to buy any other insurance to obtain credit unless the box indicating Vendor's Single Interest Insurance is required is checked on page 1 of this contract. If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

Check the insurance you want and sign below:

Optional Credit Insurance

☐ Credit Life: ☐ Buyer ☐ Co-Buyer ☐ Both☐ Credit Disability: ☐ Buyer ☐ Co-Buyer ☐ Both

Premium:

Credit Life \$ N/ACredit Disability \$ N/A

Insurance Company Name

N/A

Home Office Address

N/A

CONSUMER CREDIT INSURANCE IS NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COST. Your decision to buy or not buy credit life insurance and credit disability insurance will not be a factor in the credit approval process. If you choose this insurance, the cost is shown in Item 4A of the Itemization of Amount Financed. Credit life insurance is based on your original payment schedule. This insurance may not pay all you owe on this contract if you make late payments. Credit disability insurance does not cover any increase in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown below.

Other Optional Insurance

☐ N/A N/A
Type of Insurance TermPremium \$ N/A

Insurance Company Name

N/A

Home Office Address

N/A☐ N/A N/A
Type of Insurance TermPremium \$ N/A

Insurance Company Name

N/A

Home Office Address

N/A

Other optional insurance is not required to obtain credit. Your decision to buy or not buy other optional insurance will not be a factor in the credit approval process. It will not be provided unless you sign and agree to pay the extra cost.

I want the optional credit insurance and other insurance checked above.

X N/A N/A
Buyer Signature DateX N/A N/A
Co-Buyer Signature Date

☐ IF CHECKED, THE TERM OF OPTIONAL CREDIT INSURANCE IS LESS THAN THE TERM OF THIS CONTRACT, AS DESCRIBED ABOVE.

X N/A N/A
Buyer Signature Date

THIS INSURANCE DOES NOT INCLUDE INSURANCE ON YOUR LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE.

See Your Charges and Amounts Paid to Others on Your Invoice

5 Amount Financed (3 + 4)

OPTION: ☐ You pay no finance charge if the Amount Financed, Item 5, is paid in full on or before
 N/A, Year N/A, SELLER'S INITIALS N/A

OPTIONAL GAP CONTRACT. A gap contract (debt cancellation contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in Item 4D of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term N/A Mos. N/A
 Name of Gap Contract

I want to buy a gap contract.

Buyer Signs X N/A

Returned Check Charge: You agree to pay a charge of \$30.00 if any check you give us is dishonored.

The Annual Percentage Rate may be negotiable with the Seller.
 The Seller may assign this contract and retain its right to receive a part of the Finance Charge.

NOTICE TO RETAIL BUYER: Do not sign this contract in blank. You are entitled to a copy of this contract at the time you sign. Keep it to protect your legal rights.

You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You confirm that you received a completely filled-in copy when you signed it.

Buyer Signs X Cheryl Hart Date 06/02/2017 Co-Buyer Signs X N/A Date N/A

Co-Buyers and Other Owners — A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

Other owner signs here X N/A Address N/A

Seller signs KOL, INC. dba KIA OF GREENVILLE Date 06/02/2017 By X Title N/A

Seller assigns its interest in this contract to GLOBAL LENDING SERVICES (Assignee) under the terms of Seller's agreement(s) with Assignee.

☐ Assigned with recourse ☒ Assigned without recourse ☐ Assigned with limited recourse

Seller KOL, INC. dba KIA OF GREENVILLE By Title

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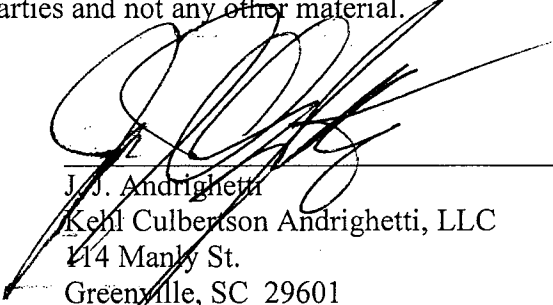
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Certificate of Counsel

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

May 14, 2018



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