

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master in Equity

Case No.: 2016-CP-49-6794

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SC Court of Appeals

Mathes Auto Sales, Inc.

Respondent/Appellant

v.

Otis Morris, Jr., Pro Bowl Motors, Inc., Travelers Casualty & Surety Co., of America, Inc.; Gerald Scott Dixon, Michael Tyrone Moore, and Dixon's Automotive, LLC, Defendants, of whom Otis Moore, Jr., Pro Bowl Motors, Inc., Gerald Scott Dixon, Michael Tyrone Moore, and Dixon's Automotive, LLC are the Appellants/Respondents.

RECORD ON APPEAL

Volume I

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MATHES AUTO SALES, INC.,

Plaintiff,

vs.

OTIS MORRIS, JR., PRO BOWL MOTORS,
 INC., TRAVELERS CASUALTY & SURETY
 CO. OF AMERICA, INC., GERALD SCOTT
 DIXON, MICHAEL TYRONE MOORE, and
 DIXON'S AUTOMOTIVE, LLC,

 Defendants.

) IN THE COURT OF COMMON PLEAS

) Civil Action No.: 2016-CP-40-6794

ORDER FOR JUDGMENT

This matter came before me for a bench trial pursuant to an Order of Reference issued by the Honorable L. Casey Manning filed on October 30, 2017. The trial began on February 8, 2018, recessed for February 9, 2018, and resumed and concluded on February 12, 2018.

John N. Mathes ("Mathes") appeared on behalf of the Plaintiff ("MAS") which was represented by J. Gregory Studemeyer and Ryan G. Studemeyer, both of Columbia. Defendant, Otis Morris, Jr. ("Morris"), appeared on behalf of Defendant, Pro Bowl Motors, Inc. ("Pro Bowl"), and both of them were represented by H. Ronald Stanley of Columbia. Gerald Scott Dixon ("Dixon") and Michael Tyrone Moore ("Moore") appeared on behalf of Defendant, Dixon's Automotive, LLC ("Dixon's Automotive"), which was represented by Leland B. Greeley of Rock Hill.

PROCEDURAL HISTORY

This action was initiated by the filing of a summons and complaint on November 4, 2016. Therein, the Plaintiff alleged that its account with NextGear Capital, Inc. ("NextGear") had been inappropriately charged the sum of \$35,368.00 for a vehicle purchased in its name by Morris without its consent from Dixon's Automotive. The Plaintiff further alleged that Morris had previously sold the same vehicle to Ms. Tarica Worthy ("Worthy") and that she was the rightful owner. The Plaintiff

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sought a declaratory judgment that it had no liability to NextGear for any sums advanced to anyone in connection with the fraudulent transaction between Dixon's Automotive and Morris.

On February 1, 2017, the Plaintiff filed an Amended Complaint. Therein, the Plaintiff added Morris, Pro Bowl, Travelers Casualty & Surety Co. of America, Inc. ("Travelers"), Worthy, S.C. State Credit Union ("State Credit Union"), Dixon's Automotive, Auto-Owners Insurance, Inc. ("Auto-Owners"), and Manheim Remarketing, Inc. ("Manheim Remarketing") as additional Defendants. In addition to the initial declaratory relief sought, the Plaintiff sought an award of actual, treble, and punitive damages against Morris, Pro Bowl, Dixon's Automotive and their respective statutory sureties, Travelers and Auto-Owners, and against Manheim Remarketing. The Plaintiff asserted causes of action for violation of the Unfair Trade Practices Act, the Act Regulating Manufacturers, Distributors and Dealers ("the Dealers Act"), conversion, and negligence.

Morris, Pro Bowl, State Credit Union, Worthy, and Dixon's Automotive all filed answers denying the material allegations of the amended complaint. Subsequently, the Plaintiff settled its claims with NextGear and Manheim Remarketing and dismissed its claims against Worthy, State Credit Union, and Auto-Owners without prejudice. The Plaintiff also agreed to settle its claims against Travelers shortly before trial.

Before taking any testimony, counsel for Dixon's Automotive sought to make an oral motion for summary judgment, suggesting that Dixon's Automotive had done nothing wrong. Over the objection of counsel for the Plaintiff, the Court agreed to entertain the motion as counsel for the Plaintiff could show no prejudice. However, after considering arguments of counsel, the Court determined that the motion was premature and, perhaps, could be presented under Rule 41(b), SCRCP at the appropriate stage of trial.

The Plaintiff then presented testimony from Worthy, Daniel Harms ("Harms"), a representative of State Credit Union, excerpts of the deposition of Morris, testimony from Donald W. Deese

("Deese"), excerpts of the depositions of Dixon and Moore, and testimony from Investigator C.B. Duckett ("Duckett") of the Columbia Police Department. The Plaintiff testified as the final witness and was cross-examined by counsel for Morris and Pro Bowl. Numerous exhibits were admitted, many of which were premarked and admitted without objection.

Before the Plaintiff rested its case, its counsel moved to amend the complaint to conform to the evidence pursuant to Rule 15(b), SCRCP to add Dixon and Moore as Defendants. That motion was taken under advisement and counsel for the Plaintiff and counsel for Dixon's Automotive were directed to brief the issue.

Counsel for Dixon's Automotive then moved for dismissal pursuant to Rule 41(b), SCRCP. After considering the arguments of counsel, that motion was denied.

Neither Morris nor Dixon offered a single word of testimony. In fact, the Defendants presented no defense at all.

On February 16, 2018, the Plaintiff filed a supplemental motion to amend the complaint to conform to the evidence to add Dixon and Moore as parties. In addition to reiterating the grounds argued before resting at trial, the Plaintiff raised an alternative basis for adding Dixon and Moore, ie, both are "dealers" as defined by S.C. Code Ann. Section 56-15-10(h) and "persons" as defined by S.C. Code Ann. Section 56-15-10(n). On February 23, 2018, the Plaintiff filed a memorandum in support of its motions.

In accordance with Rule 52, SCRCP, after considering the testimony presented and reviewing the exhibits admitted, I make the following:

FINDINGS OF FACT

1. Mathes is a resident of Florence, South Carolina. He owns MAS. (Tr. p. 53, lines 13 - 22).

2. Morris is a resident of Blythewood, South Carolina. He is currently employed by BMW of Columbia. (Morris Depo. p. 9, lines 19 – 21 and Moore Depo. p. 89, lines 5 – 7).
3. Dixon is a resident of Fort Mill, South Carolina. (Dixon Depo. p. 11, lines 5 – 12).
4. Moore is a resident of Rock Hill, South Carolina. (Moore Depo. p. 8, lines 14 – 16).
5. Dixon and Moore were childhood friends and Moore was like a little brother to Dixon. (Dixon Depo. p. 13, lines 7 – 8 and Moore Depo. p. 19, lines 2 – 10).
6. Dixon and Moore operate Dixon's Automotive as partners and share profits and losses. (Dixon Depo. p. 9, line 12 and p. 22, line 18 – p. 23 line 17 and Moore Depo. p. 43, lines 14 - 18).
7. Over the years, Dixon's Automotive has sold over 1,000 motor vehicles. (Moore Depo. p. 79, lines 22 – 24).
8. Mathes and Morris became acquainted approximately 30 years ago when both of them were employed by Jim Hudson Mitsubishi in Columbia. (Morris Depo. p. 25, lines 16 – 21 and Tr. p. 55, line 15 – p. 16, line 15).
9. Mathes and Morris became close friends, went to football games together, played golf together, and went out to dinner together with their wives. (Morris Depo. p. 25, line 22 – p. 26, line 14 and Tr. p. 56, line 23 – p. 57, line 21).
10. Morris later established Pro Bowl, a retail motor vehicle dealership in the Congaree Vista area of Downtown Columbia.
11. According to Morris, he and Pro Bowl are the same. (Morris Depo. p. 39, lines 14 – 17).
12. Dixon was an investor in Pro Bowl. (Dixon Depo. p. 14, lines 2 – 9).
13. Mathes eventually moved back to Florence and established MAS.
14. After Morris established Pro Bowl, he authorized Mathes to purchase motor vehicles for Pro Bowl at Manheim auctions. (Plaintiff's Exhibit #22).

15. Morris and Dixon both played football at the University of South Carolina and became acquainted. (Dixon Depo. p. 14, line 23 – p. 15, line 13).
16. Moore met Morris when he accompanied Dixon on a visit to Pro Bowl approximately 10 years ago. (Moore Depo. p. 17, lines 9 – 22).
17. In 2004, Morris signed a Representative Authorization Letter authorizing Dixon to buy and sell motor vehicles for Pro Bowl at auctions. (Plaintiff's Exhibit #42).
18. Dixon and Moore established Dixon's Automotive as a retail motor vehicle dealership in 2005. (Moore Depo. p. 20, lines 5 – 8 and Plaintiff's Exhibit #41).
19. Both Dixon and Moore signed the Application For A Dealer Or Wholesaler License but Dixon had to sit for a test for the license. (Dixon Depo. p. 27, line 25 – p. 28, line 4 and Exhibit #1).
20. Dixon and Moore dealt with less expensive used cars in the \$10,000 to \$15,000 range. (Moore Depo. p. 23, lines 22 – 24).
21. Dixon signed a Representative Authorization Letter on May 2, 2005, authorizing himself to act on behalf of Dixon's Automotive at auctions. (Dixon Depo. p. 33, lines 3 – 18 and Plaintiff's Exhibit #44).
22. On March 23, 2006, Mathes signed a Representative Authorization Letter authorizing Morris to buy and sell motor vehicles at auctions on behalf of MAS.
23. On July 9, 2008, Dixon signed a Dealer Authorization/Removal of an Individual authorizing Morris to act on behalf of Dixon's Automotive at auctions. (Dixon Depo. p. 33, line 19 – p. 35, line 13 and Plaintiff's Exhibit #45).
24. On August 18, 2009, Morris signed a Dealer Authorization/Removal of an Individual form authorizing Dixon to act on behalf of Pro Bowl at auctions. (Plaintiff's Exhibit #43).

25. Dixon and Moore ceased operating Dixon's Automotive as a retail dealership in 2012 but continued operating as a wholesaler. (Dixon Depo. p. 18, line 5 – p. 19, line 11 and Moore Depo. p. 9, lines 8 – 17 and p. 21, lines 1 – 14).

26. Over the years, Dixon's Automotive bought motor vehicles from and sold motor vehicles to Morris at Pro Bowl. (Dixon Depo. p. 36, lines 5 – 8 and Moore Depo. p. 22, line 4 – 18).

27. Dixon and Moore had allowed Morris to inspect motor vehicles for purchase but had never consigned a single motor vehicle to Morris to sell because they understood doing so was illegal. (Moore Depo. p. 22, line 19 – p. 23, line 12).

28. Dixon's Automotive had purchased motor vehicles on several occasions and had them shipped to Morris (Moore Depo. p. 31, lines 13 – 22 and p. 109, lines 3 - 9)), but on those occasions, if Morris decided to purchase them, he always paid for them immediately. (Moore Depo. p. 32, line 1 – p. 33, line 5).

29. On May 20, 2013, Mathes signed a Fifty Thousand Dollars and Zero Cents (\$50,000.00) Demand Promissory Note And Loan And Security Agreement (“Note”) with NextGear with its principal office in Carmel, Indiana to secure inventory financing for motor vehicles purchased at auctions including Manheim Darlington by MAS. (Plaintiff's Exhibit #49).

30. Both Mathes and his wife personally guaranteed the obligations of MAS under the Note.

31. The Note and associated documents consumed 31 pages of fine print.

32. The Note specifically provided that MAS would be solely responsible for any unauthorized access to its account. [Plaintiff's Exhibit #49, page 4 of 12, par. 4(t)].

33. The Note also included choice of law, forum selection, and arbitration clauses providing for arbitration of any disputes under the Federal Arbitration Act and the law of the State of Indiana in Marion County or Hamilton County, Indiana. (Plaintiff's Exhibit #49, page 10 of 12, par. 20 and 21).

34. By late 2014, Morris had closed his original dealership in the Vista, opened and closed Pro Bowl Ford in Pittsburgh, and relocated Pro Bowl to 1231 Broad River Road, in Columbia. (Dixon Depo. p. 14, line 2 – p. 16, line 21).

35. Morris began negotiating with Jim Hudson Automotive Group (“Hudson”) to sell the real estate where Pro Bowl was then located on Broad River Road as part of a retirement package for Donald W. Deese (“Deese”), the former CFO of Hudson who had been employed by Hudson for nearly 40 years.

36. Hudson's plan was to replace Deese as CFO and allow him to operate a used car dealership at the Broad River Road facility.

37. Hudson's arrangement with Morris included retaining him as an employee for some period of time.

38. The transaction between Hudson and Morris closed in January of 2015, and Deese began operating a Hudson entity known as Capital City Rides, Inc. (“Capital City”) at the former Pro Bowl location.

39. In May of 2015, Deese, a certified public accountant and a certified fraud examiner, discovered that Morris had misappropriated approximately \$104,000.00 through a scheme involving motor vehicle certificates of title at Capital City.

40. Morris signed a confession and promised to make restitution.

41. Morris' misappropriation resulted in a \$10,000 per month pay cut, the loss of a demonstrator, and the loss of group health insurance for Deese.

42. Deese was also forced to discharge an employee who had worked with him for 25 years, who still has not been able to replace her former income.

43. Morris eventually came up with all but \$9,143.00 owed to Capital City.

44. Deese eventually collected the remaining sums from Pro Bowl's surety bond required by S.C. Code Ann. Section 56-15-320 as indemnification for loss or damage suffered by an owner of a motor vehicle by reason of fraud or violations of the Dealers Act.

45. Mathes was unaware of Morris' caper at Capital City.

46. In early May of 2016, Worthy became interested in purchasing an Infiniti QX60 SUV to replace her Audi Q7 that had been damaged in a flood. (Tr. p. 6, lines 17 - 20).

47. Since Worthy had purchased previous vehicles from Pro Bowl, she contacted Morris about her interest in an Infiniti. (Morris Depo. p. 49, line 18 – p. 50 line 17 and Tr. p. 6, lines 4 - 20).

48. Moore and Morris began discussing the acquisition of a gold 2014 Infiniti QX60 SUV located in Tampa, Florida in May of 2016. (Moore Depo. p. 11, line 10 – p. 17, line 7 and p. 24, lines 12 – 24).

49. Moore knew that Morris had no ability to pay for the Infiniti at that time because his line of credit had been exhausted. (Moore Depo. p. 24, line 24 – p. 25, line 1; p. 26, lines 6 – 13; p. 29, line 24 – p. 30, line 6; and p. 61, lines 18 – 25).

50. Morris sent Worthy pictures of a gold 2014 Infiniti QX60 SUV. (Tr. p. 9, lines 4 - 5).

51. On May 10, 2016, Worthy met with Morris and the two of them executed a Buyers Order, a BUYERS GUIDE, a disclaimer of warranties, and a WE OWE FORM for a gold 2014 Infiniti QX60 with Vehicle Identification Number ("VIN") 5N1ALOMM6EC502540 ("the Infiniti") at Morris' office on Hampton Street in Columbia, that neither of them had ever laid eyes on other than in photographs. (Morris Depo. p. 12, lines 2 – 3 and 11 – 25; p. 13, lines 1 – 25; p. 14, lines 1 – 16; p. 16, line 24 – p. 17, line 2; p. 28, lines 2 -7; and p. 31, line 3 – p. 32, line 1 and Plaintiff's Exhibit #s 1, 12, 14, 15, and 16).

52. Worthy applied for a loan from State Credit Union for \$16,026.00 and signed a Loan And Security Agreements And Disclosure Statement listing the Infiniti as Collateral, obligating herself to make 35 monthly payments of \$480 and a final payment of \$473.18. (Plaintiff's Exhibit #2).

53. State Credit Union issued its Check No. 1099462 in the amount of \$16,026.00 dated May 12, 2016, payable to Pro Bowl bearing a restrictive endorsement. (Tr. p. 28, line 3 – p. 29, line 5 and Plaintiff's Exhibit #9).

54. The restrictive endorsement provided, "By endorsement of this check, the seller guarantees that SC State Credit Union, P.O. Box 726, Columbia, SC 29202 will be listed as first lienholder on the South Carolina title for [the Infiniti] in the amount of \$16,026.00.

55. Pro Bowl endorsed the check and deposited it into an account with South State Bank on Clemson Road in Northeast Columbia. (Plaintiff's Exhibit #9).

56. On May 16, 2016, Worthy met Morris at a McDonald's restaurant in Northeast Columbia near McDaniels Acura and tendered her Check #299 in the amount of \$20,000.00 payable to Pro Bowl towards payment for the Infiniti. (Tr. p. 12, lines 2 – 17 and Plaintiff's Exhibit #3).

57. On May 17, 2016, Moore purchased the Infiniti, the very same one that had purportedly already been sold by Pro Bowl to Worthy and financed by State Credit Union, on Manheim Tampa's OVE, an online vehicle exchange, either on his computer or on his cell phone on behalf of Dixon's Automotive while he was physically present in Rock Hill. (Moore Depo. p. 11, line 21 – p. 15, line 14; p. 26, lines 14 – 19; p. 38, lines 20 – 21; p. 39, lines 6 – 10; and p. 82, lines 2 – 9).

58. By that time, Dixon's Automotive no longer had a retail license for selling motor vehicles but did have a wholesaler license authorizing it to sell to dealers. (Dixon Depo. p. 18, line 5 – p. 19, line 11 and Moore Depo. p. 9, lines 8 – 17).

59. Dixon's Automotive also had an inventory financing arrangement with NextGear and when Moore purchased the Infiniti on Manheim Tampa's OVE, Dixon's Automotive's account with

NextGear was charged the total sum of \$34,147.79. (Dixon Depo. p. 25, lines 2 – 4 and Moore Depo. p. 27, line 20 – p. 29, line 5 and Plaintiff's Exhibit #40).

60. NextGear immediately began charging Dixon's Automotive interest on the sums advanced for the purchase of the Infiniti. (Moore Depo. p. 30, lines 15 – 23).

61. Moore arranged for the Infiniti to be transported from Tampa, Florida directly to Morris in Columbia. (Moore Depo. p. 29, lines 6 – 23).

62. At that time, Morris had not made any commitment to purchase the Infiniti from Dixon's Automotive. (Moore Depo. p. 39, lines 11 – 19 and p. 62, line 15 – p. 64, line 25).

63. Moore had entrusted a motor vehicle in the past to another dealer under similar circumstances. (Moore Depo. p. 111, line 24 – p. 112, line 4).

64. Moore understood that it would have been illegal to entrust the Infiniti to Morris to sell without first purchasing it from Dixon's Automotive. (Moore Depo. p. 23, lines 1 – 12).

65. Moore knew that someone like Morris in the retail business could sell the Infiniti even without a certificate of title. (Moore Depo. p. 68, line 19 – p. 70, line 9).

66. After the Infiniti arrived in Columbia, Morris delivered it to Worthy. (Tr. p. 12, line 22 – p. 13, line 10).

67. Morris told Worthy that he would need to get the Infiniti back from her to get it serviced or repaired and to get a tag and registration card for her.

68. Thereafter, on several occasions, Morris provided substitute transportation from his employer, McDaniels Acura, for Worthy while representing that he was arranging for service or repairs or dealing with getting a license plate and registration certificate for her. (Tr. p. 13, line 2 – p. 17, line 23).

69. On May 19, 2016, the Infiniti was serviced at Philips Auto Tech in Columbia and the charges were billed to Pro Bowl. (Morris Depo. p. 30, line 11 – p. 32, line 10 and Plaintiff's Exhibit #26)

70. NextGear sent floor plan auditors to Moore's residence in Rock Hill once or twice per month to make sure that Dixon's Automotive was in possession of the Infiniti on which it had advanced \$34,147.79 and which it claimed as collateral. (Moore's Depo. p. 35, line 20- p. 38, line 4).

71. Moore never told NextGear's representative that the Infiniti had been transported to Columbia and was in the possession of Morris who still held a retail license for selling motor vehicles. (Moore Depo. p. 60, lines 20 -24).

72. On June 6, 2016, State Credit Union received a copy of a Florida certificate of title for the Infiniti. (Tr. p. 30, lines 6 – 24 and Plaintiff's Exhibit #10).

73. On June 30, 2016, the South Carolina Department of Motor Vehicles issued an Official Order of Dealer License Cancellation addressed to Morris at a post office box maintained by Pro Bowl. (Morris Depo. p. 33, lines 1 – 24 and Plaintiff's Exhibit #27).

74. In the late summer of 2016, Morris had the Infiniti picked up again from Worthy, representing that he needed to take it to the DMV to get a license tag and registration card for her. (Tr. p. 16, lines 10 - 14).

75. Morris arranged for a driver to transport the Infiniti from Columbia to Dixon's home in Fort Mill where it remained parked in his driveway for 2 or 3 weeks. (Dixon Depo. p. 37, line 11 – p. 40, line 8 and Moore Depo. p. 34, lines 12 – 16; p. 47, lines 4 – 13; and p. 48, lines 5 – 22).

76. Moore notified Dixon that he had arranged for the Infiniti to be dropped off at his home. (Dixon Depo. p. 37, line 11 – p. 38, line 18 and Moore Depo. p. 50, lines 2 – 8).

77. Dixon stored motor vehicles for Dixon's Automotive at his home from time to time (Moore Depo. p. 50, lines 18 – 21), and on this particular occasion, the Infiniti was left at Dixon's home for a floor plan audit for the second time by NextGear. (Moore Depo. p. 59, line 22 – p. 60, line 19).

78. Moore also advised Dixon that he was going to post the Infiniti for sale online with Manheim Darlington. (Moore Depo. p. 50, lines 10 – 12).

79. On or about August 9, 2016, Morris mentioned to Mathes during a telephone conversation that he had an Infiniti that he needed to do something with. (Tr. p. 66, lines 8 - 12).

80. There was no discussion about Morris purchasing the vehicle in the name of MAS. (Tr. p. 66, line 16 – p. 67, line 3).

81. Moore then listed the Infiniti on Manheim Darlington's OVE and Morris arranged for a driver to transport it from Dixon's home to Darlington to be checked in. (Moore Depo. p. 52, line 19 – p. 53, line 14; and p. 59, lines 6 – 9).

82. Dixon knew that someone was coming to take the Infiniti to an auction. (Dixon Depo. p. 40, line 15 – p. 41, line 3).

83. Dixon knew that Morris was going to pick up the Infiniti from Dixon's home in Fort Mill. (Dixon Depo. p. 10, lines 14 - 17).

84. Moore anticipated that Dixon's Automotive would receive less for the vehicle in August than it paid in May, especially since new vehicles would be arriving at new car dealerships soon, driving the prices of used vehicles lower. (Moore Depo. p. 35, lines 1 – 19).

85. Dixon's Automotive sold the Infiniti to MAS on Manheim Darlington's OVE, an online vehicle exchange limited to dealers, in August of 2016. (Morris Depo, p. 42, lines 7 – 19 and Moore Depo. p. 94, lines 2 – 18 and p. 95, lines 4 – 11).

86. Morris purchased the Infiniti on August 15, 2016, that he had already sold to Worthy in the name of MAS for the sum of \$35,275.00, a price exceeding the price paid by Dixon's Automotive

when it purchased the Infiniti on May 17, 2016. (Morris Depo. p. 37, line 14 – p. 40, line 9; p. 43, lines 17 – 18; and p. 44, lines 13 – 19).

87. The sales price of the Infiniti caused Manheim Darlington to issue an alert reflecting that “The sale price for this vehicle is over the normal MMR range”. (Morris Depo. p. 34, line 23 – p. 35, line 24 and Plaintiff's Exhibit #28)

88. MMR is an acronym for Manheim Market Report, a price listing generated by Manheim and used by dealers to estimate the value of vehicles. (Morris Depo. p. 35, line 13 – p. 37, line 7).

89. The alert was forwarded by Manheim Darlington to Moore by email. (Moore Depo. p. 91, line 4 – p. 92, line 10).

90. Thereafter, Mathes discovered that his account with NextGear had been charged the sum of \$35,368.00 for the purchase of the Infiniti that he had never seen, let alone ever agreed to purchase. (Tr. p. 64, line 22 – p. 65, line 19 and Plaintiff's Exhibit #50).

91. MAS was in the “buy here/pay here” used car business of selling and financing used vehicles with a maximum price of \$6,000.00 and had never purchased a \$35,000.00 vehicle.

92. Mathes remembered his previous telephone conversation with Morris about an Infiniti and called him to find out if he knew anything about the charge listed on MAS' account with NextGear. (Tr. p. 66, lines 8 - 18).

93. Morris immediately claimed that he had purchased the Infiniti in the name of MAS by mistake, that he had intended to purchase the Infiniti in the name of McDaniels Acura, and that he would get it taken care of within a few days. (Tr. p. 67, lines 4 - 11).

94. On the same day, August 24, 2016, the Infiniti was serviced at Philips Auto Tech and the charges were billed to Worthy. (Plaintiff's Exhibit #31).

95. Thereafter, Mathes and Morris engaged in a series of telephone calls and text messages about the Infiniti. (Morris Depo. p. 47, lines 15 – 18 and Tr. p. 68, lines 6 – p. 74, line 13).

96. Mathes discovered that the Infiniti had already been sold to Worthy when Morris inadvertently sent him an image of an Allstate South Carolina Automobile Identification Card for Worthy with an effective date of August 4, 2016, almost two weeks before Morris had "mistakenly" purchased the Infiniti in the name of MAS. (Morris Depo. p. 46, line 13 – p. 47, line 2; Tr. p. 69, line 21 – p. 70 line 17; and Exhibit #32).

97. Mathes subsequently discovered that the Infiniti had been listed on Manheim Darlington's OVE with no photographs and no condition report, an immediate red flag for a \$35,000 vehicle and an indication of a prearranged sale. (Tr. p. 81, line 10 – p. 89, line 18 and Plaintiff's Exhibit #53).

98. On the same day, Mathes reported the matter to the Florence County Sheriff Office. (Tr. p. 90, line 17 – p. 91, line 19 and Plaintiff's Exhibit #60)

99. Mathes notified both Manheim Darlington and NextGear of the fraudulent transaction between Dixon's Automotive and Morris. (Tr. p. 74, line 11 – p. 75, line 2).

100. Notwithstanding Mathes' report of fraudulent activity on MAS' account, NextGear demanded that MAS pay the \$35,000.00 advanced on MAS' Note for the purchase of the vehicle from Dixon's Automotive. (Tr. p. 80, lines 10 - 14).

101. Thereafter, both Manheim Darlington and NextGear refused to do business with MAS. (Tr. p. 75, lines 3 - 7).

102. On October 25, 2016, Mathes filed a Customer Complaint Form with the South Carolina Department of Motor Vehicles against Dixon's Automotive because NextGear had charged the account of MAS for the Infiniti purportedly sold by Dixon's Automotive and had paid Dixon's Automotive for the Infiniti that had been sold by Morris to Worthy on May 10, 2016. (Tr. p. 93, lines 5 - 15 and Plaintiff's Exhibit #61)

103. On October 31, 2016, State Credit Union wrote to Morris to follow up on his failure to honor the restrictive endorsement on the check for \$16,026.00 for Worthy's purchase of the Infiniti. (Morris Depo. p. 48, lines 7 – 16 and Plaintiff's Exhibit #11).

104. Morris never provided State Credit Union with a certificate of title with its lien recorded as promised in the restrictive endorsement on the check he deposited. (Tr. p.29, lines 13 - 25).

105. On November 14, 2016, MAS initiated this action in an effort to avoid being haled into an arbitration proceeding in Indiana by NextGear.

106. On December 21, 2016, Worthy filed a Customer Complaint Form with the South Carolina Department of Motor Vehicles because she still did not have a license tag or a registration card for the Infiniti, requesting that the matter be investigated and that Morris be prosecuted. (Tr. p.19, line 18 – p. 21, line 7 and Plaintiff's Exhibit #5).

107. Worthy subsequently submitted a Six-Month Temporary Permit Request for the Infiniti, acknowledging certain limitations placed upon temporary registrations including use outside the State of South Carolina. (Tr. p. 21, line 18 – p. 22, line 24).

108. Worthy was prevented from operating the Infiniti outside of the State of South Carolina while the DMV investigated the matter. (Tr. p. 22, lines 1 - 7).

109. Eventually, the DMV issued a license tag and registration certificate to Worthy and provided State Credit Union with a certificate of title for the Infiniti with its lien recorded thereon without any assistance whatsoever from Morris, Dixon or Moore. (Tr. p. 22, line 25 – p. 23, line 4 and p. 33, lines 11 - 19).

110. MAS eventually settled its dispute with Manheim Darlington and NextGear but was unable to operate in the normal course of business from October 2016, until after the dispute was settled in May of 2017, because NextGear had suspended providing MAS with inventory financing and

Manheim Darlington and other Manheim auctions refused to allow MAS to participate. (Tr. p. 90, lines 1 - 9).

111. MAS' inability to replenish its accounts receivable by selling and financing vehicles as contracts with its then current customers terminated caused devastating damage to MAS' business and cash flow. (Tr. p. 76, lines 12 - p. 79, line 9 and p. 98, lines 5 - 11).

112. Not only could MAS not purchase vehicles on credit with NextGear as it had done for years, it was also prevented from purchasing vehicles from Manheim Darlington and other Manheim auctions for cash. (Tr. p. 54, lines 1 - 2 and p. 75, lines 3 -5).

113. MAS' gross receipts, which had been on an upward trajectory since 2014, declined by nearly \$25,000.00 in 2016 from 2015, and by nearly \$125,000 in 2017, from 2016. (Defendant's Exhibits #s 2, 3, 4, and 5).

114. What started out as a \$57,701.96 profit as of August 31, 2016 (Tr. P. 112, line 19 - p. 113, line 18), evaporated and resulted in a loss of \$21,091.00 for the year. (Defense Exhibit #4).

115. The following year, 2017, was even more disastrous, a loss of \$51,534.00. (Defense Exhibit #5).

116. In an effort to survive, Mathes was forced to liquidate a lease for a cell tower at a tremendous discount, his wife was forced to cash in her 401K, and Mathes' elderly parents had to sell some of their stock in SCANA and loaned other sums to him to prevent his financial ruin. (Tr. p. 94, line 21 - p. 96, line 7).

117. All told, MAS suffered damages of \$670,286.00 including attorney's fees in excess of \$60,000.00 through January 31, 2018.

118. Neither Morris, nor Dixon, nor Moore, nor Dixon's Automotive have been charged with any crime. (Morris Depo. p. 25, lines 14 - 15 and Tr. p. 52, lines 5 - 9).

1 on the record.

2 THE COURT: Okay.

3 MR. GREG STUDEMEYER: That would be Exhibit Number
4 4, Number 6, Number 7, Number 8, Number 10, Number 13,
5 Number 17, Number 18, Number 19, Number 20, Number 21,
6 Number 25, Number 33, Number 34, Number 35, Number 36,
7 Number 37, Number 38, Number 39, Number 46, Number 47,
8 Number 51, Number 52, Number 54, Number 55, Number 56,
9 Number 58, Number 59, Number 60, and Number 62.

10 THE COURT: Okay, Mr. Stanley?

11 MR. STANLEY: No objection.

12 MR. GREELEY: I agree, Your Honor.

13 THE COURT: All right, this is --

14 MR. GREELEY: Your Honor, I do have a matter for
15 the Court before we take the first witness.

16 THE COURT: Okay. This is Civil Action Number
17 2016-CP-40-6794, Mathes Auto Sales, Incorporated
18 against NextGear Capital and others, and it's a hearing
19 on the merits. And we're ready to proceed. Let me
20 make an announcement for those who have never been in
21 court with me on a case like this. If you need a break
22 for any reason just let me know. Don't sit there and
23 have to go to the bathroom and don't say anything. So
24 if you need a break let me know.

25 Also, as you know, everything we do in this court

1 is a date certain, and we've blocked off the whole day
2 for this. And if we can't finish today we can
3 reconvene on Monday, because we have a whole day
4 available for Monday. So does that suit everybody?
5 Mr. Studemeyer?

6 MR. GREG STUDEMEYER: Yes, Your Honor.

7 MR. STANLEY: Let me look at my calendar. I think
8 that's okay. That's fine with me, Your Honor.

9 THE COURT: Okay, Mr. Greeley?

10 MR. GREELEY: Yes, Your Honor.

11 THE COURT: All right. Mr. Greeley, you had a
12 matter to take up with the Court?

13 MR. GREELEY: If the Court will entertain it, Your
14 Honor, since this is going to be on the merits, I would
15 like to at this time, since the plaintiff has already
16 filed the depositions of my clients --

17 THE COURT: Uh-huh.

18 MR. GREELEY: -- I would like to file the original
19 of the plaintiff in this case and make a motion for
20 summary judgment in regards to my Dixon Automotive.

21 THE COURT: Okay.

22 MR. GREELEY: And if I may, I believe the
23 plaintiff has the original of his client's --

24 THE COURT: No, I have it.

25 MR. GREELEY: Oh, you have it. Thank you.



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1 MR. GREG STUDEMEYER: Your Honor, before we get
2 too far down this trail I want to first just object to
3 a motion for summary judgment at this stage of the
4 proceedings. As the Court is well aware, Rule 56
5 provides for summary judgment upon notice and upon the
6 filing of the supporting affidavits, neither of which
7 have been provided.

8 THE COURT: Uh-huh.

9 MR. GREG STUDEMEYER: And so I would ask that the
10 Court not entertain the motion for summary judgment
11 under these circumstances.

12 THE COURT: All right, one moment, please. Okay,
13 on the move for summary judgment, Mr. Studemeyer
14 opposes or objects to a motion for summary judgment.
15 Now, Mr. Studemeyer, how is your client prejudiced by
16 hearing a motion for summary judgment at this stage?

17 MR. GREG STUDEMEYER: Well, Rule 56, of course,
18 requires 10-days-notice. We are prepared to proceed to
19 trial. We have a row full of witnesses here that are
20 prepared to come forward and testify. Again, Your
21 Honor, there's been no notice of any specific -- I
22 mean, these depositions, for instance, he's referring
23 to the plaintiff's deposition. I've got a pretty good
24 memory, but I'm not sure that I can remember every page
25 of the 63-page deposition. So I've had no opportunity

1 to review a particular passage that the Dixon's
2 defendants may want to cite, no opportunity to submit
3 opposing affidavits, if they're necessary, so in that
4 way, yes, Your Honor, the plaintiff is prejudiced.

5 THE COURT: So you're ready to try the case,
6 you're not ready to hear a motion?

7 MR. GREG STUDEMEYER: I'm ready to try the case
8 and I object to a motion being presented without 10-
9 days-notice as required by the Rules.

10 THE COURT: All right, objection is overruled.
11 All right, Mr. Greeley, you may proceed with the
12 motion.

13 MR. GREELEY: Your Honor, my clients were brought
14 into this matter by an Amended Complaint. The
15 plaintiff asserted one cause of action against my
16 clients under the Dealer Act of the South Carolina
17 Statutes. And in that cause of action, which is the
18 fourth cause of action in the Complaint -- in the
19 Amended Complaint. The factual allegation was that
20 they had violated the Dealers Act by entrusting or
21 delivering to Mr. Morris the vehicle after it was
22 purchased in Florida when Mr. Morris had told them he
23 thought he had a buyer. And that they said by doing
24 that, that was a -- an unfair and deceptive act that
25 was arbitrary in bad faith and unconscionable under



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1 this section.

2 Now, I have looked at that section, Your Honor,
3 56-1540, and in reading that entire section, and I have
4 a copy for the Court here, I don't see anywhere where
5 such an action by our clients is addressed in that.

6 And in a general sense as to whether or not there
7 is any fact in the record or asserted or alleged fact
8 in the record that my clients have done anything
9 fraudulent or in bad faith or unconscionable, the
10 record is devoid of that.

11 We have 62 pieces of evidence that have been
12 marked that are going to be presented to this Court.
13 Less than 10 have my client's name on them. And the
14 plaintiff, when asked during his deposition, he was
15 asked, and this would be page 41, line 11 of his
16 deposition, I asked, "And do you have any information
17 that anyone at Dixon's Automotive was aware of the
18 transaction with Ms. Worthy in this matter?" And the
19 plaintiff said, "No."

20 My clients have no knowledge that Mr. Morris had
21 sold this car. And they had not produced -- they've
22 only produced an allegation of my clients having bad
23 faith, but there is nothing in the record that shows my
24 clients even were negligent, even that they had done
25 anything that was wrong. They bought the car, Mr.

1 Morris indicated that he may have a buyer, he later
2 indicated the financing did not come through, the car
3 was then delivered to Rock Hill, then later the car was
4 taken to the auction, was sold at the auction by Mr.
5 Morris as an agent for the plaintiff, and was sold to
6 the plaintiff. My clients did not find out about this
7 until sometime later, that this had been done.

8 And there's no evidence whatsoever of wrongdoing
9 by my clients in this case. They haven't produced it,
10 it's not there. And I would ask for the Court to allow
11 us summary judgment at this point. We're getting ready
12 to go through a hearing on the merits. And it looks
13 like it's going to take a long time for us to get
14 through there, and at the end, I would submit to the
15 Court, there's going to be nothing that's going to be
16 against my clients and I will be making a motion for
17 dismissal at that time.

18 But the affidavit -- I mean, the deposition of the
19 plaintiff shows there that he had no information that
20 they -- and they say in their depositions they had no
21 information about this. They had no idea that this had
22 occurred.

23 THE COURT: Now, as you know, summary judgment is
24 hard to get. And the reason it's hard to get is that
25 the other side doesn't have to prove anything, they



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1 NOTHING BUT THE TRUTH, TESTIFIED AND DEPOSED AS
2 FOLLOWS:

3 **DIRECT EXAMINATION**

4 BY MR. GREG STUDEMEYER:

5 Q Good morning.

6 A Good morning.

7 Q Ms. Worthy, my name is Greg Studemeyer. We've never
8 met before today, but we've spoken over the phone. Let
9 me ask you. If you would, state your full name.

10 A It's Tarica Worthy.

11 Q Okay. And Ms. Worthy, where do you live?

12 A My address is 905 Muller Avenue. That's my mailing
13 address, but --

14 Q Okay.

15 A Yeah.

16 Q You live here in Columbia?

17 A I do.

18 Q Okay. And how long have you lived in Columbia?

19 A All my life.

20 Q All right. Are you familiar with Otis Morris?

21 A I am.

22 Q How long have you known Mr. Morris?

23 A It's been over ten years.

24 Q Okay.

25 A Yeah.

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- 1 Q And how did you get to know Mr. Morris?
- 2 A Business.
- 3 Q Okay.
- 4 A Yeah.
- 5 Q What business is he in or was he in where you got to
- 6 know him?
- 7 A Used to buy cars from him.
- 8 Q Okay.
- 9 A Yeah.
- 10 Q Was he in the car business at the time?
- 11 A He was.
- 12 Q Okay. Let me ask you: Have you ever worked with Mr.
- 13 Morris?
- 14 A No.
- 15 Q Okay. Now, how many cars do you suppose you've bought
- 16 from him over the years?
- 17 A Like four or five.
- 18 Q Okay. And what was the most recent car that you bought
- 19 from him?
- 20 A The Infiniti.
- 21 Q All right. And what year and model is that?
- 22 A 2014 QX60.
- 23 Q All right. And do you still have that car?
- 24 A I do.
- 25 Q All right. Now, if you would, please tell the judge

1 how you became interested in buying an Infiniti from
2 Mr. Morris.

3 A During the hurricane, my other vehicle was flooded, so
4 at that time, I was in need of another car, and called
5 Mr. Morris and told him I needed another vehicle, and
6 he provided it.

7 Q Okay. Now, did Mr. Morris have a retail operation at
8 the time?

9 A To my understanding, he was -- at that time, I think he
10 had started working at McDaniels, but of course, I
11 still called him and let him know I needed a vehicle.

12 Q Okay. So he was working for McDaniels Acura, as far as
13 you know?

14 A Yes.

15 Q Northeast Columbia?

16 A Mm-hmm.

17 Q Okay. Now, did you meet with him to discuss buying a
18 car from him?

19 A Yes.

20 Q Okay. Where did you meet?

21 A It was an office he had downtown, across from the
22 police department. I can't remember the exact address,
23 but --

24 Q Okay.

25 A -- it's an office over there.

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- 1 Q On Hampton Street?
- 2 A Yes.
- 3 Q Okay. Do you remember a lawyer in Columbia named
- 4 Lincoln Jenkins?
- 5 A No.
- 6 Q Okay. All right, but the office where Mr. Morris was
- 7 doing business was right by the Columbia Police
- 8 Department?
- 9 A Yes.
- 10 Q All right. Now, how many times did you meet with him
- 11 before you agreed to buy this car?
- 12 A Twice.
- 13 Q Okay. And were both meetings at the office on Hampton
- 14 Street?
- 15 A No. One was at the McDonald's across from McDaniel,
- 16 when I provided him with the check for the vehicle.
- 17 Q Okay. Let me ask you this: Whenever you met with him
- 18 on Hampton Street, did he have any inventory of cars
- 19 there on display?
- 20 A Not on display, but there were cars in the parking lot.
- 21 I don't know if they were for sale or whatever, or if
- 22 someone was driving them, but --
- 23 Q Okay. This wasn't a typical situation where you drove
- 24 onto a car --
- 25 A No.

1 Q Okay. All right. Let me hand you what's been marked
2 as Plaintiff's Exhibit Number 1, and this is already in
3 evidence, but if you would, please tell us, if you
4 would, what this is.

5 A It's a bill of sale.

6 Q Okay. And that's a bill of sale from whom to whom?

7 A From Mr. Morris to me.

8 Q Okay. And what is the date of this bill of sale?

9 A Oh, May 10th.

10 Q Okay. And as far as you know, is that date accurate?

11 A Yeah, I think it was around that time.

12 Q Do you believe that's the day that you agreed to buy
13 the car?

14 A Mm-hmm.

15 Q All right. And you'd seen the car at that point?

16 A Just online.

17 Q Okay.

18 A Yeah.

19 Q Do you remember -- is this your signature?

20 A Yes.

21 Q On the day that you signed this document, do you
22 remember if you were on Hampton Street or at the
23 McDonald's at the time?

24 A Hampton.

25 Q Okay. You were on Hampton Street?

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- 1 A Mm-hmm.
- 2 Q Okay. All right. Was there a car there for you to
3 take delivery of?
- 4 A No.
- 5 Q All right. Now, other than signing this piece of
6 paper, what did you do to go about buying this car from
7 Mr. Morris?
- 8 A Well, we communicated, of course. Phone calls, and he
9 said the car was coming in, I guess, from Florida --
- 10 Q Okay.
- 11 A -- and one of his guys were bringing it up. And so,
12 once I met him and gave him the check, maybe like the
13 next day, I called and asked, was the car on the way,
14 and he said he wanted to get it cleaned up, the usual,
15 and then he'd have it delivered to me.
- 16 Q Okay.
- 17 A So --
- 18 Q All right. Let me -- before we get too far down the
19 trail, let me ask you this: Do you know -- first of
20 all, according to Plaintiff's Exhibit 1, you agreed to
21 pay a total of \$36,026?
- 22 A Yes.
- 23 Q And how were you gonna do that? How were you gonna pay
24 that much money?
- 25 A With the check I got from the insurance company.

- 1 Q Okay. And was that for the entire \$36,000?
- 2 A No, I financed it through a credit union.
- 3 Q Okay. All right. Let me hand you what's been marked
- 4 as Plaintiff's Exhibit Number 2 and ask you if you
- 5 recognize that document.
- 6 A Yes.
- 7 Q Okay. And is this a loan application and a loan and
- 8 security agreement --
- 9 A Yes.
- 10 Q -- to borrow the money for the Infiniti that you bought
- 11 from Mr. Morris?
- 12 A Mm-hmm.
- 13 Q All right. And is this date, May the 12th of two-
- 14 thousand -- it says 2010, but I think it's supposed to
- 15 be 2016.
- 16 A Yes.
- 17 Q Okay. And so this was within two days of you meeting
- 18 with Mr. Morris on Hampton Street in agreement about a
- 19 car?
- 20 A Mm-hmm.
- 21 Q And so -- is that a yes?
- 22 A Yes.
- 23 Q She's trying to record everything.
- 24 A Oh, okay. Sorry. Okay. Yes.
- 25 Q So what you did was you were gonna pay \$20,000 as a

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- 1 down payment --
- 2 A Mm-hmm.
- 3 Q -- and then you were gonna finance the balance of
- 4 \$16,000 and some change through your credit union?
- 5 A Yes.
- 6 Q And you were gonna make payments of about \$480 a
- 7 month --
- 8 A Yes.
- 9 Q -- for 36 months?
- 10 A Yes.
- 11 Q Okay. So this was serious business for you; correct?
- 12 A Yes.
- 13 Q All right. Let me hand you what's been marked as
- 14 Plaintiff's Exhibit Number 3 and ask if you recognize
- 15 that.
- 16 A Yes.
- 17 Q All right. And what is that?
- 18 A That's the check I wrote for the vehicle.
- 19 Q Okay. And who did you write that check to?
- 20 A Well, it's for Otis Morris, but it was written out to
- 21 Pro Bowl Motors.
- 22 Q Okay. Now, did you understand that Otis Morris and Pro
- 23 Bowl Motors are one of the same?
- 24 A Yes.
- 25 Q Okay. And your check was for \$20,000?

- 1 A Yes.
- 2 Q And you gave him this check at a McDonald's?
- 3 A Yes.
- 4 Q Okay. Now, at this point, had you seen the car yet?
- 5 A No.
- 6 Q Okay. And so you're still trusting Mr. Morris?
- 7 A Yes.
- 8 Q All right. When did you first see this car?
- 9 A Maybe the next day, day or two.
- 10 Q Okay.
- 11 A Yes.
- 12 Q All right. Tell us about that.
- 13 A He called and told me the truck had gotten in, and I
- 14 was getting ready to go out of town. So, I wanted to
- 15 make sure, since I'd already paid the money, I wanted
- 16 to at least have the truck in my possession. And he
- 17 said, I guess, it still had to go to Philips to get
- 18 checked by the mechanics or whatever there, but I want
- 19 the truck in my possession. I told him, let me know
- 20 when you want to take it there, and I'll bring the
- 21 truck back to you.
- 22 Q Okay.
- 23 A And at that time, I took possession of the truck.
- 24 Q Okay. And how long did you have possession of it?
- 25 A Until he got it and took it back. I mean, up until

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- 1 now, but --
- 2 Q Well, let me ask you this.
- 3 A I'm trying to --
- 4 Q From what I've said, you've met with Otis on Hampton
- 5 Street on May the 10th, you signed the paperwork.
- 6 A Mm-hmm.
- 7 Q You met with him about a week later or so after you'd
- 8 already been to the credit union to get the money.
- 9 A Mm-hmm.
- 10 Q And then about a week later, you met with Otis at the
- 11 McDonald's, you gave him a check for \$20,000 --
- 12 A Right.
- 13 Q -- and then maybe the next day or the day after that,
- 14 he actually delivered the car to you?
- 15 A Yes.
- 16 Q All right. So, how many days did you have the car --
- 17 A Before he took repossession? Maybe three, four days.
- 18 Q Okay. Now, you've said repossess. I don't think you
- 19 meant that.
- 20 A No, I'm sorry. He took possession of the car again.
- 21 Q Okay.
- 22 A Yes.
- 23 Q Okay.
- 24 A Mm-hmm.
- 25 Q All right. You had done everything you were supposed

1 to do; correct?

2 A Yes. That was it that I knew of, yeah.

3 Q Okay. You'd given him the \$20,000 check, you'd given
4 him the money you borrowed from the credit union?
5 You'd done everything you were supposed to do?

6 A Yes.

7 Q And the only thing he said he was gonna do for you is
8 what?

9 A Get the car checked out and get it cleaned up --

10 Q Okay.

11 A -- and then I got the truck back.

12 Q Okay. So, forgive me. I'm tired. I didn't sleep well
13 last night. How long did you have the truck before
14 Otis wanted it back?

15 A I'm sorry, I don't have exact days, but he kept taking
16 it back for -- to supposedly get it registered --

17 Q Okay.

18 A -- because I still didn't have any paperwork or
19 anything on it.

20 Q Okay. What'd you do for transportation?

21 A I was driving it. He was providing me with temporary
22 tags.

23 Q Okay.

24 A Mm-hmm.

25 Q Well, what I'm getting at here is, at some point, did

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1 you surrender possession of this Infiniti to Mr. Morris
2 to do whatever it was that he was gonna do with it?

3 A Yes.

4 Q All right. Do you remember about how long after you
5 first saw the car that happened?

6 A I can't give that, because it was on and off so many
7 times. He'll tell me he has to take it to the DMV or
8 he had to take it somewhere to do something with it.

9 Q Okay.

10 A And so --

11 Q So, he did that more than one time?

12 A Yes.

13 Q Okay. So, you would drive the car for a few days or a
14 week, and then you'd turn it over to him --

15 A Yes.

16 Q -- and he'd have the car for a while?

17 A Mm-hmm, yes.

18 Q Okay. And he did that more than once?

19 A Yes.

20 Q All right. And how long did this go on?

21 A It went on, I'm gonna say, until around July. I took
22 it to him because there was a scratch on the side of
23 the door, and I wanted to see if he could get it maybe
24 buffed out and cleaned off. So, he kept the truck for
25 maybe two weeks at that time --

1 Q Okay.

2 A -- saying that the car was in line to get fixed, but
3 the person was backed up, so I hadn't seen the truck
4 for at least two weeks, and then finally, I demanded it
5 back.

6 Q Okay. All right. So, he had the truck for around two
7 weeks?

8 A Mm-hmm.

9 Q Now, what were you doing for transportation?

10 A I have another vehicle.

11 Q Okay, all right. Did a time come whenever he had your
12 vehicle for an extended period of time --

13 A Yep, that was the time.

14 Q That's when he had it for around two weeks or
15 something?

16 A Yeah.

17 Q Okay. And what did you do about that?

18 A I kept texting him and calling him asking was it ready,
19 and he kept saying the person is working on it, or
20 either he would offer to provide me with the loaner
21 vehicle.

22 Q Okay.

23 A Mm-hmm.

24 Q All right. And where was that loaner vehicle coming
25 from?

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- 1 A McDaniel.
- 2 Q Okay.
- 3 A Mm-hmm.
- 4 Q But you hadn't done any business with McDaniels?
- 5 A No.
- 6 Q Okay. Did that come across as kind of shady to you?
- 7 A Yes.
- 8 Q All right. Did you take him up on his offer?
- 9 A Yes.
- 10 Q All right. Let me ask you this: Did a time come when
- 11 you felt like you needed to do something more than ask
- 12 others to perform what he had already agreed to do?
- 13 A Well, once I retrieved -- well, when I called and
- 14 texted him about getting the car back, he brought it
- 15 back to me, but I was still kind of wondering what was
- 16 going on with the tag. So at that point, it had been,
- 17 of course, over 90 days, and I was just wondering what
- 18 was going on with the tag.
- 19 Q Okay.
- 20 A But that was it.
- 21 Q Okay. All right. So you went 90 days without having a
- 22 tag?
- 23 A Mm-hmm.
- 24 Q Okay. All right. Let me ask if you recognize what's
- 25 been marked for identification only as Plaintiff's

1 Exhibit Number 4.

2 A Yes.

3 Q Okay. What is that?

4 A That's when I got an oil change.

5 Q Okay. And is this something you paid for?

6 A I can't recall if I paid. Well, he was getting stuff
7 done under Pro Bowl. I think I did pay for this.

8 Q Okay.

9 A Yeah.

10 Q At this point, it says, "Bill to: Tarica Worthy".

11 A Uh-huh.

12 Q You were --

13 A Yes, mm-hmm.

14 Q All right. And this is dated August the 25th of 2016?

15 A Mm-hmm. Yes. I'm sorry, yes.

16 Q All right. Now, at that point, had the car been
17 returned to you permanently?

18 A Yes. It may have been a day or so. He may have needed
19 it to supposedly take it to the DMV --

20 Q Okay.

21 A -- because of the registration, but that was it.

22 Q Okay.

23 A No extensive time that I can recall.

24 Q Okay. I would move to admit what's been marked for
25 identification only as Exhibit Number 4 in evidence.

1 MR. STANLEY: No objection.

2 MR. STANLEY: No objection, Your Honor.

3 THE COURT: All Right, motion is granted.

4 BY MR. GREG STUDEMAYER:

5 Q All right. Hang on. I'm gonna ask you if you
6 recognize what's been marked as Plaintiff's Exhibit
7 Number 5.

8 A Yes.

9 Q And is this your handwriting?

10 A It is.

11 Q Okay. And what is this document that we're looking at?

12 A This happened when -- let me see. I think I had found
13 out that the truck had been resold or there was
14 something going on with Mr. Mathes, and I couldn't get
15 my truck registered. I had gotten in contact with the
16 DMV to file a complaint to see if I could get the truck
17 registered.

18 Q Okay. And is that what this is?

19 A Yes.

20 Q And this is your handwriting?

21 A It is.

22 Q Okay. Would you read what's under Part D in that box
23 there?

24 A I purchased a vehicle from Otis Morris, Jr., Pro Bowl
25 Motors, and have yet to -- I'm sorry. I can hardly

1 understand it.

2 Q Just do as best you can. I know the writing isn't --

3 A Receive a tag, and the bank -- I can't read what that
4 says because the print, but --

5 Q No --

6 A -- the purchase date is May 10th, 2016. I've tried
7 numerous times to get Mr. Morris to get this done
8 without something.

9 Q It looks like, with zero results.

10 A Yeah, zero results. Yes.

11 Q Okay. And then in the box labeled as E, can you read
12 that for us?

13 A I have consulted with an attorney and plan to file
14 charges.

15 Q Okay.

16 A Yes.

17 Q And then finally, Paragraph F.

18 A I would like for this matter to be investigated and he
19 needs to be prosecuted, pretty much.

20 Q Okay. All right. And did you ever do anything to see
21 that he was prosecuted?

22 A I went and filed the complaint with the police
23 department; yes.

24 Q The Columbia City Police Department?

25 A Mm-hmm.

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1 Q Okay. And again, if you would, please say yes.

2 A Yes. I'm sorry.

3 Q Okay. Now, did anything ever come of that?

4 A No.

5 Q Okay. All right. Now, the second page of this
6 document marked as an exhibit, apparently, it's an
7 agreement you had with the DMV that you only had a
8 temporary registration; is that correct?

9 A Yes.

10 Q And you understood that if you went out of state, you
11 were on your own?

12 A Yes.

13 Q Okay. Did that keep you from going out of state in the
14 car?

15 A Yes.

16 Q Okay. All right. So, did you feel like your use of
17 the vehicle was in some way limited?

18 MR. STANLEY: Object to your leading her.

19 THE WITNESS: Yes.

20 MR. GREG STUDEMEYER: Okay. I'll withdraw that
21 question.

22 THE COURT: All right.

23 BY MR. GREG STUDEMEYER:

24 Q Do you recognize the name Terry Pugh?

25 A Yes.

1 Q Okay. Is that -- well, who is that?

2 A He was the investigator for the DMV.

3 Q Okay.

4 A Mm-hmm.

5 Q And was Mr. Pugh trying to help you?

6 A He was.

7 Q Okay. And what was he trying to help you with?

8 A To get my tag and find out information about the title.

9 Q Okay. And was he eventually able to do that for you?

10 A He was able to get the temporary tag, and I'm not sure
11 what else happened after that.

12 Q Do you know now whether this vehicle has been properly
13 titled in your name?

14 A Yes.

15 Q Okay. And has it?

16 A Yes.

17 Q Do you know when that was ultimately done?

18 A I don't.

19 Q Okay. All right.

20 MR. GREG STUDEMEYER: All right. Your Honor,
21 that's all the questions I have for Ms. Worthy at this
22 time.

23 THE COURT: All right. Mr. Stanley?

24 CROSS-EXAMINATION

25 BY MR. STANLEY:

- 1 Q Ms. Worthy, the vehicle that you purchased, you
2 purchased it from Pro Bowl Motors; isn't that right?
- 3 A Well, if that's Otis Morris; yes.
- 4 Q Okay. That's the reason I'm asking you, because if you
5 look at Exhibit Number 1 -- do you still have Exhibit
6 Number 1 there?
- 7 A Yes.
- 8 Q Okay. That buyer's order says, right under the words
9 "Buyer's Order" --
- 10 A Mm-hmm.
- 11 Q -- it says, "Pro Bowl Motors, Inc."
- 12 A Yes.
- 13 Q Isn't that right? Your check was payable to Pro Bowl
14 Motors, Inc.?
- 15 A Yes. That's who Mr. Morris told me to write it out to.
- 16 Q Okay. Now, you have purchased, I think you said, at
17 least four or five cars --
- 18 A Yes.
- 19 Q -- from Mr. Morris. Did you purchase those from Pro
20 Bowl Motors?
- 21 A Yes.
- 22 Q Where were they located when you were purchasing them?
- 23 A On Broad River Road.
- 24 Q All of them? All of the vehicles that you purchased
25 were purchased on Broad River?

1 A Yes.

2 Q What did you purchase?

3 A I got an Audi, BMW, let's see. Those were the cars I
4 purchased myself.

5 Q Okay. Well, I'd like all the ones that you referred
6 to.

7 A Let me see. Well, the other cars were purchased for
8 me, but they were purchased -- I can't recall if they
9 were from -- we just got in contact with Mr. Morris and
10 I didn't do paperwork other than that.

11 Q Okay. But you purchased the Audi?

12 A Yes.

13 Q You purchased the BMW?

14 A Yes.

15 Q You had other cars that were purchased from Pro Bowl
16 Motors, but were not purchased by you?

17 A Yes.

18 Q But was purchased by someone else for you?

19 A Mm-hmm.

20 Q All right. What were those cars?

21 A I've had a Jeep. Let's see. I had a Lincoln MKS, and
22 I think that was it.

23 Q Who purchased those?

24 A It should be about five.

25 Q You think that's it?



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- 1 A Yeah, I think that's it.
- 2 Q And then the car that we're talking about here today --
- 3 A The Infiniti.
- 4 Q -- is an Infiniti?
- 5 A Mm-hmm.
- 6 Q So, that's five vehicles?
- 7 A Yes.
- 8 Q All purchased by you or someone for you from Pro Bowl
- 9 Motors?
- 10 A Mm-hmm.
- 11 Q Who purchased the other vehicles that you did not
- 12 purchase?
- 13 A Do I have to name the person?
- 14 Q Yes, ma'am. I'm asking you that.
- 15 A John Abraham.
- 16 Q Is that John Abraham the professional football player?
- 17 A Yes.
- 18 Q So, Mr. Abraham purchased a Jeep for you?
- 19 A Yes.
- 20 Q Mr. Abraham purchased a Lincoln for you?
- 21 A Yes.
- 22 Q Which one of the vehicles was damaged by the flood?
- 23 A The Audi.
- 24 Q Was Mr. Abraham one of the owners of Pro Bowl Motors?
- 25 A Yes.

- 1 Q All right. He was partnered with Mr. Morris?
- 2 A Yes.
- 3 Q All right. So, he was a shareholder for Pro Bowl
- 4 Motors; right?
- 5 A Yes.
- 6 Q All right. So, when you were buying all these vehicles
- 7 from Pro Bowl Motors, you were buying vehicles from Mr.
- 8 Abraham? He's a friend of yours?
- 9 A Yes.
- 10 Q And when you were dealing with Pro Bowl Motors for the
- 11 Infiniti, was Mr. Abraham still in Pro Bowl Motors?
- 12 A Not to our understanding; no. We thought the business
- 13 had dissolved under his name and Harold Green.
- 14 Q You thought Harold Green was out of it?
- 15 A Yes.
- 16 Q And you thought John Abraham was out of it?
- 17 A Yes.
- 18 Q But you were still dealing with Pro Bowl Motors?
- 19 A Yes.
- 20 Q Now, the Infiniti --
- 21 A Mm-hmm.
- 22 Q -- as we sit here today, you have that vehicle; right?
- 23 A I do.
- 24 Q All right. And you've got tags on them?
- 25 A I do.

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1 Q Happy with it?

2 A Yes.

3 Q Thank you so much. I have nothing else.

4 THE COURT: Anything?

5 MR. GREELEY: I have no questions.

6 THE COURT: Any redirect?

7 MR. GREG STUDEMEYER: No, Your Honor.

8 THE COURT: All right, thank you, ma'am, you can
9 come down. Watch your step coming down.

10 MR. GREG STUDEMEYER: Your Honor, if Ms. Worthy
11 prefers, I would ask that she be excused and she can go
12 about her day.

13 MR. GREELEY: No objection.

14 MR. STANLEY: No objection.

15 THE COURT: All right, thank you, ma'am.

16 MR. GREG STUDEMEYER: Your Honor, at this I call
17 Mr. Daniel Harms.

18 WHEREUPON, DANIEL HARMS, BEING DULY SWORN AND
19 CAUTIONED TO SPEAK THE TRUTH, THE WHOLE TRUTH, AND
20 NOTHING BUT THE TRUTH, TESTIFIED AND DEPOSED AS
21 FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. GREGSTUDEMEYER:

24 Q Mr. Harms, tell us what you do for a living.

25 A I work for South Carolina State Credit Union, a non-

1 profit financial institution.

2 Q Okay. And what do you do for them?

3 A I'm the Vice President of retail services.

4 Q Okay. And what is your role? What do you do for the
5 credit union?

6 A Well, I oversee the operations of three of our
7 branches, along with our collections department.

8 Q Okay. Are you familiar with a loan that was extended
9 by the credit union to Ms. Worthy to buy this vehicle
10 we're talking about?

11 A I am.

12 Q Okay. Let me ask you if you recognize Plaintiff's
13 Exhibit Number 9.

14 A I do.

15 Q And what is that?

16 A This is an official check which amounts to the proceeds
17 of a loan that we gave Ms. Worthy.

18 Q Okay. And how much is that check?

19 A \$16,026.

20 Q All right. Does that check bear a restrictive
21 endorsement on the back of it?

22 A It does. It is our practice to put a restrictive
23 endorsement which states that by cashing or endorsing
24 that check, that you guarantee delivery of a title, a
25 clear title with no lien that we can use to title it in

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1 our borrower's name with us as the lien holder.

2 Q Okay. Now, this check is made payable to whom?

3 A Pro Bowl Motors.

4 Q Okay. And was the check deposited?

5 A It was deposited, I believe, the day after we issued
6 the check.

7 Q Okay. And the check cleared?

8 A Yes, it has cleared.

9 Q And was the restrictive endorsement honored?

10 A Could you ask that in a different way?

11 Q Did Mr. Morris or Pro Bowl Motors do what they said
12 they would do whenever they signed the restrictive
13 endorsement and put your money in his bank?

14 A We did not receive the title in a timely manner.

15 Q Okay. And what did you do about that?

16 A Well, typically what we do is we try to work with our
17 borrower and the dealership to see what can be done to
18 remedy the situation. We did reach out to Ms. Worthy
19 and Pro Bowl Motors, Mr. Morris that was, to try to get
20 the title. We were unsuccessful for a period of time.
21 Ultimately, in November of 2016, I believe we filed a
22 complaint with the South Carolina Department of Motor
23 Vehicles.

24 Q Okay. And was the Department of Motor Vehicles able to
25 help you?

1 A Not at that time; no.

2 Q Okay. All right. Let me ask you if you recognize what
3 has been marked as Exhibit Number 10 for identification
4 only.

5 A Yes, I do.

6 Q And what is that?

7 A Part of our due diligence process when we finance
8 vehicles from dealerships that we are not very familiar
9 with, is we ask for copy of change of title to
10 substantiate that we have some amount of confidence
11 that we'll be able to receive the title that we can
12 ultimately use to either title in the borrower's name
13 or have reasonable expectations that the dealership
14 would be able to title it in our borrower's name with
15 our lien on it.

16 Q Okay. Let me ask you this: Who did you receive this
17 from?

18 A Well, this was included in the loan file. I couldn't
19 state who we received it from. Typically, we received
20 this information directly from the dealership.

21 Q Okay. All right. Now, let me ask you: Up until the
22 time, did you ever receive a certificate of title with
23 your lien recorded on it?

24 A No.

25 Q Okay. Even without a recorded lien, was it the credit



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1 union's position that it still had an enforceable
2 contract with Ms. Worthy?

3 A We did; yes.

4 Q Okay. And the credit union expected Ms. Worthy to make
5 every one of those monthly installments she agreed to
6 make?

7 A We did.

8 Q And did she do that?

9 A She did. Yes.

10 Q Okay. Your Honor, I would ask that Plaintiff's Exhibit
11 Number 10 be admitted in evidence.

12 MR. GREELEY: No objection.

13 MR. STANLEY: No objection.

14 THE COURT: All right, motion is granted.

15 BY MR. GREG STUDEMEYER:

16 Q All right. Now, Mr. Harms, let me ask if you recognize
17 what's been marked as Plaintiff's Exhibit Number 11.

18 A I do.

19 Q And what is that?

20 A This was a part of the efforts where we reached out to
21 Mr. Morris to secure the title so that we could change
22 the ownership to Ms. Worthy and record our lien. This
23 was sent by our chief retail services officer.

24 Q Okay. And how did Mr. Morris respond, if at all?

25 A He did not.

1 Q Mr. Harms, let me ask you this: Is the state credit
2 union that you work for, is that a federally chartered
3 financial institution?

4 A We are.

5 Q Okay. And are you all regulated?

6 A We are.

7 Q Okay. And who is it that regulates your credit union?

8 A Primarily the NCUA.

9 Q Okay. And does the NCUA, from time to time, audit
10 credit unions?

11 A Absolutely.

12 Q Do they look for liens on certificates and title to
13 make sure that you're collateralized?

14 A They do.

15 Q Did this lack of collateralization on Ms. Worthy's loan
16 create a problem for you?

17 A Not regulatory; no. This loan specifically wasn't
18 identified in any audit that we had, but obviously
19 would impair our ability to collect, and substantially
20 impacts our member if a vehicle we financed isn't
21 titled in their name.

22 Q Okay. Your Honor, that's all the questions that I have
23 for this witness. Thank you, Mr. Harms.

24 THE COURT: All right, Mr. Stanley.

25

CROSS-EXAMINATION

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1 BY MR. STANLEY:

2 Q All right. Mr. Harms, what's the status of your loan
3 to Ms. Worthy?

4 A The loan is current right now and is active.

5 Q So, you are being paid. You have not suffered any loss
6 on this loan?

7 A No.

8 Q Now, did I understand you to say that your lien has
9 never been perfected?

10 A No, I did not say that. We have received the title
11 recently, and we were able to title in Ms. Worthy's
12 name and put our lien on there. That is something that
13 happened recently.

14 Q When?

15 A I couldn't say the exact date. Within the last several
16 months.

17 Q Last several months?

18 A Right.

19 Q Okay. Did this happen in 2017? Didn't it?

20 A In '16. The loan was contracted on May the 12th, 2016.
21 Typically, we expect either a copy of the title, title
22 in our borrower's name with our lien recorded, or
23 received the title so that we can process that title
24 work within 45 days. Only recently did we receive the
25 title and were able to perfect the lien and title in

1 Ms. Worthy's name.

2 Q All right. You're still using that word recently, but
3 you can't tell me when?

4 A I can't tell you the exact date; no.

5 Q But you've got the title right now?

6 A Yes, sir. Yes, sir.

7 Q At your bank?

8 A We do. Well, it's an e-title, but yes.

9 Q And you've not suffered any loss on this loan?

10 A No, sir.

11 Q Thank you, sir.

12 THE COURT: Okay. Mr. Greeley?

13 MR. GREELEY: No questions, Your Honor.

14 THE COURT: Okay. Any re-direct?

15 MR. GREG STUDEMEYER: No, Your Honor, and I would
16 ask that Mr. Harms be released.

17 THE COURT: Okay, thank you sir.

18 Mr. Studemeyer, some of your exhibits have account
19 numbers on them, and I would ask that you, when we
20 finish today, remember to redact those from all the
21 exhibits.

22 MR. GREG STUDEMEYER: I'll do that. Okay, thank
23 you, Your Honor. Your Honor, at this time I wish to --

24 THE COURT: Hold on a second. Do you need to be
25 excused? All right, you may. We'll stand at ease



1 about 10 minutes.

2 [RECESS]

3 THE COURT: Our schedule, I plan to break for
4 lunch around one and we'll break for about an hour
5 until two. I'm not going anywhere unless the canteen
6 out there is full, but I'll be in the building, so if
7 you can come back at two. If we can't finish by five
8 today we can reconvene on Monday.

9 MR. GREELEY: Your Honor, if I may, I have checked
10 with my schedule for Monday just to confirm, and I have
11 discovered that I am in Marion, South Carolina in
12 general sessions court Monday morning.

13 THE COURT: All right, that takes priority under
14 the Rule. So well, tell you what, if we can't finish
15 today we'll actually -- in my court we can set another
16 day that's convenient to everybody. So if we don't
17 finish today -- my point is not to put under time
18 restrictions, not to rush, because we'll have plenty of
19 time to hear everybody.

20 MR. GREELEY: Thank you, Judge.

21 MR. STANLEY: Thank you.

22 THE COURT: All right, Mr. Studemeyer.

23 MR. GREG STUDEMEYER: Your Honor, at this time I
24 wish to publish excerpts from Mr. Morris' deposition.

25 THE COURT: Okay, now do you object to that Mr.

1 Stanley?

2 MR. STANLEY: No, sir.

3 MR. GREELEY: I do not object.

4 THE COURT: And you've already submitted the
5 excerpt or are you going to --

6 MR. GREG STUDEMAYER: I have, Your Honor. I filed
7 the entire deposition with the Clerk of Court.

8 MR. GREELEY: I did not get the excerpt. What I
9 got was you had filed the entire deposition.

10 MR. GREG STUDEMAYER: Okay.

11 THE COURT: Stand at ease for a moment; that is
12 fine.

13 (Whereupon, there was a pause in the proceedings.)

14 MR. GREELEY: Judge, I don't have any problem with
15 it. I guess, let's do it -- rather than taking the
16 time of the Court, let's go ahead, and if I have
17 objections I'll object when we get to that part.

18 THE COURT: All right, that's okay.

19 MR. GREG STUDEMAYER: Let's begin with --

20 THE COURT: Let me ask: When was the deposition
21 taken?

22 MR. GREG STUDEMAYER: This deposition was taken,
23 Your Honor, on September 22 -- excuse me, I have the
24 wrong deposition.

25 THE COURT: It looks like January 17, 2017.

1 MR. GREG STUDEMAYER: Yes. Let's begin on page 9,
2 lines --

3 THE COURT: I apologize. Let me -- you want to
4 unseal this deposition at this time?

5 MR. GREG STUDEMAYER: Your Honor, I think it would
6 be appropriate since we're going to be reading parts of
7 it.

8 THE COURT: Okay, proceed.

9 MR. GREG STUDEMAYER: Your Honor, my -- the
10 designation I submitted to the Court and counsel says
11 that I'm going to begin on page 9 with lines 18 to 21,
12 but I really need line 16 to 21. So if there's no
13 objection, I'll begin with line 16.

14 MR. GREELEY: No objection.

15 MR. STANLEY: No objection.

16 [PUBLICATION OF EXCERPTS FROM
17 THE DEPOSITION OF OTIS MORRIS, JR.]

18 (NOTE: Mr. Greg Studemeyer will be asking the
19 questions and Mr. Ryan Studemeyer will be giving the
20 answers of Mr. Otis Morris as contained in the
21 deposition.)

22 READING -

23 Q Okay. All right. Give me your full
24 name.

25 A Otis Morris, Jr.

1 Q Okay. And what is your current address?

2 A 312 Longtown, one word, Road West,
3 that's Blythewood, South Carolina.

4 MR. GREG STUDEMEYER: All right, let's go to page
5 12 lines 2 to 3.

6 READING -

7 Q Okay. Why don't -- let's see -- why
8 don't we do -- tell me what all you brought with you,
9 if you don't mind.

10 (No response read from the deposition.)

11 MR. GREG STUDEMEYER: And then let's go to lines
12 11 to 25.

13 READING -

14 Q Well, we probably go through them one at
15 a time, Otis. You put them in whatever order you think
16 makes most sense to you and if you would just tell us
17 what they are and we'll mark them one at a time.

18 A Okay, this is copy of as-is form.

19 Q All right. Let's mark that as Exhibit
20 Number 1 if we could.

21 MR. GREG STUDEMEYER: And Your Honor, what was
22 marked as Exhibit Number 1 for Mr. Morris' deposition
23 has been marked as Exhibit Number 12 and it's in
24 evidence.

25 READING -

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1 Q All right, let me ask you about this
2 as-is form. This is -- this reflects the sale of a car
3 by Pro Bowl Motors, and I can't make out whose name is
4 on the back of it.

5 A I think that's Tarica Worthy's
6 signature.

7 Q Okay, all right. Thank you, sir.

8 A Okay. And this is a copy of the check.

9 Q All right. And this is a check from
10 whom to whom?

11 A Tarica Worthy to Pro Bowl Motors.

12 Q All right.

13 MR. GREG STUDEMEYER: All right, that Number 2 to
14 the deposition, Your Honor, has been marked as Exhibit
15 Number 13 for identification purposes only, and I will
16 ask that this be moved into evidence.

17 THE COURT: All right, anyone object?

18 MR. STANLEY: Number 13?

19 MR. GREG STUDEMEYER: Yeah.

20 MR. STANLEY: No objection, Your Honor.

21 MR. GREELEY: Yeah, there's no objection.

22 THE COURT: Again, this has an account number on
23 it.

24 MR. GREG STUDEMEYER: Okay, we'll address all that
25 at the end of the day.

1 THE COURT: All right, thank you.

2 MR. GREG STUDEMEYER: All right, line 15.

3 READING -

4 A Okay, this is a we-owe form, which I
5 think y'all may have that.

6 Q All right. This is the we-owe form from
7 Pro Bowl Motors to Terica Worthy?

8 A Correct.

9 MR. GREG STUDEMEYER: All right, and we marked
10 Exhibit 3 as Exhibit Number 14 for identification
11 purposes and I'm going to ask that this be moved into
12 evidence.

13 MR. STANLEY: I have no objection.

14 MR. GREELEY: No objection.

15 READING -

16 Q Okay. All right.

17 A This is an as-is form, non-guarantee.

18 Q Did this involve the same transaction?

19 A Yes, sir.

20 Q With Ms. Worthy?

21 (No response read from the deposition.)

22 MR. GREG STUDEMEYER: All right, we'll mark that
23 as Exhibit Number 4 and Exhibit Number 4 to Mr. Morris'
24 deposition has been marked for identification purposes
25 only as Plaintiff's Exhibit Number 17. And I move this

1 into evidence.

2 MR. STANLEY: No objection.

3 MR. GREELEY: No objection, Your Honor.

4 MR. GREG STUDEMAYER: Your Honor, I'm getting a
5 little bit confused with all the stacks of exhibits.
6 If it's okay, we'll just use the ones that I've given
7 the court reporter.

8 THE COURT: That's fine.

9 MR. GREG STUDEMAYER: Let's see, where are we?
10 What page --

11 MR. RYAN STUDEMAYER: Line 8.

12 MR. GREG STUDEMAYER: What page line are we on?

13 MR. RYAN STUDEMAYER: Page 14 line 8.

14 THE COURT: Page what?

15 MR. RYAN STUDEMAYER: Page 14 line 8.

16 READING -

17 Q All right. And again, this also
18 reflects the sale by Pro Bowl Motors, Inc. to Tarica
19 Worthy; correct?

20 A Correct.

21 MR. GREG STUDEMAYER: Okay, moving on to line 21
22 and the answer.

23 READING -

24 A These are what I was emailed. That's a
25 copy of the title.

1 Q Okay, let's do them one at a time so the
2 court reporter can mark them for us.

3 A Okay.

4 Q If you would just identify what they
5 are.

6 A Well, it's -- it's one and the same, and
7 that's the front of the title.

8 Q All right.

9 MR. GREG STUDEMEYER: Okay, at that point we
10 marked Number 6. We marked --

11 COURT REPORTER: I have a title here.

12 MR. GREG STUDEMEYER: Okay. I think what
13 Plaintiff's Exhibit Number 6 from Morris' deposition
14 was marked -- we may have to come back to that. I
15 don't want to hold us up too much on that.

16 All right, let's let them, -- let's resume with
17 page 15 line 8, I think it was.

18 READING -

19 Q Okay.

20 A Here's the back of the title.

21 Q The same title?

22 A The same title.

23 Q Okay.

24 MR. GREG STUDEMEYER: All right. Then we had
25 Exhibit Number 7. All right, 7 was marked for

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1 identification purposes as Exhibit Number 18 and I
2 would move this into evidence, Your Honor.

3 MR. STANLEY: No objection.

4 THE COURT: Motion granted.

5 MR. STUDEMEYER: All right, we're resuming at line
6 16.

7 READING -

8 Q Okay.

9 A I'm not sure which order these would be,
10 but these are affidavits for the title.

11 Q All right, let's do that one at a time
12 then.

13 A Okay.

14 MR. GREG STUDEMEYER: And then we marked Exhibit
15 Number 8, which is marked as Plaintiff's Exhibit 19 for
16 identification purposes, and I would move that into
17 evidence, Your Honor.

18 MR. STANLEY: No objection.

19 MR. GREELEY: No objection.

20 THE COURT: All right, your motion is granted.

21 MR. GREG STUDEMEYER: All right, resuming with
22 page 15 line 24.

23 READING -

24 Q And is this also --

25 A That's --

1 Q What is this?

2 A That's part of it. It's a -- it's a
3 part of the affidavit.

4 Q Okay.

5 MR. GREG STUDEMAYER: And then we had Exhibit
6 Number 9 which is marked for identification purposes as
7 Plaintiff's Exhibit Number 20, and I would ask that
8 this be moved into evidence at this time.

9 MR. GREELEY: No objection.

10 MR. STANLEY: No objection.

11 THE COURT: All right, your motion is granted.

12 MR. GREG STUDEMAYER: Thank you. All right,
13 resuming with line 8.

14 READING -

15 Q Okay.

16 A And this is --

17 Q Well, let me ask you before we get too
18 far along: Exhibits Number 6 and 7, if you will just
19 clarify for me, these are copies of the front and back
20 of the certificate of title for the 2000 model -- 2014
21 model Infiniti sold by Pro Bowl Motors to Ms. Worthy;
22 is that correct?

23 A Correct.

24 Q Okay. And then Exhibits 8 and 9 appear
25 to be, it says at the top "State of Florida Motor

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1 Vehicle Power of Attorney odometer disclosure", but is
2 it your testimony that Exhibits 8 and 9 are actually
3 two sides of the same document?

4 A I would say yes. But it was emailed to
5 me.

6 Q Okay. But both of these documents 8 and
7 9 refer to the same Infiniti vehicle sold by Pro Bowl
8 Motors to Ms. Worthy?

9 A Yes, sir.

10 Q Okay. All right. And then what's this
11 next document?

12 A That's a part of that affidavit.

13 Q All right. This is an affidavit, all
14 right. Well --

15 A That's what it says at the top.

16 Q So we'll mark that as Exhibit Number 10.

17 MR. GREG STUDEMEYER: And Exhibit Number 10 was
18 marked for identification purposes this morning as
19 Plaintiff's Exhibit Number 21. At this time -- I would
20 move at this time it be admitted into evidence.

21 MR. GREELEY: Your Honor, I object to lack of
22 authentication. I believe that the testimony says he
23 received it from email but he couldn't testify to its
24 authenticity or something to that regard.

25 THE COURT: Mr. Studemeyer?

1 MR. GREG STUDEMEYER: Your Honor, these were
2 documents that were provided by Mr. Morris' deposition.
3 He discussed these as in the nature of being business
4 records.

5 THE COURT: Uh-huh.

6 MR. GREG STUDEMEYER: And I think they should be
7 admissible for that purpose.

8 THE COURT: Objection overruled.

9 MR. GREG STUDEMEYER: Thank you, Your Honor.

10 READING -

11 Q Okay, now I'm looking at the affidavit
12 marked as Exhibit Number 10 and it says "please void
13 first dealer assignment. First dealer assignment
14 completed the wrong purchaser in error." Do you know
15 what that's about?

16 A I think it's about the title has a error
17 on it.

18 MR. GREG STUDEMEYER: Okay, now let's move on to
19 page 18 lines 15 and 16.

20 READING -

21 Q This is a form, a certificate of title;
22 right?

23 A Correct.

24 MR. GREG STUDEMEYER: Okay. Now page 19 lines 13
25 to 16.

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1 READING -

2 Q Is it fair to say that at some point in
3 time Dixon's Automotive was an owner of the vehicle?

4 A Yes, sir.

5 MR. GREG STUDEMEYER: All right, page 19 -- excuse
6 me, page 20 line 6.

7 READING -

8 Q What other documents do you have?

9 A Okay, this is a list of individuals who
10 are authorized to purchase cars, that's Pro Bowl
11 Motors.

12 Q Okay.

13 MR. GREG STUDEMEYER: Okay, we marked that Exhibit
14 as Number 11 in the deposition, and it is marked as
15 Exhibit Number 22 and it's already in evidence.

16 All right, resuming with line 17 on page 20.

17 READING -

18 Q Okay, let's see, Exhibit Number 11,
19 okay, so it looks like someone has made a mark right
20 here with a pen or something, and it looks like that's
21 next to the listing of existing individuals who are
22 authorized to purchase on behalf of Pro Bowl Motors.

23 A I believe that's correct. Correct.

24 Q Okay. And is that current? Is that
25 current as of today?

1 A That would be current; yes, sir.

2 Q As far -- yeah, yeah, I notice the date
3 1/17/2017 at 9:40 a.m. on it and according to this,
4 John Baptist is an authorized representative of Pro
5 Bowl Motors?

6 A Yes, sir.

7 Q Okay. Along with Tony Lewis, Harold
8 Green, Gerald Dixon, and yourselves?

9 A Correct.

10 Q Okay. All right. And then what's the
11 next document that you have?

12 A The next one is a document sent, who was
13 authorized up until a date for Mathes Auto Sales.

14 MR. GREG STUDEMEYER: All right. And we marked
15 that one as Exhibit Number 12 for the deposition, and
16 that is Exhibit Number 23 which is already into
17 evidence.

18 All right, we're resuming with line 18.

19 READING -

20 Q Okay. All right. At -- in this, these
21 last two documents you have handed me, you say you got
22 these from Manheim in Atlanta?

23 A Correct.

24 Q Okay. All right. And is there anything
25 significant about what's marked as Exhibit Number 12



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1 from your perspective?

2 A It shows who was listed and removed and
3 they date they were removed as buyers.

4 Q Okay. All right. And according to this
5 document, you were removed from a list of authorized
6 individuals to act on behalf of Mathes Auto Sales; is
7 that correct?

8 A Yes, sir.

9 Q Okay. That's part of that document.

10 MR. GREG STUDEMEYER: And I said okay.

11 READING -

12 A That's a part of that document.

13 Q All right. Let's mark that as Number
14 13.

15 MR. GREG STUDEMEYER: Exhibit 13 is into evidence
16 as Exhibit Number 24.

17 MR. STANLEY: No objection.

18 MR. GREELEY: No objection, Your Honor.

19 THE COURT: All right.

20 MR. GREG STUDEMEYER: All right, now where are you
21 -- this is on page 22?

22 MR. RYAN STUDEMEYER: Line 13.

23 MR. GREG STUDEMEYER: Line 13, okay.

24 READING -

25 Q Okay, when you say it's part of that

1 document, what do -- what --

2 MR. GREG STUDEMEYER: Let me start over.

3 READING -

4 Q Okay, when you say it's a part of that
5 document, did you mean it's a part of what you marked
6 as Exhibit Number 12?

7 A Well, I guess it would be two separate
8 documents. But that document was sent to me also.

9 Q From Manheim in Atlanta?

10 A Correct.

11 Q Okay. So you got 11, 12, and 13 all
12 from Manheim today?

13 A Yes, sir.

14 Q Okay. All right.

15 A I think it's the same copy.

16 MR. GREG STUDEMEYER: Now, let's move to page 23
17 lines 3 to like 19.

18 READING -

19 Q Thank you. This appears to be a
20 different -- different document than 12, and let's see
21 11 and 12. Why don't you take a look?

22 A These two are the same. She just wrote
23 on that copy. Those two are the same.

24 Q Okay. Okay. And then what else do you
25 have?

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1 A I brought the subpoena that you sent
2 out, a copy of the bill of sales from Mathes Auto
3 Sales.

4 Q That's what you have there?

5 A Yes, sir.

6 Q Can I take a look at that? All right.

7 MR. GREG STUDEMEYER: And then we marked that as
8 Exhibit Number 14 which is in evidence -- oh, this was
9 marked for identification purposes only as Exhibit
10 Number 25, and I would ask that this be moved into
11 evidence.

12 MR. STANLEY: If it hasn't already been, then no
13 objection.

14 MR. GREELEY: No objection.

15 THE COURT: Okay.

16 MR. GREG STUDEMEYER: Okay, now let's move on to
17 page 25 line 14.

18 READING -

19 Q Okay. Have you ever been arrested?

20 A No, sir.

21 Q Do you know John Mathes?

22 A Yes, sir.

23 Q How long have you known him?

24 A Twenty-plus years.

25 Q How did you come to know him?

1 A Worked together.
2 Q Okay. Do you know his wife?
3 A Yes, sir.
4 Q Have you visited with them in their
5 home?
6 A Yes, sir.
7 Q Have they visited with you in your home?
8 A Yes, sir.
9 Q Y'all been on vacation together?
10 A No, sir. Well, yes, sir, I apologize.
11 Q Okay.
12 A Yes, sir.
13 Q Do you know John's parents?
14 A Yes, sir.
15 Q Do you consider John to be a friend of
16 yours?
17 A Yes, sir.
18 Q Are you familiar with NextGear Capital?
19 A I can't answer that I'm familiar with
20 it.
21 Q Okay.
22 A Yes, sir.
23 Q All right. What do you know about
24 NextGear Capital?
25 A Floorplan company.

1 Q Okay. Do you know where they're
2 located?

3 A Home office?

4 Q Yes, sir.

5 A I think Indiana.

6 Q Okay.

7 A Okay.

8 Q All right. And let me just kind of give
9

10 MR. GREG STUDEMEYER: Let me start over.

11 READING -

12 Q All right. Let me just kind of give you
13 the lay of the land here, okay. NextGear claims that
14 your friend John owes them thirty-six thousand plus
15 dollars for money advanced to purchase this 2014
16 Infiniti we've been talking about from Dixon's
17 Automotive and Manheim Darlington in August of this
18 year, of last year; okay? John says he's never seen
19 the car; he never purchased the car, and he never
20 borrowed any money on the car. NextGear has presented
21 us with a document suggesting that they have the right
22 to enforce their claim against your friend John in
23 Indiana. What can you do to help us with that?

24 A I don't know. Maybe that, I'm under
25 advisement by counsel that I refuse to answer that

1 question pursuant to the rights afforded to me by the
2 Fifth Amendment of the United States Constitution.

3 Q You can't help your friend?

4 A Under the advisement of counsel, I
5 refuse to answer that question pursuant to the rights
6 afforded by me by the Fifth Amendment of the United
7 States Constitution.

8 Q All right. Did you bring all the
9 documents that you were required to maintain as a
10 dealer with you today?

11 A Yes, sir.

12 Q Okay. We've already talked about the
13 car that you sold Ms. Worthy; right?

14 A Yes, sir.

15 Q Okay. Did you bring with you the
16 documents were you acquired the vehicle?

17 A No, sir.

18 Q Is there a reason why you didn't?

19 A I don't have them.

20 Q Can you tell me where you acquired the
21 vehicle from?

22 A Under the advisement of counsel I refuse
23 to answer this question pursuant to the rights afforded
24 to me by the Fifth Amendment.

25 Q Did you pay for the car?

1 A I'm under the advisement (sic) I refuse
2 to answer that question pursuant to me -- the rights
3 afforded to me by the Fifth Amendment.

4 Q All right. All right. Can you tell me
5 what the term "OVE" means?

6 A Online Vehicle Exchange.

7 Q Okay. And can you tell me what the term
8 "MMR" means?

9 A I think it's Manheim Marking Report.

10 Q Okay. You -- you identified OVE for me
11 and I heard what you said, but can you describe what it
12 is?

13 A I cannot under the -- under advisement
14 of counsel I refuse to answer that question pursuant to
15 the rights afforded to me by the Fifth Amendment.

16 Q All right.

17 MR. GREG STUDEMEYER: All right, the next document
18 we marked was Number 15, which is already in evidence
19 as Plaintiff's -- yeah, Exhibit Number 15 which is
20 already in evidence as Exhibit 26.

21 All right, page 30 line 8.

22 READING -

23 Q Let me hand you what's marked as Exhibit
24 Number 15 and ask if you recognize that document.

25 A Yes, sir.

1 Q Okay, what is that?

2 A It looks like a repair order from
3 Phillips.

4 Q Okay. And who is it billed to?

5 A Pro Bowl Motors.

6 Q Okay. Tell me what you recall about
7 this transaction with Phillips Auto Tech.

8 A A car was taken (sic) by for a service
9 check.

10 Q Okay. Who took it by?

11 A I'm not sure if I did, but I'm not sure
12 who took it back.

13 Q Okay. According to this document it
14 says that the appointment was made the 19th of 2016.
15 do you see that on the left side at the top?

16 A Correct.

17 Q Okay. It says it was promised on May
18 the 19th of 2016 at 10:07; do you see that?

19 A I see that.

20 Q Okay. Can you tell me who owned the car
21 at that time?

22 A I cannot answer that question under the
23 Fifth Amendment.

24 Q Okay. Well, certainly by May the 19th
25 you had already sold that car to Ms. Worthy; hadn't

1 you?

2 A I cannot answer that question.

3 Q Okay. Well, let me hand you back the
4 bill of sale that you've already identified for me,
5 it's Exhibit Number 5.

6 A Okay.

7 Q Does that show the date you sold the car
8 to Ms. Worthy?

9 A It shows the bill of sales; yes, sir.

10 Q Okay. And it shows the date of the
11 sale?

12 A Yes, sir.

13 Q Okay. The date of the sale was May the
14 10th of 2016?

15 A On the bill of sales.

16 Q Okay. Is that not accurate?

17 A The bill of sales is accurate on the
18 10th.

19 Q Okay. So you actually sold the car to
20 Ms. Worthy on May the 10th of 2016?

21 A Correct.

22 Q Okay. And then you took the car to
23 Phillips Auto Tech on May the 19th to have it serviced?

24 A I did not.

25 Q Who did?

1 A I think she may have did. I didn't take
2 it.

3 Q Okay. It was billed to you?

4 A Yes, sir.

5 Q You paid for it?

6 A Yes, sir.

7 Q Okay. All right. Was that an
8 arrangement you had with Ms. Worthy that you would have
9 her take the car to Phillips to have it checked after
10 she bought it?

11 A I can't answer that question.

12 Q Why not?

13 A My rights of the Fifth Amendment.

14 Q Well, there's nothing criminal about
15 paying for somebody's inspection; is it?

16 A I cannot answer that question.

17 Q Okay. All right. Can I have that back
18 please, sir?

19 A Sure.

20 Q All right. Okay, let me ask you if you
21 recognize what's marked as Exhibit Number 16?

22 A Yes, sir.

23 MR. GREG STUDEMEYER: And Number 16 is already in
24 evidence, I would hand up to the court reporter.

25 READING -

1 Q What is that?

2 A It's a letter from the South Carolina
3 Highway Department of Motor Vehicles.

4 MR. GREG STUDEMEYER: That is in evidence as
5 Number 27.

6 READING -

7 Q And who was it addressed to?

8 A Pro Bowl Motors.

9 Q Okay. And what's the substance of the
10 letter?

11 A Surety bond.

12 Q Okay. Well, this is actually a
13 revocation of your license to sell automobiles; isn't
14 it?

15 A Surety bond.

16 Q Well, let me just read it to you, if you
17 don't mind. The third sentence of the letter, quote,
18 the above license is cancelled effective 12:01 a.m.
19 July 29th, 2016 based upon a finding by the Department
20 of Motor Vehicles that South Carolina requires, blah,
21 blah, blah. Your license was cancelled. Your license
22 to sell cars; correct?

23 A 37775, yes.

24 Q Okay. Do you have more than one
25 license?

1 A I did.

2 Q Okay. What other license did you have?

3 A We had a wholesale license.

4 Q Okay. So what we're referring to here
5 on Number 16 is a retail license?

6 A Correct.

7 Q Okay. And did you retain a wholesale
8 license after your retail license was cancelled?

9 A Yes, sir.

10 Q For how long?

11 A I would say August, I think, is when it
12 needed to be renewed.

13 Q Okay.

14 A August.

15 Q All right. Let me ask you if you
16 recognize what is marked as Exhibit Number 17.

17 A Yes, sir.

18 MR. GREG STUDEMEYER: That's already in evidence
19 as Exhibit Number 28.

20 READING -

21 Q Let me ask if you recognize what is
22 marked as Exhibit Number 17.

23 A Yes, sir.

24 Q What is that?

25 A It looks like an email received from

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1 Marion Weaver.

2 Q Okay. And who is Marion Weaver?

3 A She works at Darlington.

4 Q Okay. And do you know her?

5 A I do.

6 Q Okay. What does she do with -- she
7 works for Manheim Darlington?

8 A She works for Manheim Darlington.

9 Q What does she do for them?

10 A She works with dealer relations.

11 Q Okay. All right. Now, take look a
12 about halfway down the page where you see the word,
13 quote, on alerts. Do you see that?

14 A Yes, sir.

15 Q And do you see right below that where
16 it's written, printed, the sales price of this vehicle
17 is more than the normal MMR range. Can you tell me
18 what that means?

19 A I cannot.

20 Q Well, let me ask you this: Would you
21 agree with me that a reasonable interpretation is that
22 that car sold for an amount in excess of its actual
23 value?

24 A I can't agree to that.

25 Q Okay. Well, tell me what you think it

1 means.

2 A It means it's over the MMR range.

3 Q Okay.

4 A What that range is, it's not listed.

5 Q Okay. Tell me in plain English what an
6 MMR range is.

7 A Manheim Market Report.

8 Q Yeah, but tell me in plain English what
9 it means. If you were trying to explain to your child,
10 what would you tell them?

11 A Manheim Market Report.

12 Q You think a child would understand that?

13 A No. Manheim Market Report is what the
14 MMR means.

15 Q Okay. I understand that's what the
16 acronym stands for.

17 A Right.

18 Q But I'm just asking you to tell me in
19 plain English what it means.

20 A A value that Manheim Market Report
21 states.

22 Q Okay. Is a Manheim Market Report
23 anything like Black Book, or an NADA book or some kind
24 of recognized form of a kind of prospect?

25 A I don't think there's a book, maybe a



1 price guide possibly.

2 Q So it's like an online service, like a
3 Kelly Blue Book, for instance, where you can look up
4 the value of a vehicle?

5 A I'm not sure if you can look it up.

6 Q Okay. Do you have access to that
7 information?

8 A I did.

9 Q Okay. How did you get it?

10 A By being a dealer.

11 Q Okay. And what would you use that
12 information for?

13 A The information would be used to gauge
14 prices of cars.

15 Q Okay. And to make sure you didn't pay
16 too much?

17 A I can't answer that.

18 Q Why can't you answer that?

19 A I'm not sure it always works with the
20 Manheim Market Report.

21 Q Okay. Turn to the second page if you
22 don't mind. Well, let's go back to the first page. Do
23 you see down at the bottom of the page it refers to a
24 particular vehicle, make, model, and so on? This is --
25 this is the same car we've been talking about that you

1 sold to Ms. Worthy; correct?

2 A The VIN number is the same.

3 Q Sir?

4 A The VIN number is the same.

5 Q Okay. It's a 2014; right?

6 A Correct.

7 Q And it's Infiniti?

8 A Correct.

9 Q And it's a QX60?

10 A Correct.

11 Q It's the -- it's the car that you sold
12 to Ms. Worthy; correct?

13 A It's the same VIN number. I assume it's
14 the same car.

15 Q Okay. All right. And then down at the
16 very bottom of the page do you see where it's got
17 "offer end time"?

18 A Yes, sir.

19 Q And what does that say?

20 A It says 4 p.m.

21 Q And what date?

22 A 8/16/2016.

23 Q All right. And then if you turn the
24 page, do you see where it's got the contact information
25 about midways down?

- 1 A Yes, sir.
- 2 Q Okay. And who was listed as the buyer?
- 3 A Otis Morris.
- 4 Q Okay. And there's a phone number below
- 5 that. Is that your phone number?
- 6 A Correct.
- 7 Q 238-9799?
- 8 A Yes.
- 9 Q And there's a fax number below that 779-
- 10 4562; is that your fax number?
- 11 A Was.
- 12 Q Okay. And there's an email address of
- 13 ot28@aol.com. Is that yours?
- 14 A Correct.
- 15 Q So you were the buyer?
- 16 A Pro Bowl Motors and Otis Morris listed
- 17 on this.
- 18 Q Well, I see where it says buyer name
- 19 "Otis Morris". Do you see what I'm seeing?
- 20 A Yes, sir.
- 21 Q Okay. Do you see anything on here about
- 22 Pro Bowl Motors?
- 23 A Well, Otis Morris and Pro Bowl Motors
- 24 are the same.
- 25 Q Yet Pro Bowl Motors doesn't appear on

1 this document; does it?

2 A I understand.

3 Q Does it?

4 A No, sir.

5 Q Okay. All right. So can you tell me
6 who you bought the car from?

7 A Dixon Automotive.

8 Q Okay. Did you -- did you see the car
9 that day?

10 A I can't answer that question.

11 Q Why is that?

12 A Part of my Fifth Amendment.

13 Q Okay. Was the car there?

14 A I can't answer that question.

15 Q Okay. All right. But you know you
16 bought it from Dixon Automotive?

17 A Correct.

18 Q Okay. Do you know where Dixon
19 Automotive got the car?

20 A I can't answer that question.

21 Q All right.

22 MR. GREG STUDEMEYER: All right, at that time we
23 marked Exhibit Number 18 which in evidence as Exhibit
24 Number 29. All right, resuming with page 40 line 21.

25 READING -

1 Q Let me ask you if you recognize what's
2 marked as Exhibit 18.

3 A Do not.

4 Q Have you ever seen a document like this
5 before?

6 A Similar, but not this document.

7 Q Okay. Can you tell based upon -- how
8 long have you been in the car business all-together?

9 A Thirty years.

10 Q Okay. How many times have you been to
11 Darlington to buy cars?

12 A I couldn't put a number on it, sir.

13 Q Thousands?

14 A Not that many.

15 Q Hundreds?

16 A Hundreds.

17 Q Okay. Based upon your hundreds of
18 experiences at Darlington, at Manheim Darlington, can
19 you tell me what this document means?

20 A Well, across the top it is a document
21 showing a purchase. A buyer side and a seller side.

22 Q Okay. And this would -- who does it
23 show as the buyer?

24 A Mathes Auto Sales.

25 Q Okay. And who does it show as the

1 seller?

2 A Dixon Automotive.

3 Q Okay. And what's the date of this sale?

4 A 8/16.

5 Q 2016?

6 A Yes, sir.

7 Q Okay. Were you there?

8 A No, sir.

9 Q You weren't? You were not there on
10 that --

11 A No, sir.

12 Q -- date? Okay. Okay. Can you tell how
13 this online -- what does OVE mean again?

14 A Online Vehicle Exchange.

15 Q Can you tell me how that works?

16 A A car is posted online and you are able
17 to bid on the car, I guess, is the easiest way to say
18 it.

19 Q Okay. How do you go about posting it
20 online?

21 A Enter in the information, miles, the VIN
22 number, post the car.

23 Q Okay. And do you have to be a member of
24 the auction or do you have to have permission from the
25 auction to do that?

1 A You would have to be a dealer, I would
2 assume.

3 Q Okay. All right. The -- what, if
4 anything, is required in terms of making the car
5 available for inspection by the auction?

6 A The auction would need to physically see
7 the car.

8 Q Okay. All right. Then who can bid on a
9 car?

10 A Anyone.

11 Q Okay. And is there a certain window of
12 time during which the car can be offered on this, on
13 this online auction?

14 A I think you can set it up 24 hours.

15 Q Okay. All right. At the end of 24
16 hours it's gone and you've got to --

17 A I mean --

18 Q -- repost it?

19 A You can. You can set it up for 24 hours
20 constantly.

21 Q Okay. I got-you. All right.

22 A Ongoing, ongoing.

23 Q All right. Did you post this car?

24 A Under the Fifth Amendment rights I
25 cannot answer that question.

1 Q Okay. But did you buy the car?

2 A Yes, sir.

3 Q Okay. Now, before you bought the car,
4 did you seek permission from your friend John Mathes?

5 A I cannot answer that question based on
6 the Fifth Amendment right.

7 Q All right. Let's mark this as 19.

8 MR. GREG STUDEMEYER: 19 is in evidence as Exhibit
9 Number 30.

10 READING -

11 Q Take a look at Exhibit Number 19 and
12 tell me if you can identify that for me.

13 A I haven't seen this document.

14 Q Okay. Do you see your name on the
15 document on the left-hand side about 60 percent of the
16 way down the page?

17 A Yes, sir.

18 Q Okay. Does that indicate that you were
19 the purchaser of the car?

20 A It's not signed. I haven't seen it, but
21 assume yes. But I haven't seen this document.

22 Q All right. And you said you did buy the
23 car?

24 A I purchased the car; correct.

25 Q Okay. And you bought the car August the

1 16th, 2016?

2 A Correct.

3 Q And you did that online?

4 A Correct.

5 Q Okay. Because you weren't there?

6 A Under the grounds of the Fifth Amendment
7 I can't answer that question.

8 Q Okay. Is Gerald Dixon a friend of
9 yours?

10 A Yes, sir.

11 Q Okay. And he's the principal of Dixon
12 Automotive up in Rock Hill?

13 A I can't answer that question.

14 Q Well, that hasn't got anything to do
15 with a criminal problem; does it?

16 A I don't know how Gerald Dixon has
17 ownership in his company.

18 Q Okay. All right. You've done business
19 with Gerald before; correct?

20 A Correct.

21 Q And with his partner, I guess, Mr.
22 Moore?

23 A Correct.

24 Q Okay. All right. Let's mark this as
25 Number 20.

1 MR. GREG STUDEMEYER: Number 20 is in evidence as
2 Exhibit Number 31.

3 READING -

4 Q Let me ask you if you recognize what's
5 marked as Number 20.

6 A I recognize this as from Phillips.

7 Q Okay.

8 A I've not seen this.

9 Q All right. Do you see who this is
10 billed out to?

11 A Correct.

12 Q Who is it billed out to?

13 A It says Tarica Worthy.

14 Q Okay. And do you see the date?

15 A I do.

16 Q Okay. And the date's August the 24th;
17 is that right?

18 A I think the date says August 25th.

19 Q Okay. The invoice date August 25th,
20 2016, I see that, okay. All right. How could this
21 happen?

22 A I didn't have anything to do with the
23 vehicle that she took into service.

24 Q Okay.

25 A So I wouldn't know.

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1 Q All right.

2 MR. GREG STUDEMAYER: So then we marked Exhibit
3 Number 21, which is in evidence as Exhibit Number 32.

4 READING -

5 Q All right. Do you recognize what's
6 marked as Exhibit Number 21?

7 A Insurance card.

8 Q Okay. Have you seen that before?

9 A I have.

10 Q Okay. Did you send a copy of that to
11 John Mathes?

12 A I did.

13 Q Okay. What was the purpose of that?

14 A For him to know that there was
15 insurance.

16 Q Okay. When did you do that?

17 A I don't recall the date.

18 Q Let's mark this as Exhibit Number 22.

19 MR. GREG STUDEMAYER: And 22, Number 22 is marked
20 for identification only.

21 READING -

22 Q Do you recognize Exhibit Number 22?

23 A No, sir.

24 Q You got your cell phone with you?

25 A I've never seen this before.

1 Q- Do you have your cell phone with you?

2 A Yes, sir.

3 Q Do you mind taking it out? Did you send
4 text messages to John Mathes?

5 A I did.

6 Q Did you receive text messages from John
7 Mathes?

8 A I did.

9 Q Take a look and make sure that these are
10 accurate.

11 A I don't have those text messages.

12 Q Well, see if you can find them. Do you
13 have them?

14 A I refuse to answer that question.

15 Q Have you deleted your text messages?

16 A Under the Fifth Amendment.

17 Q Have you deleted them?

18 A I refuse to answer that question.

19 Q All right.

20 A Under the Fifth Amendment.

21 Q John's still got his.

22 MR. GREG STUDEMEYER: Your Honor, at this time I
23 would move what's marked as Plaintiff's Exhibit 33 into
24 evidence.

25 THE COURT: What is that?

1 MR. GREG STUDEMAYER: Text messages.

2 MR. GREELEY: Object.

3 MR. STANLEY: Objection, Your Honor.

4 THE COURT: Grounds?

5 MR. GREELEY: The -- they are statements that have
6 been made out of court. The witnesses have not yet
7 testified. We have not had an opportunity nor do we
8 have an opportunity to cross-examine the content of
9 that at this time and we object.

10 MR. GREG STUDEMAYER: Your Honor --

11 MR. STANLEY: Plus in addition to that, it is a --
12 it's a document that has been prepared by counsel's
13 office staff.

14 MR. GREG STUDEMAYER: Your Honor, I'll tell you
15 what I'll do. I'll let Mr. Mattis -- he's got his
16 phone with him, and so when it gets to him, we'll let
17 him discuss that.

18 MR. STANLEY: There you go.

19 THE COURT: All right.

20 MR. GREG STUDEMAYER: Okay. Where are we?

21 MR. RYAN STUDEMAYER: 110.

22 READING -

23 Q Do you recognize this marked as Exhibit
24 Number 23?

25 A From State Credit Union.

1 MR. GREG STUDEMAYER: All right. And that is in
2 evidence as Exhibit Number -- well, I don't know --
3 there was an objection to this. It's marked for
4 identification purposes as Number 34. But I think it's
5 been previously marked. It's the letter from the State
6 Credit Union, so I'm not going to introduce that. I
7 think Mr. Harms already talked about that, Your Honor.

8 All right, so where are we?

9 MR. RYAN STUDEMAYER: Line 13.

10 MR. GREG STUDEMAYER: On page?

11 MR. RYAN STUDEMAYER: 40.

12 MR. GREG STUDEMAYER: 40, okay.

13 READING -

14 Q Yes, sir, do you recognize it?

15 A I've seen this letter. Yes, sir.

16 Q Okay. You received it?

17 A Yes, sir.

18 Q Have you responded to it?

19 A I have.

20 Q Okay. How did you respond?

21 A Based on the Fifth Amendment I refuse to
22 answer this question.

23 Q Who did you respond to?

24 A Based on the Fifth Amendment I refuse to
25 answer this question.

1 Q All right. Well, let me ask you this:
2 What -- what would be required for you to provide
3 answers to the question that you've objected to?

4 A I refuse to answer that question based
5 on the Fifth Amendment.

6 Q If there were no criminal prosecution
7 pending against you, would you answer these questions?

8 A I refuse to answer that question based
9 on the Fifth Amendment.

10 MR. GREG STUDEMAYER: Okay. Let's move on to line
11 18.

12 READING -

13 Q Otis, tell me how long have you known
14 Tarica Worthy.

15 A Ten-plus years maybe.

16 Q Okay. How did you get to know her?

17 A She purchased a car.

18 Q Okay. How many cars has she bought from
19 you all-together?

20 A Maybe three cars she purchased.

21 Q Okay. The way you've said that is did
22 she bring other people, refer other people, or does she
23 have a husband, or tell me the whole truth here; okay?

24 A Well, I answered your question.

25 Q You did.

1 A Yeah.

2 Q You remember you said you would tell me
3 the whole truth so I wouldn't be misled.

4 A Well, if you ask that question.

5 Q Okay.

6 A You did. Who else has bought some cars
7 for her?

8 Q Yes, sir.

9 A There has been other people buy cars for
10 her but she's only bought --

11 Q Oh, okay.

12 A -- maybe three.

13 Q Okay.

14 A So I answered the question.

15 Q Okay.. All right.

16 THE COURT: Let's stop here, if you can put a pin
17 in that. It's past lunch and we're breaking until two
18 o'clock.

19 MR. GREG STUDEMEYER: Your Honor, I think we have
20 one page left if you could bear with us and we'll be
21 done.

22 THE COURT: Okay, famous last words from lawyers.

23 MR. GREG STUDEMEYER: I'm on page 50 and we end on
24 page 51 at line 18.

25 THE COURT: Okay, please proceed.

1 MR. GREG STUDEMEYER: All right, so where were we?
2 Maybe at page 50 line 22.

3 READING -

4 Q Thank you. All right. Who else bought
5 cars for her?

6 A John Abraham.

7 Q Okay. Anybody else?

8 A Not that I'm aware of from me.

9 Q Okay. And John Abraham that's her
10 brother?

11 A No, sir.

12 Q Not -- is he related to her?

13 A I don't think so.

14 Q Okay. All right. Do you know what
15 Tarica Worthy does for a living?

16 A I do not.

17 Q Okay. Do you have any reason to believe
18 that Ms. Worthy did anything dishonest in connection
19 with her ownership of this car?

20 A I cannot answer that based on my Fifth
21 Amendment right.

22 Q No, I'm not talking about you, I'm
23 talking about her. Do you know of anything that she
24 did involving dishonesty?

25 A I cannot answer that question based on



1 my Fifth Amendment right.

2 MR. GREG STUDEMAYER: Your Honor, I think that
3 concludes this deposition.

4 THE COURT: All right. Now, you going to call Mr.
5 Morris to the stand, Mr. Stanley?

6 MR. STANLEY: Probably, Judge.

7 THE COURT: Do you need to ask a specific
8 question?

9 MR. STANLEY: No, sir.

10 THE COURT: All right. Mr. Greeley?

11 MR. GREELEY: No, Your Honor.

12 THE COURT: All right. We'll stand in session
13 till 2:15 and we'll resume with this case.

14 MR. GREG STUDEMAYER: Thank you, Your Honor.

15 **[RECESS]**

16 MR. GREG STUDEMAYER: Your Honor, we will proceed
17 with publishing deposition excerpts from Michael
18 Moore's deposition. And Your Honor, just to kind of
19 improve the flow, we're going to dispense with
20 introducing the exhibits. It seems to go -- we've
21 already pre-marked so many of them, I don't think we
22 need --

23 THE COURT: Again, you're not under a time
24 constraint, so take all the time you need.

25 MR. GREG STUDEMAYER: Thank you very much. Okay,

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beginning with page 8 lines 11 through 16 and 24 to 25.

**[PUBLICATION OF EXCERPTS FROM THE
DEPOSITION OF MICHAEL TYRONE MOORE]**

(NOTE: Mr. Greg Studemeyer will be asking the questions and Mr. Ryan Studemeyer will be giving the answers of Mr. Michael Tyrone Moore as contained in the deposition.)

READING -

Q Okay. All right. Let me ask you to state your full name.

A Michael Tyrone Moore.

Q And your address?

A It's 1720 Ogden Road, Rock Hill, South Carolina 29730.

MR. GREG STUDEMEYER: All right, line 24.

READING -

Q Okay. All right. What do you do?

A I work at Cellguard. I -- I'm a lead technician up at Cellguard.

Q What is -- what kind of company is Cellguard?

A We make the film for the batteries for cell phones and computers, stuff from getting hot, exploding and everything.

Q Okay. How long have you done that?

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- 1 A It's going on nine years.
- 2 Q And what else do you do?
- 3 A I wholesale at Dixon's Automotive.
- 4 Q Okay. And how long have you done that?
- 5 A We've been on the wholesaling side since
- 6 probably 2012.
- 7 Q Okay.
- 8 A 2013.
- 9 Q All right. And before 2012 were y'all
- 10 in the retail business?
- 11 A We was retail.
- 12 Q Did you do both?
- 13 A Well, yeah, at that time we did retail
- 14 and wholesale, you know, because we had our retail
- 15 license we can do both.
- 16 Q Okay. Does Dixon's Automotive have a
- 17 place of business now?
- 18 A Yes.
- 19 Q And where's that?
- 20 A At that 1720 Ogden Road.
- 21 Q Okay. And what at that location belongs
- 22 to Dixon's Automotive?
- 23 A We've got a little -- I've got a little
- 24 file cabinet set up, you know, because that's all
- 25 you're allowed. Well, that's the only thing you're



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1 allowed to have for wholesale. Because we're not --

2 Q Both?

3 A -- retailer, we're not for showing the
4 customers.

5 Q Okay. All right... So you have a file
6 cabinet?

7 A Yeah.

8 Q You got a desk?

9 A Yes.

10 Q Okay. Do you do most of your business
11 over your cell phone?

12 A Yeah, probably over my cell phone.

13 Q Okay. All right. And Dixon Automotive
14 is still licensed as a wholesaler?

15 A Yes.

16 Q Okay. Does it have any inventory right
17 now?

18 A No, sir.

19 Q When is the most recent time it had
20 inventory?

21 A Like I say, I bought a car, I -- I'm not
22 for sure of the date, sir.

23 Q Okay.

24 A I'm not for sure of the --

25 Q I've got all kinds of questions that I



1 thought about asking you, but I think I can simplify
2 this because you, I mean, you know why I'm here?

3 A Yes, sir.

4 Q You know what I'm interested in?

5 A Yes, sir.

6 Q Why don't we do this the easy way and
7 I'll just ask you an open-ended question and you can
8 tell me however you want to tell me. But what I want
9 to know is everything you know about acquiring this
10 2014 Infiniti QX60.

11 A Uh-huh.

12 Q Turning it over to Otis and disposing of
13 the car, that's -- that's what I -- from a to z, that's
14 why I'm here. And I believe --

15 A Yeah.

16 Q -- if you just tell me, we can probably
17 reduce the deposition down to take an hour and a half
18 to 30 minutes.

19 A We purchased the car in May, yes 2016,
20 was it --

21 Q All right, when you say "we" who are you
22 talking about?

23 A Well, Dixon's -- from Dixon's Automotive
24 we purchased the car.

25 Q Who? Who? Who for Dixon's Automotive

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1 purchased the car?

2 A I'm not for sure if I purchased it at
3 that time. I'm not sure if I purchased it at the time.
4 I -- or let me see, did I or my -- I'm not for sure if
5 I actually clicked on the car at that time because it
6 was on OVE on our Manheim site.

7 Q Okay.

8 A On Manheim site.

9 Q All right. You're doing what I asked
10 you to do and I'm interrupting --

11 A Yes.

12 Q -- you, and I apologize.

13 A Yeah.

14 Q But you're using some language I'm not
15 completely --

16 A Well --

17 Q -- familiar with.

18 A Okay.

19 Q I will tell you this --

20 A Okay.

21 Q -- I will tell you this, I represent
22 automobile dealers for a living.

23 A Right.

24 Q I grew up on a used car lot --

25 A Right.

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1 Q -- in North Charleston. I lived at
2 Darlington when it was called Clanton's.

3 A Right.

4 Q I went to Rawls, I did all that kind of
5 stuff.

6 A Yeah.

7 Q But this OVE, this is something that's
8 come about since I was a kid, so can you explain to me
9 what, how -- what all this is? How?

10 A It's a Manheim site where dealers,
11 dealers retail/wholesale dealers are allowed to put
12 their inventory on that site for -- it's just for
13 automobile dealers, not for the public or anyone else.
14 It's just for strictly automobile dealers. It's
15 supposed to be, you basically get a wholesale, the
16 wholesale prices for, from dealer to dealer. We're
17 allowed to go on that site to purchase vehicles like,
18 like I say an individual couldn't go on the site. It
19 would only have to be a dealer, wholesaler or retail
20 dealer.

21 Q Okay. So in this case you had to be
22 registered with the particular auction, which I
23 understand in this case, you tell me --

24 A Yes.

25 Q -- but I believe that was a Tampa

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1 Manheim Tampa auction?

2 A Yes, sir.

3 Q Is that correct?

4 A Yes, sir.

5 Q And so this QX60 automobile, was it in
6 Tampa, Florida?

7 A Yes, sir.

8 Q And you bid on the car online?

9 A Yes, sir.

10 Q And you were here in South Carolina some
11 place?

12 A Yes, sir.

13 Q And were -- were you doing it from home
14 or from work or how were you doing it?

15 A You've got to do it from a computer, or
16 I can do it from my cell phone, cell phone or computer.
17 Anyway, you've got internet access to it.

18 Q Okay. All right. And so was it a live
19 auction where you could actually see an image of the
20 car on your cell phone or your computer at the time?

21 A Yes.

22 Q So you got to see what the car looked
23 like?

24 A Yeah.

25 Q Okay.

1 A On the site you can see everything the
2 car looks like, the miles, or you know they give you a
3 description of the vehicle.

4 Q Okay. Now, this was in -- when did this
5 happen?

6 A May of 2016.

7 Q Okay.

8 A You know.

9 Q Do you - can -- can -- is there anything
10 you can look at or refer to either here or at home or
11 at your office or anywhere that will help us come up
12 with the precise date that you did that?

13 A I - I -- I looked -- I think the
14 paperwork, I think it was May 17th.

15 Q Okay. All right. Did you have a
16 specific need for a 2014 Infiniti QX60?

17 A Any car we have we never have a specific
18 need for. You know, we buy cars and hopefully, just
19 like any other dealer in the -- in the business they
20 hope they can sell it to someone. Get it sold to make
21 a profit.

22 Q Right.

23 A We never had -- any car buyer never have
24 a -- most of the time they never have a specific need
25 unless someone come -- comes to me, you know. But I



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1 never have a specific need for it.

2 Q Well, did someone come to you in this
3 case and say, Michael, I'm looking for a 2014 Infiniti
4 QX60, will you see if you can find me one? Did you
5 have a conversation with -- like that with anyone?

6 A When I was looking at it, I did speak
7 with Mr. Morris and he said he -- he might be
8 interested in this vehicle.

9 Q Okay. So you were having a conversation
10 with him at the same time you were seeing this thing on
11 the --

12 A Well, you -- like it's on an OVE map, so
13 they have cars you can look, not a specific time at --
14 they have cars on the website, might have it on there a
15 day to a couple of days.

16 Q Okay.

17 A It's -- it's not -- it wasn't like the
18 live auctions so.

19 Q Oh, okay, now I understand.

20 A Yeah.

21 Q So this is like going on eBay?

22 A Yes.

23 Q And you --

24 A The cars, yes.

25 Q So you kind of had an opportunity to --

- 1 A Yes.
- 2 Q -- preview what was --
- 3 A Yes.
- 4 Q -- available before an auction began?
- 5 A Yes.
- 6 Q Okay. That's how that took place. All
- 7 right, let me ask -- let me back up and ask you: How
- 8 long have you known Otis Morris?
- 9 A Probably I guess ten years. Ten years
- 10 or so maybe.
- 11 Q Okay. How did you get to know him?
- 12 A I actually met Otis through Gerald.
- 13 Q Okay. Okay. Was that on a -- on a
- 14 social basis that y'all met?
- 15 A Yes, it, it was on -- I rode down, down
- 16 with him back then, then -- I -- I remember first
- 17 meeting him. I met -- rode down to Pro Bowl with him
- 18 and that's how I met --
- 19 Q Okay.
- 20 A -- met Otis.
- 21 Q That was when the Pro Bowl was located
- 22 on Lady Street?
- 23 A I don't know the name of streets in
- 24 Columbia, so I can't, you know.
- 25 Q Was it in downtown Columbia?



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1 A I think so.

2 Q Okay. So you rode down there with
3 Gerald?

4 A Yes.

5 Q And that's how you met --

6 A Yes.

7 Q -- Otis? Okay. And what was the
8 purpose of going down there?

9 A I can't remember what -- what the
10 purpose of going down there then. I can't tell you
11 what I -- what was going down there then.

12 Q Okay.

13 A I know we just stopped in. I don't --

14 Q All right. Were you working for
15 Cellguard at the time?

16 A In '02, no. I was working actually at
17 General Tire.

18 Q Okay. Where were they located?

19 A Up in Charlotte.

20 Q Okay. Did you work a nightshift or
21 something to --

22 A Yes, I worked a 12-hour nightshift.

23 Q I see.

24 A I used to work the 12-hour nightshift
25 before they close -- the plant closed down.

1 Q Okay. Gerald said you all were, the two
2 of you were --

3 A Yeah.

4 Q -- childhood friends?

5 A Yes.

6 Q Y'all grew up together here in Rock
7 Hill?

8 A Well, Gerald's a little -- he's older
9 than me, but we were back then, like -- I was like his
10 little brother hanging around.

11 Q I see.

12 A Yes.

13 Q So y'all grew up in the same
14 neighborhood?

15 A Yeah. Well, he stayed on the other --
16 we had mutual -- my sister was around his age.

17 Q I see.

18 A So.

19 Q Okay. When did you become interested in
20 the automobile business?

21 A Probably -- probably in '01, 2000, 2000,
22 2001 I became interested in it.

23 Q Okay. And have you ever -- did you ever
24 work for an automobile dealership other than --

25 A No, I had friends who owned a dealership

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1 before, so I seen, you know, the business was a good
2 business at the time.

3 Q Okay.

4 A And I knew General Tire was on -- up and
5 down with the work, so.

6 Q Okay. So had Gerald already begun Dixon
7 Automotive when you joined him, or did y'all open that
8 together, or how did that go?

9 A We opened it together.

10 Q Okay. And at the time y'all opened that
11 business and applied for a license, did either one of
12 y'all have any real experience in the car business?

13 A Well, I, like I dealt with my friend.
14 He owned one. And I guess he -- Gerald's experience
15 came from, I guess, he knew about part of the business
16 when he dealt with Pro Bowl but I don't -- I can't say
17 to what extent. I had another friend who kind of
18 walked me through, you know, what to expect, you
19 know --

20 Q Okay.

21 A -- in the business.

22 Q All right. And who was your friend?

23 A Her name was Mia Gaston.

24 Q What? What?

25 A Mia. They own Gaston Auto, Auto Sales

1 at the time here on Saluda.

2 Q Okay. All right. So you all, whenever
3 you worked for Dixon's Automotive, that was -- that was
4 on Saluda?

5 A Yes.

6 Q As well; right?

7 A Yes, sir.

8 Q And y'all had a retail operation?

9 A Yes, sir.

10 Q And y'all did that from like 2005 until?

11 A '12.

12 Q 2012?

13 A '12 I'd say.

14 Q Okay.

15 A Before we went to wholesale.

16 Q All right. Did y'all have employees?

17 A When we started out we had one employee,
18 a secretary.

19 Q Okay. All right. How big a place did
20 y'all have?

21 A We started out it was a small probably
22 400-foot building.

23 Q Okay. And how many -- how many cars did
24 y'all keep at a time?

25 A Probably about 10.

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1 Q Oh.

2 A Probably about 10.

3 Q Well, that's good.

4 A Yeah.

5 Q Well, after you went down to Columbia
6 and met Otis with Gerald that time, what other contact
7 did you have with him up until the time on this car?

8 A Over the years we might have talked,
9 sold some cars to Pro Bowl, wholesaled some cars to Pro
10 Bowl or things like that, general -- general business
11 like any car, other car dealership, you know.

12 Q Okay.

13 A You build -- you've got to build
14 relationships in this business with other dealers
15 especially you trying to wholesale.

16 Q Right. And did y'all buy some cars from
17 Otis from time to time?

18 A I think we probably bought a couple cars
19 from Otis at the time.

20 Q Okay. Did y'all ever turn cars over to
21 him to sell for you?

22 A What you mean?

23 Q Like on consignment or something like
24 that?

25 A No. We, we let him look at the car, we



1 -- either we let him look at the car, and you know if
2 he had someone to buy it, he'll write us a check to buy
3 it from us, from Pro Bowl to us, not just turn it over,
4 because you can't -- you can't actually turn it over to
5 a dealer to let him sell the car, because that is
6 illegal.

7 So we actually -- he has to pay for it, buy it
8 from us before we sell it, before you even try to sell
9 it.

10 Q What -- what makes you think it's
11 illegal to turn a car over?

12 A From the DMV lady. You know, she saying
13 we can't, you know, you can't let somebody -- because
14 the title is not in their name or anything.

15 Q Okay. Did y'all ever sell cars for
16 people at your lot where they asked you, hey, will you
17 take my car on consignment and sell it for me?

18 A No.

19 Q You never did that?

20 A No, no.

21 Q Okay. All right.

22 A Again, we had to buy from them, but we
23 couldn't sell it.

24 Q All right. What kind of cars did y'all
25 deal in?

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1 A Hondas, cheaper cars, or just used --
2 mostly back then cheaper cars or less, 10, 15, it's
3 whatever caught our eye at that time.

4 Q Okay.

5 A Not -- nothing specific.

6 Q Okay.

7 A Nothing I could --

8 Q No brand loyalty?

9 A No, no brand loyalty in it.

10 Q Okay. So if a Hyundai, you would buy
11 it? If it was a Reina, you would buy it. If it was
12 a --

13 A Yeah, if we like -- if we liked it, if
14 it looked good to us, we'd buy it.

15 Q Got-you. All right. Now, tell me, I
16 want you to tell me a little bit more about the
17 conversation you had with Otis when you were looking on
18 this OVE site and I -- I mean, I'm trying to find out
19 what led to the conversation that you had with Otis
20 about this car.

21 A We always be looking on the site,
22 looking for different cars and I -- I told him I was
23 probably interested in buying this car and he said
24 "That's funny, I was looking at that car too. Looking
25 at a car like this too." He said, "You know, if you

1 get it, I might be interested in buying it from, you
2 know, wholesale." Because his line of credit, he
3 couldn't get it at the time. But he said the line of
4 credit. So I figured I could make a few hundred
5 dollars wholesaling the car.

6 Q Okay. Now, where was Otis? Did Otis
7 have a place of business at the time?

8 A I think he was still Pro Bowl Motors.

9 Q Okay. But now was this -- I -- I know
10 that there was a time when Otis had a place on Lady
11 Street downtown Columbia, and then he went to Pittsburg
12 for a while with this Ford dealership; were you aware
13 of that?

14 A Yes.

15 Q Okay. And then apparently he was back in
16 Columbia for a while. I think at one time he was on
17 Broad River Road and another time he had some office
18 space on Hampton Street. Do you know where he was at
19 the time you were having this conversation with him?

20 A I can't tell you what -- we was on a
21 phone conversation. I can't tell you where he was.

22 Q Okay. Do you know if he was in the
23 retail business at the time?

24 A Yes, he was still in retail business.

25 Q Okay. All right. Did he --

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1 A From as far as I know he was still in
2 retail business.

3 Q Okay. Now, all right, after you went on
4 this site and you saw this car, you knew it was
5 available, you had a conversation with Otis. I'm
6 assuming that was on your cell phone with him.

7 A Yes, sir.

8 Q And he said if you ended up buying he
9 wanted to buy it but he didn't have the money?

10 A Yes.

11 Q And he said something to you along the
12 lines that if you buy it, I may want to buy it from
13 you?

14 A Yes.

15 Q At some later time or something?

16 A Yes.

17 Q All right. So tell me what physically
18 you had to go through to buy this car online.

19 A Just clicking on it, they send you an
20 email saying you won, won the car bid, won a car bid
21 whatsoever, and that's an easy thing to do, you know.

22 Q Okay. Do you recall what you paid for
23 the car?

24 A I'm not for sure what it was.

25 Q Okay. Some -- somewhere in the

1 \$30,000.00 range?

2 A Yeah, I know it was over 30,000.

3 Q Okay. Did you ever think when you were
4 a kid growing up that one day you would buy a
5 \$30,000.00 online?

6 A Well, not by me personally. But with me
7 running a dealership, you know.

8 Q Yeah.

9 A So.

10 Q Click, there goes \$30,000.00?

11 A Yeah. But like you said, that's just
12 part of being in the business.

13 Q Okay.

14 A Being in the car business.

15 Q So if this is a car that you were able
16 to buy online, you never even saw the car in person?

17 A Right.

18 Q All you saw was an image either on your
19 cell phone or on a computer screen?

20 A And we buy plenty of cars this way on --

21 Q Okay.

22 A -- through this method.

23 Q Okay. And Manheim kind of takes care of
24 you with that?

25 A Yes.

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1 Q If there's something wrong with the
2 car --

3 A Yes.

4 Q -- they have an arbitration set up?

5 A It's arbitration system. If it's over
6 \$500.00 or there's something wrong with it over \$500.00
7 we get to arbitrate it and then we take it off our
8 hand.

9 Q I got you. All right, now at the time
10 that you hit the -- you clicked the button to buy the
11 car, you had a line of credit yourself; right?

12 A Yes.

13 Q And who was that with?

14 A NextGear Capital.

15 Q All right. And NextGear is a -- it's
16 a --

17 A Floorplan company.

18 Q -- floorplan company. For finance
19 company out of Indiana?

20 A Yes.

21 Q I believe.

22 A Yes.

23 Q Okay. And how much credit did they
24 extend to you?

25 A At that time I had a \$250,000.00 credit

1 limit.

2 Q All right. Well, you must have been
3 doing good business for them to extend that to you. So
4 tell me how that situation worked. How -- how did -- I
5 know you -- you clicked a button to buy the car, how
6 did Manheim get paid?

7 A Through NextGear Capital.

8 Q Okay. So Manheim must have sent an
9 email to NextGear to let them know that one of their
10 customers had agreed to buy a car and in return
11 NextGear wired money to Manheim Tampa?

12 A Yes.

13 Q Okay. How did you get the car?

14 A Transporter.

15 Q Okay.

16 A Transporter.

17 Q And what -- where was the car
18 transported from?

19 A Tampa.

20 Q And where was it delivered to?

21 A I think we had it delivered to Columbia
22 at the time because it was cheap.

23 Q Okay. And where in Columbia was it
24 delivered?

25 A To Pro Bowl.

1 Q Okay. And do you know where -- do you
2 know where specifically the car was delivered to Pro
3 Bowl?

4 A I -- I -- I could probably pull the --
5 but I'm not for sure.

6 Q Okay.

7 A I'm pretty sure it's to Pro Bowl. I
8 don't know the address at that time I gave them.

9 Q Okay. Now, tell me, I mean, explain
10 that to me if you would. I -- I think what we just
11 talked about was you had spoken to Otis and Otis said
12 he was interested but he didn't have money.

13 A He didn't have his credit line available
14 at the time, his credit, because he had several high
15 end cars, high end cars on his lot at the time and
16 it's --

17 Q Okay.

18 A -- nothing unusual for dealers to, you
19 know --

20 Q Okay. So tell me why would you have the
21 car delivered to a guy with no money?

22 A Well, he -- to take a look at it.

23 Q Okay.

24 A Not to -- you know, to take a look at it
25 because I was going to have a driver go pick up the

1 car.

2 Q All right. And I'm assuming that from
3 the minute you hit click you were paying interest on
4 that car?

5 A Yes. Yes. Yes.

6 Q Even when it was in transport from Tampa
7 to Columbia?

8 A Yes. Yes, sir.

9 Q You were paying interest on \$30,000.00?

10 A Yes, sir.

11 Q Okay. So you had an interest in making
12 sure that that car was safe?

13 A Yes.

14 Q Okay. Now how long did the car stay in
15 Columbia?

16 A I'm not for sure at the time, at the
17 time of this date. Like I say, all this is -- this
18 came up new to me. I -- I wasn't keeping up with the
19 time and tracking time and --

20 Q Oh --

21 A -- of the car, so I can't tell you.

22 Q Oh, but you didn't anticipate this was
23 going to blow up?

24 A I had no idea about any of this till
25 NextGear gave me a call.

1 Q All right. Well, let me ask you this:
2 Had you bought cars on OVE before and had them shipped
3 to Columbia?

4 A Yes.

5 Q Okay.

6 A I have had before.

7 Q Did -- for Otis?

8 A For --

9 Q You had them shipped to Otis?

10 A Yes.

11 Q Okay. And had you had any problems in
12 the past for this?

13 A Never had a problem. Never had a
14 problem.

15 Q Okay. So if they got shipped to Otis,
16 Otis would sell them and he'd send you the money?

17 A No, he -- he wouldn't sell them. He
18 would get a driver to bring them to me, or I would get
19 a driver to go down there and pick it up. He wouldn't
20 sell them for me. Either he would buy them from me or,
21 you know, or I'd have them picked up.

22 Q Okay.

23 A He wouldn't -- he wouldn't sell them for
24 me.

25 Q Okay. Well, had he ever -- he had

1 bought cars from you before that you'd bought through
2 the auctions like this?

3 A Yes, he -- yes. He's bought them from
4 me, yes.

5 Q Okay. All right. Now, has he all --
6 tell me about the past. How many times do you suppose
7 that took place?

8 A Well, I can't -- I can't tell you how
9 many times like that.

10 Q A hundred? Two hundred? Three hundred?

11 A I -- I know on several different
12 occasions. I can't tell you how many occasions it has
13 been, you know.

14 Q Okay.

15 A I never ran into any problem until I got
16 a phone call on this.

17 Q Okay. All right. Did Otis always pay
18 you right away when he decided to buy a car?

19 A Yes.

20 Q Okay. Did you ever have to chase after
21 him?

22 A No.

23 Q Did you ever have to send him a letter?

24 A No. No, sir.

25 Q Did you ever have to send him a text

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1 message?

2 A No, sir.

3 Q You ever had a lawyer send him a letter?

4 A No, sir.

5 Q Okay. So he --

6 A Never had this problem.

7 Q He was squeaky clean until this
8 situation?

9 A Yes, sir, with us I know. I don't know
10 with anybody else, but I can say that dealing with us,
11 I never had a problem.

12 Q Okay. All right. Now, did Otis agree
13 to buy this Infiniti from you?

14 A Did he agree?

15 Q Did he agree to buy this car from you?

16 A He said he was going to buy it, but it
17 came to the point he -- he said he didn't have the
18 funds to buy it. So I said I was going to send the
19 vehicle to Manheim Darlington. I had to get the
20 vehicle and send it to Manheim Darlington.

21 Q Okay. I'm not a very patient person. I
22 don't know about you --

23 A No.

24 Q But especially if I was paying interest
25 on \$30,000.00 on something I've never seen, put my eyes

1 on, how -- how long was the car in Columbia before you
2 told Otis "I've got to have -- I've got to have the car
3 taken to the auction?"

4 A Again, I don't know the exact time. But
5 like I said, when I got it from Columbia, I had it
6 delivered to Gerald's house because I was at work at
7 the time. And then once it left Gerald's house it went
8 to the auction. So I can't give you a timeline. We --
9 usually we have -- well, at the time I think 90 days
10 before we had to pay, before our curtailment was due on
11 a car.

12 Q Okay.

13 A So that -- that made me not really
14 worried about the payment or anything. So -- because
15 we usually have 60 to 90 days to pay a curtailment on a
16 car.

17 Q Okay. But that car was not
18 appreciating; was it?

19 A Oh no, it wasn't appreciating. Most
20 cars you get when you buy -- anytime you buy a car off
21 the lot it usually depreciates. So usually we get them
22 at a wholesale price, so that's how we usually plan on
23 making our money. If every car we bought from the
24 auction we can guarantee we going to make money, I'd be
25 a rich man right now.

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1 Q Right. Well you -- you probably also
2 knew from being in the business at the time, what --
3 you've been in business nine years or so?

4 A Yes, sir.

5 Q So you knew at that time that when it
6 starts getting late in the summer and new cars start
7 coming out, then the prices on the used cars go down?

8 A That's why I took the car to the
9 auction.

10 Q Okay. And you probably anticipate
11 you're going to lose money on the sale then?

12 A Yes, sir.

13 Q Okay. Now, when somebody like NextGear
14 lets you point and click and buy cars at their
15 expense --

16 A Uh-huh.

17 Q -- so to speak, they don't trust
18 completely with their collateral; do they?

19 A Oh, they come with a audit. They come
20 with an audit.

21 Q Yeah.

22 A They have an audit done.

23 Q They do that about once a month?

24 A Some -- sometime once or twice a month.

25 Q Okay. And they come -- they came

1 looking for this car?

2 A They came -- they done an audit, not
3 just for this particular car, they done an audit on
4 this car --

5 Q Right.

6 A -- like every other car.

7 Q Right. And this car wasn't at your
8 place whenever they came looking for it?

9 A My place is the physical address. It's
10 like you say, if this car was up to Gerald's house so
11 that's why -- if it wasn't at my address, that's why it
12 wasn't there. I might have had to -- if I had too many
13 cars in my yard at the time I had the cars -- took to
14 Gerald's house.

15 Q All right. Well, when -- who did
16 NextGear send to do a floorplan on it? Different
17 people or the same person most of the time?

18 A Sometimes it was -- it started off with
19 a guy and then it turned to be a young lady.

20 Q Okay. And they don't let you know
21 they're coming; do they?

22 A No, sir.

23 Q Because they want to know whether you've
24 got the car or don't have the car?

25 A Right.

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1 Q And they don't want to give you time to
2 come up with an excuse?

3 A Right.

4 Q Okay.

5 A So we got to show proof we had a car.
6 We've got to show proof we had a car. We've got to
7 take -- if we -- if it isn't there when, at the time
8 they come, we've got to take pictures all the way
9 around plus a picture of the VIN number.

10 Q Right. Okay. Now, the information that
11 I have indicates that they came for three different
12 floorplan audits and that car was not in your
13 possession.

14 A I don't think they came for three
15 different floorplan cars, because if they would have
16 came for three different floorplan audits at the time
17 they would have locked me out. They would have locked
18 my dealership out.

19 Q Okay.

20 A If the car -- if -- because they've got
21 -- they've got to actually touch the car or do
22 something, you know, for this vehicle.

23 Q Right. All right. Well --

24 A And that wasn't -- I didn't have it 90
25 days so.

1 Q Well, let me ask you this: That's,
2 that's kind of -- that's an interesting question,
3 because if you look at all the paperwork in this
4 transaction, it doesn't make sense.

5 A Uh-huh.

6 Q The dates are all out of whack. We'll
7 look at some documents.

8 A Okay, that's fine.

9 Q But I'm going to ask a question, and I
10 think I know the answer, but from time to time do you
11 receive cars before you receive the title work?

12 A Yes.

13 Q Okay. So it's possible the title -- the
14 date on the title work can lag your actual date of
15 receipt?

16 A The title work should show the day I
17 purchased the car. It should show the purchase I --
18 the day I bought the car. But the title might not get
19 to me until a week or so, and when the floorplan --
20 when the car is on the floorplan, we never have an idea
21 what the title -- what date is going to be on the
22 title. We can only go by the bill of sale that we have
23 on the, for the car.

24 Q Okay. All right. And the only thing --
25 well, let me make sure. If I'm repeating myself, I

1 apologize. I'll be 63 tomorrow. You don't know for
2 sure what date you actually clicked and bought that car
3 online?

4 A I'm pretty sure it was around May 17th.

5 Q Okay. Like May --

6 A Around like May 16th, 17th.

7 Q Okay. Do you know for sure the car was
8 delivered to Columbia?

9 A I'm not for sure what day it was
10 delivered.

11 Q Okay. And --

12 A It had to be after that time though.

13 Q Okay. And at that time -- okay, and at
14 the time it was -- it the time it was delivered to
15 Columbia, Otis had not made any commitment to buy it
16 from you?

17 A No, sir.

18 Q Okay. All right. Now, is Dixon's
19 Automotive still in business today?

20 A Yes.

21 Q When was the last time the company
22 bought a car?

23 A I -- did I buy one last week? Week
24 before last? Might have bought one last week.

25 Q Okay.

1 A Or before -- or week before last. I - I
2 -- at least three weeks or so.

3 Q Okay.

4 A I'm not for sure of the date.

5 Q Have you sold that car?

6 A No, it's my personal vehicle.

7 Q Okay.

8 A I'm driving.

9 Q Okay.

10 A I just drive it.

11 Q When is the last time Dixon's Automotive
12 sold a car?

13 A I'm not for sure what date I wholesaled
14 the car.

15 BY MR. GREG STUDEMEYER: Let's go to page 43, go
16 to page 41 line 24.

17 READING -

18 Q Do you know what Auction Access is?

19 A Yes.

20 Q Tell me what that is.

21 A That's what grants us permission to get
22 into the auction.

23 Q Okay. It's a universal authorization
24 process?

25 A Yes.

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1 Q So if you have authority from X, Y, Z
2 motors to buy or sell cars at the Atlanta auction,
3 you're going to also do the same thing at Darlington,
4 and Tampa, and Charlotte?

5 A Yes.

6 Q Is that right?

7 A Yes.

8 MR. GREG STUDEMEYER: Let's go to page 43 line 6.

9 READING -

10 Q Okay. So Gerald authorized you to act
11 on behalf on Dixon Automotive?

12 A Yes.

13 Q And what's the date of that document?

14 A May 20th, 2005.

15 Q Okay. And that's around the time that
16 y'all went into business together?

17 A Yes, sir.

18 Q And is it fair to say if Gerald said
19 that y'all were basically partners --

20 A Yes, sir.

21 Q -- y'all shared profits and losses?

22 A Yes, sir.

23 Q Okay. All right. Now, was in 2005.

24 Were you aware that Gerald had signed a car like this,
25 and it's marked as Plaintiff's Exhibit 5 to his

1 deposition, authorizing Otis to buy and sell cars --

2 A I can't --

3 Q -- on y'all's behalf?

4 A I can't be aware of it. I don't know
5 when we filled this -- I filled out mine, so I can't --
6 I can't answer that question.

7 Q Have you ever seen this document?

8 A I never seen that document, no.

9 Q Do you want to take a closer look at it
10 since I'm asking you to do that from across the table?

11 A It looked like same one (sic) document
12 as this right here, so.

13 Q Right. But is -- is it clear to you
14 that that document authorizes Otis to act on behalf of
15 Dixon Automotive?

16 A Yeah, that's what this saying, buying
17 on.

18 Q Okay. Did Gerald have your permission
19 to grant that kind of authority?

20 A I know Otis was going to guide --
21 helping to guide it when we first started, you know,
22 when we first started. So he was, you know, making
23 sure know the ropes in the business, but --

24 Q Okay.

25 A -- he might have said something at the

1 time. I can't remember. Like you said, that's 12
2 years ago.

3 Q Right.

4 A I'm not -- I can't be saying he told me
5 and I can't, you know, remember at the time.

6 Q Okay. Well, given the relationship
7 between Gerald and Otis, it wouldn't have come as a
8 surprise to you if Otis had bought a car at the auction
9 for your company?

10 A Not without us knowing, not with us not
11 being aware of the vehicle.

12 Q Okay. Well, if Gerald had signed a
13 piece of paper authorizing him to do it, he would know
14 it; wouldn't he?

15 A Who?

16 Q If Gerald authorized -- if Gerald signed
17 this document marked Exhibit Number 5 authorizing Otis
18 to buy cars at the auction, Gerald would know about it;
19 correct?

20 A I can't answer that for Gerald. I can
21 only answer for myself.

22 Q Okay. Well, if you signed that
23 document --

24 A If I signed it, I would know, but --

25 Q You'd know about it?

1 A Yeah.

2 Q Okay. All right. Now, tell me, I'm a
3 little bit in the dark about how long the Infiniti was
4 in Columbia and when it was picked up and taken to
5 Gerald's house, and how long it was at Gerald's house
6 before it was taken to Darlington. So let me kind of
7 go backwards in slow motion here. Can you tell me how
8 long the car was in Columbia?

9 A No, I can't, not at this time.

10 Q Okay.

11 A I can't remember the exact dates or how
12 -- exactly how long, because like I say, I -- when I
13 sold the vehicle at Manheim Darlington, I was done with
14 the car. I never -- I don't keep track of how long I
15 have each car unless it's on my floorplan, unless have
16 a curtailment or anything due. That's how I -- okay, I
17 track -- I make sure I stay on top of it to make sure I
18 get it sold, or if I take a loss on it, I take a loss
19 on it. I just take it back to the auction and get it
20 sold.

21 Q Okay. So do I understand correctly that
22 you're the one who took the car to Darlington?

23 A I didn't take the car to the -- a driver
24 took the car to Darlington.

25 Q All right. All right. Well, we'll get

1 to that in a minute. I want to back up. Let's -- I'm,
2 I'm still over here at the point where the car is in
3 Columbia.

4 A Uh-huh.

5 Q How did the car -- and if you would say
6 yes or no, so she --

7 A Yes.

8 Q -- can you tell me how the car got from
9 Columbia to Gerald's house?

10 A A driver from -- a driver brought the
11 car down.

12 Q Okay. And who was the driver?

13 A I'm not for sure the driver's name,
14 driver's name. It's somebody -- Otis had a -- one of
15 his drivers bring the car to us because he didn't -- he
16 didn't have the funds to buy it from us at the time.

17 Q Okay. And who paid the driver?

18 A I think -- I'm not for sure if I ended
19 up paying him or he paid -- he paid the driver, so --

20 Q Okay. Would you have a record if you
21 paid?

22 A If I paid, I -- sometime I just pay
23 cash. So I -- because the driver don't charge nothing
24 but 20 or 30 dollars, so I'm not for sure.

25 Q Okay. Do you have a record of paying

1 for the transport of the car from Tampa to Columbia?

2 A I have to look back in my -- in my
3 records to see.

4 Q Okay. Will you do that for me?

5 A Yes.

6 Q And if you have such a record, will you
7 give it to Mr. Greeley?

8 A Yes.

9 Q And he'll -- he'll provide a copy to me.
10 Okay. Now, what -- I think what you've testified to so
11 far is you know that the car was taken from Columbia to
12 Gerald's house. Is --

13 A That's correct.

14 Q Is that right?

15 A That's correct.

16 Q Did it go anyplace else before that?

17 A Not to my knowledge.

18 Q Okay.

19 A When it left Gerald's house it went to
20 Manheim Darlington.

21 Q Okay. But as far as you know, the
22 vehicle didn't go anyplace other than from Otis'
23 possession in Columbia to Gerald's place up in Rock --

24 A From my -- yes.

25 Q Fort Mill?

1 A That's from -- that's where I authorized
2 it. From Columbia to Gerald's house to Manheim
3 Darlington.

4 Q Okay. Now, it's -- what you're telling
5 me is you believe that this was a driver that Otis
6 hired to take the car from Columbia to Fort Mill?

7 A Yes, he, you know, had drivers before.
8 When I needed a driver to bring it if I couldn't make
9 it down there to get it, he'd have one of his drivers
10 bring it, bring the vehicle to us.

11 Q Okay. And he had done that before?

12 A Yes, sir.

13 Q Okay. How many times?

14 A I don't -- only if -- if we done
15 business or done something, yes, sir.

16 Q Okay. All right. Now, it seems to me
17 that from Columbia to Darlington it's almost a straight
18 shot on I-20. Why would you send a car from Columbia
19 up I-77 to Fort Mill and then from Fort Mill down 77
20 and back on 20 over towards Darlington?

21 A Because at the time I wanted the car in
22 my possession, because I couldn't get the -- you know,
23 the -- if he wasn't going to buy the vehicle, I need
24 the car in my possession so to, you know, nothing -- I
25 can assure I have it for my audit. Make sure, you

1 know, it's there for my floorplan.

2 Q Okay. I understand. All right. Now,
3 Gerald said that he didn't know anything about this car
4 until he came home and it was in his driveway.

5 A Yeah, at the --

6 Q He didn't know nothing about birthing no
7 baby.

8 A Yeah, at the time I told -- had -- I had
9 Otis have a driver bring it to Gerald's house for me
10 and leave it, because I had, like I say, too many cars
11 in my yard at the time. So I had it dropped off up
12 there. I let Gerald know if the car, this car when he
13 asked me about me (sic), I had this car dropped off at
14 your house.

15 Q Okay.

16 A And I say I'm be sending it to the
17 auction soon as we get -- get it up online. We post it
18 on OV -- on the online auction like I told you.

19 Q Okay. Well, let me ask you this: Before
20 you had the car taken from Columbia to Gerald's house,
21 did you call him up and say, hey Gerald, I've got to
22 drop this car off?

23 A I can't -- I can't remember if I
24 personally called Gerald because I -- that's not the
25 first time I needed a car dropped up there with, you

1 know, typically you see no tag on it and you know it's
2 something -- something I done bought, yes, sir.

3 Q Okay. All right. And he -- he would
4 understand the car's at his house because you don't
5 have any room at yours?

6 A Yeah.

7 Q Okay. Because y'all don't have a
8 physical location anymore?

9 A No, sir.

10 Q Okay.

11 A No.

12 Q Got-you. All right. So how long was
13 the car at Gerald's house?

14 A Again, I can't say exactly how long it
15 was there. I know it was there. Once it left Gerald's
16 house it went to the Darlington Auction.

17 Q Okay. All right. And the car had to be
18 physically present in Darlington?

19 A Yes, sir.

20 Q To register it with OVE; correct?

21 A To -- once we put the car online, once
22 someone buys it online, I don't know. We never know
23 who buys it online from another dealer, the dealer.
24 Once a dealer buys the car online, we take the car,
25 check it in at Darlington. Once we check it in at

1 Darlington we're done with it. We don't -- we don't do
2 anything with it, we just take the car, have it
3 delivered to Darlington.

4 Q Okay. Well --

5 A So we don't --

6 Q -- tell me what's -- I apologize for
7 cutting you off. You go on.

8 A That's fine.

9 Q Continue.

10 A No, that's fine. Go ahead.

11 Q What's the purpose of taking it to
12 Darlington?

13 A So it can be physically checked in at
14 the auction. We leave -- we leave it at the auction.
15 Once we -- we have to take it and drop it off at the
16 auction, and it's considered sold unless -- the only
17 way it come back on us if we didn't list something on
18 the car, some damage or something on the car, that's
19 the only way we have to take the car back. But as long
20 as -- once someone click on the button and buy the car
21 at the auction, I can't tell if you, Mr. Greeley, or
22 whoever bought the car. I know it's sold.

23 Q Okay.

24 A And it's a relief off me.

25 Q I understand. And so what you're

1 telling me is that you're the one who actually sold the
2 car at the auction?

3 A Well, it -- the car sold it on OVE on
4 the Manheim, on the Manheim auction.

5 Q Okay.

6 A On OVE. I didn't actually take it, you
7 know, run it. It -- it actually sold online.

8 Q Okay. Now, who delivered the car from
9 Gerald's?

10 A I had a -- I had a -- I had a driver, a
11 driver to take it to Manheim Darlington.

12 Q Okay. And who was that?

13 A Otis had one of his drivers take it to
14 Manheim Darlington for me.

15 Q Okay. Now, why is Otis involved at this
16 point?

17 A Because he -- he had -- that's where the
18 car was registered at Manheim Darlington. That's where
19 we had registered and he had drivers. He goes down
20 there usually on Thursday to Thursday, so he said he
21 would get a driver to take it from Gerald's house to
22 Manheim Darlington for me.

23 Q Okay. Let me ask you this: --

24 A Uh-huh.

25 Q -- I mean, you -- you've been in the

1 business now for ten, twelve years?

2 A Uh-huh, yes, sir.

3 Q You knew that as long as Otis had
4 possession of that car down in Columbia, he could sell
5 it to a retail purchaser?

6 A Not without no title or anything like
7 that. No, sir.

8 Q You've sold cars before without titles
9 before; haven't you?

10 A Huh? Not --

11 Q You?

12 A -- to a dealer if it's under my
13 dealership. If it's under Dixon's Automotive I can
14 sell a car. If -- if the title is for Dixon's
15 Automotive, I can sell. I can't sell -- I can't go get
16 a Honda from Honda dealership and sell it. I can't do
17 it.

18 Q Well, you've bought cars without titles;
19 right?

20 A Because they -- the auction get 30 days
21 to promise the title.

22 Q Right. Right. But if -- when somebody
23 comes to your lot -- let's suppose you're still in the
24 retail business. Somebody comes to your lot and they
25 say, I want to buy that car, it's \$25,000.00, only

1 \$5,000.00 down, you could sell them that car. You
2 don't have to have the title to sell them that car;
3 right?

4 A No. Well, I know the title is the floor
5 -- my floorplan company has the title.

6 Q That's right.

7 A My floorplan company has the title. I
8 don't have -- personally have it. But as long as I
9 know the floorplan, I can sell it for Dixon's, yeah. I
10 can sell it because I know I'm -- I -- I'm guaranteed
11 the title for Dixon's.

12 Q Right.

13 A So --

14 Q And that's the right way --

15 A Yeah.

16 Q -- to do business?

17 A That's the only way I do business.

18 Q Right. But if somebody wanted to be
19 crooked, they can sell a car without having a
20 certificate of title?

21 A I -- I --

22 Q You know that?

23 A Yeah, I -- they -- I can't answer that
24 because I'm not going to say, yeah, I know that because
25 I never did it.

1 Q Okay.

2 A I -- I make sure I do my business. I
3 never had no problems with DMV or anything, so I can't
4 tell you that.

5 Q Okay. All right. Well, whenever Otis
6 came to your -- came to Gerald's house to pick up this
7 Infiniti to take it, he says he was going to take it to
8 Darlington; right?

9 A Well, it had to actually be checked into
10 Darlington before Darlington will even accept the sale,
11 because if the car is not physically at Darlington,
12 they can void the three days, the sale's no good.

13 Q Okay.

14 A They can't be -- they can't sell the
15 car.

16 Q Okay. Well, you know that from the --
17 at the time that Otis sent his driver to Fort Mill, he
18 could have taken that car to Charlotte or something?

19 A Well, it checked in as it's sold at the
20 auction. But the car had to be checked into the
21 auction to be sold, so --

22 Q Okay. So that car was sold in
23 Darlington on behalf of Dixon's Automotive?

24 A Yes, sir.

25 Q Okay. And did you monitor that sale?

1 A Yes, because the -- yes. Once it sold
2 at the OV, went OV Darlington, Darlington, went to
3 Darlington, checked it in, and whoever bought it,
4 drives out their company, has to send a -- whether it's
5 a check or a floorplan or however they want to pay for
6 the car, send the money to auction, to Darlington Auto
7 Auction. They send it to -- if it was my -- if I had
8 the title, they would send the title to me. Since I
9 didn't have the title they'd send the title to NextGear
10 -- well, the check to NextGear, and NextGear would send
11 the title back.

12 Q Okay. All right. Do you know whether
13 or not this car, when it was sold in Darlington, what
14 did -- did the purchaser or whoever that was -- was
15 this a point and click purchase, or did they actually
16 go across an auction block?

17 A No, it was a point and click purchase.
18 I can tell you on OV that's how -- you know, once it's
19 on OV it doesn't go across the auction block.

20 Q Okay. All right. So do you know who
21 actually did the pointing and the clicking?

22 A We have -- I have no control. Once I
23 put it on OVE, I have no control of who buy it. I - I
24 -- I can't limit the dealer. I want anybody, any
25 dealer out there in the United States. A dealer from

1 California can buy it. That's not me to -- for me to
2 question.

3 Q Okay. But what I am -- I understand
4 what you just told me. But what I'm asking you now is
5 do you know who actually pointed --

6 A No.

7 Q -- and clicked?

8 A No, I don't, no. I --

9 Q Would it surprise you to know it was
10 Otis?

11 A I -- I wouldn't -- you know what I'm
12 saying, right now nothing surprises me. I don't know
13 what's going, you know, so nothing surprises me so.

14 Q Okay. All right. Let me ask you this:
15 Have you had some conversations with Otis about this
16 car over the last year or so?

17 A After -- after this came up, this came
18 up, I called -- I did call Otis and ask him what's
19 going -- what's going on, I'm getting phone calls.
20 NextGear locked my account out at this time until we
21 got the situation straightened out till, you know, I
22 showed them all my paperwork. You know, he say he
23 don't know what's going on. I guess it's Mathes. I
24 don't know what Otis say. He -- him and Mathes had
25 something going on. I don't know what's going on.

1 After that, NextGear opened my account back up.

2 Q They did?

3 A They opened my account back up. Thirty
4 days, you know, I was going to buy, NextGear had shut
5 me back down because of the situation.

6 Q Okay.

7 A From that point, period, I -- you know,
8 I had to -- I took a loss because I had to get rid of
9 all my cars I had on my floorplan with NextGear
10 Capital.

11 Q Okay. And so you had conversations with
12 those about that?

13 A Yeah, I told him, I'm very upset, you
14 know what I'm saying, because I don't know what's going
15 on with this thing. I didn't -- the only thing I know
16 I sold the car at Manheim Darlington. Once I sold it
17 like any other car if I sell it at the auction, we're
18 usually done with it. We're wiped clean with it. I
19 got hit with this. I sold the car in August. I guess
20 October, the middle of October I get a letter saying
21 something about this case, you know, something about
22 this. I had no idea what's going on with it.

23 Q Okay. All right. Well, would it be
24 fair to say then that from around May, that you owned
25 the car from around May the 17th of 2016 until around

1 August the 16th of 2016?

2 A Yeah.

3 Q Okay. So that's about three months?

4 A Right at three months, yes.

5 Q Okay. And the only time that you
6 actually had possession of it was the two or three
7 weeks it was over at Gerald's house?

8 A Well, it had -- I'm not sure if it had
9 came there before that or how, you know what I'm
10 saying, at Gerald's house two or three -- I know it was
11 up there. It should have been like two or three weeks.

12 Q Okay. Well, if it wasn't at Gerald's
13 house, it was either in Darlington where it got checked
14 in --

15 A Yes.

16 Q -- and that would have only been a day
17 or two; right?

18 A I don't -- whenever the buyer bought the
19 car and when he picks it up, I -- you know, I can't
20 tell you how long it was in Darlington.

21 Q Okay. But other than the two or three
22 weeks that it was at Gerald's house, it was in Otis'
23 possession?

24 A Well, I --

25 Q As far as you know?

1 A Yeah, far as I know. I had -- like I
2 say, we had it here because I had to do the lock check.
3 I had a lock check, so it was here. It -- like I say,
4 I -- I believe that's the first or second time.

5 Q All right. Now, let me ask you this:
6 Did you ever tell anybody from NextGear when they came
7 around to do the floorplan audit that Otis had the car?

8 A Nah, I never told them that Otis had the
9 car.

10 Q Why not?

11 A Huh?

12 Q Why not?

13 A What you -- when they would come I --
14 because I was getting the vehicle back. I never said
15 Otis. I might say it was out with a wholesaler, I was
16 letting a wholesaler look at it, but I never specified
17 who had the car or nothing, not, you know --

18 Q Well, let me ask you something: Was that
19 the truth?

20 A Well, was what the truth?

21 Q What you told NextGear about where the
22 car was?

23 A That I had a dealer looking at the car?

24 Q Well --

25 A Yeah, that --

1 Q Well --

2 A -- that was the truth.

3 Q Wait a minute now. You -- what you --
4 what you've already told me is that Otis couldn't buy
5 the car.

6 A Yeah, I had --

7 Q He didn't have --

8 A -- the dealer looking at it. He said
9 his funds was holdover, and he said his funds at the
10 time I bought the car, he said he didn't have the
11 funds.

12 Q Right.

13 A But at the time, you know, NextGear
14 came, he said he -- his funds was available.

15 Q All right.

16 A So I don't know when it, you know --

17 Q All right, let me ask you this: I
18 can't --

19 A I can't tell you how your finances go or
20 how his financing go.

21 Q Well, let me ask you this, you know,
22 just between us girls here --

23 A Yeah.

24 Q -- talking about it now, let me just ask
25 you this: When NextGear came by looking for their

1 collateral that they advanced thirty-plus thousand
2 dollars for, did you ever tell anybody at NextGear
3 truthfully, gee-whiz Mr. Floorplan Auditor, I don't
4 have that car. I bought it from OVE from Tampa,
5 Florida, it got shipped to Columbia, the guy hasn't
6 paid me for it, and I don't know what's going on? Did
7 you ever tell them that?

8 A No, they never asked. They never asked
9 me. The floorplan company, the driver, they never
10 asked the end-up questions like that. You know, I -- I
11 never give an answer like that to her.

12 Q Well --

13 A So --

14 Q -- you know what we talked about at the
15 beginning of this deposition whenever you took an oath
16 and you said you'd tell the truth?

17 A Correct.

18 Q The whole truth and nothing but?

19 A Correct.

20 Q And then I asked you: Having said that,
21 will you tell me the whole truth so I won't be misled?

22 A Well, I'm trying to tell you the story
23 from --

24 Q I don't have --

25 A Yes.

1 Q I'm not saying that you're not.

2 A Yes.

3 Q I think you're being truthful --

4 A Yes.

5 Q -- with me. But what I'm asking you is:

6 Were you completely truthful with NextGear?

7 A I've been completely truthful with
8 NextGear the whole time. I, you know --

9 Q Do you think -- do you think NextGear
10 was misled?

11 A I don't see how they -- how would they
12 be misled.

13 Q All right.

14 A I never tried to. I -- like you say, I
15 had \$250,000.00 credit with them. If they felt like
16 they had been misled, they would have shut me down.

17 Q Okay. Well, let me ask you this: If the
18 shoe were on the other foot, if you were the floorplan
19 lender and you had made somebody \$30,000.00 to buy a
20 car and you wanted to look out for your own collateral
21 and you went by to check on it and it wasn't there,
22 wouldn't you want to know where it was?

23 A I -- I guess so. I can't say how. I'm
24 not in that business. I'm in the car -- used car
25 business.

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1 Q I understand that. But I'm just saying
2 if you were --

3 A I'm in the used car business.

4 Q Right.

5 A I'm not in that business.

6 Q You would want somebody to be completely
7 truthful with you about where your collateral was;
8 right?

9 A I -- I'm not in that business again.

10 Q Okay. All right. Okay. Now that the
11 proverbial doo has hit the fan, do you know what
12 happened in this case?

13 A I -- not until after we got the lawsuit.

14 Q Okay.

15 A That's when I found out what happened
16 and what was going on in this case. I -- before that I
17 had no idea about anything in this case.

18 Q All right. Do you know Tarica Worthy?

19 A No, I do not.

20 MR. GREG STUDEMEYER: All right, let's go then to
21 page 65 line 25.

22 READING -

23 Q Okay.. So have you talked to Otis since
24 this lawsuit was filed?

25 A Yeah, at the time, right after this

1 lawsuit was filed, because I wanted to know what was
2 going on, because I had no idea. I talked to you when
3 I -- you asked me to fax you the paperwork back in
4 October, see what's going. I -- but before that I
5 wanted to know what was going on. And I still hadn't
6 gotten the full story what was going on on this vehicle
7 so.

8 Q But you understand what it means to want
9 to know the whole truth?

10 A Yes.

11 Q Okay. All right. Have you ever -- did
12 you know that Otis gave a deposition like this?

13 A No.

14 Q You've never seen the transcript of the
15 deposition?

16 A No. I never -- I never received the
17 transcript of the deposition.

18 Q Otis came to my office.

19 A Uh-huh.

20 Q And he put his hand on the Bible.

21 A Uh-huh.

22 Q And he swore to tell the truth.

23 A Uh-huh.

24 Q And I asked him some questions.

25 A Uh-huh.

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1 Q And he gave me some answers.

2 A Okay.

3 Q And his lawyer was there and Ms.
4 Worthy's lawyer was there.

5 A Uh-huh.

6 Q But he didn't tell you that?

7 A Nah, he never.

8 MR. GREG STUDEMEYER: Okay, let's go to page 68
9 line 14.

10 READING -

11 Q All right. Did Otis -- has Otis, to
12 this date, has he ever told you, Michael, I'm retailing
13 that car to a young lady right here in Columbia, South
14 Carolina?

15 A No, he did not.

16 Q Okay. All right. Now, when you were in
17 the retail business --

18 A Uh-huh.

19 Q -- you had a floorplan then too; right?

20 A Yes, sir.

21 Q And whenever you floorplanned a car, you
22 had to turn over the title to the floorplan company to
23 secure them; right?

24 A Well, the floorplan company gets it
25 before we do.

1 Q Okay.

2 A Once we buy it, you know, from the
3 auction, the auction send it straight to the floorplan
4 company.

5 Q Right. And then you display the car
6 right there on your lot?

7 A Yes.

8 Q And a customer will come along and want
9 to buy it and you'd sell it to them?

10 A Yes.

11 Q And then sometime after you received
12 funding for that sale, say from some other finance
13 company or bank or a credit union, then you would take
14 a portion of those proceeds, send it to your floorplan
15 company, pay off the car, and then they would send you
16 the title?

17 A Yes.

18 Q That's the way business works --

19 A Yes.

20 Q -- right? So you could have sold cars
21 without a title?

22 A Yeah, yeah, because my floorplan
23 company --

24 Q Okay.

25 A -- has the title. So with them -- with

1 them having it yeah.

2 Q Exactly.

3 A It's like they got our power of
4 attorney.

5 Q Exactly. And so it's not unusual for
6 car dealers to sell cars without having possession at
7 the time of the certificate of title?

8 A That's how, you know, I felt like it was
9 my possession if my floorplan company -- but yes, sir.

10 Q Right. And that's what Otis probably
11 did in this case with a bill of sale; correct?

12 A I -- I can't tell you what Otis did with
13 it.

14 Q Right.

15 A I can't speak with -- for no one else.

16 Q Right.

17 A But myself.

18 Q But objectively speaking, with 14 years
19 of -- excuse me, 9 years; is that right? Twelve years
20 of experience in the car business, would you agree with
21 me that what's marked as Exhibit 2 appears to be the
22 sale of a vehicle that you owned?

23 A That I owned?

24 Q By Otis to Tarica Worthy that NextGear
25 was holding the title for?

1 A Yeah, I don't -- this says sold by Pro
2 Bowl Motors.

3 Q Well, if --

4 A Yeah.

5 Q Who is Pro Bowl Motors?

6 A The -- well, that's Otis, that's not --

7 Q That's Otis?

8 A That's not Dixon's if it's the same VIN
9 number.

10 Q I agree it's Otis. Okay. Otis has
11 testified under oath that Otis and Pro Bowl are one and
12 the same.

13 A Okay.

14 Q Surprise, surprise.

15 A Yeah.

16 MR. GREG STUDEMEYER: All right, let's go to page
17 73, line 14.

18 READING -

19 Q Okay. All right, let me ask you before
20 we go any further on that, tell me what you understand
21 to be the requirements to be licensed as a motor
22 vehicle dealer in this state.

23 A What you mean? I'm sorry.

24 Q I mean, can any Tom, Dick, and Harry
25 show up at the DMV and say I want to be a car dealer?

1 A No.

2 Q And they give you a license?

3 A No, no. You're not --

4 Q What do you --

5 A You've got to take the class and take
6 the class and go through the requirements to, you know,
7 to meet the specifications of the being a motor vehicle
8 licensed dealer.

9 Q Okay. And what are those requirements?

10 A At the time they have -- it depends on
11 if you're going wholesale or retail.

12 Q Okay. All right. Well, no matter which
13 one you have wholesale or retail, you've got to have a
14 bond; right?

15 A Oh, correct.

16 Q Okay. And the bond is -- is issued by
17 an insurance company; right?

18 A Correct.

19 Q All right. And you understand that?

20 A Yes.

21 Q Okay. And that bond is there for a
22 purpose?

23 A Correct.

24 Q And what's the purpose?

25 A If we default on anything, we do

1 anything negative, you know, I think it would go
2 against our bond.

3 Q Okay. And it's to protect consumers;
4 correct?

5 A Yes.

6 Q Actually, it's to protect the owners?

7 A Yes.

8 Q Not just consumers, it could protect a
9 commercial purchaser?

10 A Yeah.

11 Q You agree with that?

12 A Yeah.

13 Q And it's to protect those people from
14 fraud?

15 A Fraud, right. Correct.

16 Q By automobile dealers?

17 A Correct.

18 Q Okay. And you have one of those bonds?

19 A Yes, I do.

20 Q And Pro Bowl Motors has one of those
21 bonds?

22 A I take it they have to have one to be in
23 business; yes.

24 Q Okay. And you or your company was the
25 owner of this Infiniti QX60 automobile; right?

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1 A Correct.

2 Q And does it not appear that Pro Bowl
3 Motors has defrauded you?

4 A From the look at -- from the look of
5 these dates here, yes, it looks like we've been
6 defrauded.

7 Q Okay. Have you filed any kind of claim
8 against Pro Bowl bond?

9 A I haven't done nothing yet because I was
10 trying to see where this lead to. I -- you know, made
11 aware, that's why, you know, we're talking to Mr.
12 Leland.

13 Q Okay. All right.

14 MR. GREG STUDEMAYER: Let's go to page --

15 THE COURT: Let's take a break.

16 MR. GREG STUDEMAYER: Okay.

17 THE COURT: Until 3:45.

18 MR. GREG STUDEMAYER: Okay.

19 **[RECESS]**

20 MR. GREG STUDEMAYER: Your Honor, I appreciate
21 your bearing with us. I know this is not exactly
22 tantalizing to listen to somebody reading. But we'll
23 try to get through this part, and then we'll have one
24 live witness, and that will probably be it for the day.

25 THE COURT: Okay. You may proceed.

1 MR. GREG STUDEMAYER: All right, let's resume with
2 page 76 line 4.

3 READING -

4 Q All right. You told me about that
5 exhibit there Number 4.

6 A Four.

7 Q Right. And I think we talked about you
8 probably never saw it before today?

9 A No, I never seen any of this before.
10 No, sir.

11 Q But it appears to be some type of a
12 disclaimer of warranty by Pro Bowl Motors?

13 A Yes.

14 Q Regarding the sale of the Infiniti?

15 A Correct.

16 Q To Ms. Worthy?

17 A Correct.

18 Q And it's dated May the 10th?

19 A Yes.

20 Q A week before you ever bought the car?

21 A Correct.

22 MR. GREG STUDEMAYER: All right, let's go to page
23 77 lines 2 to 4.

24 READING -

25 Q When people do things that are

1 fraudulent it becomes confusing; doesn't it?

2 A Yeah.

3 MR. GREG STUDEMAYER: Okay. Page 79 line 16.

4 READING -

5 Q So tell me what you did to prepare for
6 your deposition.

7 A Basically I took those, the title work
8 from where we purchased the car and where we sold the
9 car to my lawyer.

10 Q Okay. All right. And y'all just talked
11 about paperwork?

12 A Yes.

13 Q All right. Do you know, and I know
14 this, if you've been in the business 12 years you've
15 probably sold a thousand cars.

16 A Yeah.

17 MR. GREG STUDEMAYER: All right, page 80 line 20.

18 READING -

19 Q All right, let's do -- let's start with
20 that -- this is Mr. Moore -- this is Moore Exhibit
21 Number 6.

22 MR. RYAN STUDEMAYER: You skipped a part.

23 MR. GREG STUDEMAYER: Oh, I skipped a part. Oh,
24 we're supposed to start on 20?

25 MR. RYAN STUDEMAYER: We're supposed to start --

1 or we're supposed to go through line 13 on page 80 to
2 begin with. You skipped 1 through 13 on page 80.

3 MR. GREG STUDEMEYER: Okay. Let's go to page 80
4 line 1.

5 READING -

6 Q Okay. But I mean, and I'm sure you
7 don't remember every one of them --

8 A No.

9 Q -- but do you know who you bought this
10 car from? Who the seller was?

11 A No.

12 Q Okay.

13 A No.

14 Q Can you determine it from looking at the
15 paperwork?

16 A I wouldn't know. I bought it from the
17 auction, I can't -- you know, usually whoever I buy --
18 the dealer I buy from is no -- none of my concern.
19 It's none of my concern.

20 MR. GREG STUDEMEYER: Page 81, 20.

21 READING -

22 Q All right, let's do -- let's start with
23 that -- this is Moore Exhibit Number 6. You have
24 Exhibit Number 5, is that what it is, 6?

25 (No response read from the deposition)

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1 MR. GREG STUDEMEYER: Page 81 now.

2 READING -

3 Q Just take your time Mr. Moore, because I
4 know that's a lot to look at, but whenever you're ready
5 let me know.

6 A Okay.

7 Q Can you tell me when you saw this
8 document for the first time?

9 A When I seen this document I think I had
10 to print it off from my bond company back in October of
11 2016.

12 Q Okay.

13 A And then I think I -- she faxed you a
14 copy of it.

15 Q Okay. Now, where did you get the
16 document from?

17 A I -- I had it printed -- I printed it
18 off. I had to go on -- I called NextGear. I think I
19 had it printed for me.

20 Q Okay. That's part of my question.

21 A Yeah.

22 Q Tell me if this is -- if it's fair to
23 say this: Now whenever you pointed and you clicked on
24 OVE for the Tampa Manheim auction, that the way the
25 mechanics, the way the process works, is that Manheim

1 sent notice to NextGear, NextGear sends the money to
2 Tampa Manheim, and then Tampa Manheim sent the title to
3 NextGear out in Indiana?

4 A Correct.

5 Q Is that right?

6 A Correct.

7 Q You didn't even see the thing?

8 A I hadn't seen -- seen the title, never
9 seen the title.

10 Q Okay. Because that's -- I mean, that's
11 kind of the way these floorplan lenders keep everybody
12 honest?

13 A Yeah.

14 Q They don't turn loose of any money --

15 A Right, correct.

16 Q -- until they got the title?

17 A Correct.

18 Q So from sometime in May of 2016 until at
19 least August of 2016, to the best of your knowledge,
20 the original of this document marked number was in the
21 possession of NextGear Capital?

22 A Yes, sir.

23 Q Okay. But once you -- now -- now that
24 you have a copy of it in front of you, is it pretty
25 clear to you that some guy named McCluskey down in

1 Tampa or Miami traded that car in maybe to somebody
2 called Reeds Imports, and then Reeds Imports it appears
3 transferred it to Texas Direct Auto? Does that -- is
4 that -- that what it looks like to you?

5 A That's what it looks like as it's been,
6 you know --

7 Q Okay. And again, I -- again, I'm --
8 you're only answering this question based upon, you
9 know, your ability as a human being and some other 12
10 years, I think, experience in the automobile business
11 to look at something, and I would imagine you look at
12 titles from time to time but --

13 A Yes.

14 Q I -- I understand you don't claim to be
15 an expert on Florida titles, or you had nothing to do
16 with issuing this title. I understand all that.

17 A Uh-huh.

18 Q I was just looking for your -- your best
19 assessment of what that document was. And same with,
20 with this -- this is Plaintiff's Exhibit Number 7. I
21 think you're looking at Exhibit Number 7, and whenever
22 you're ready let me know.

23 A I'm ready.

24 Q Okay. What does that appear to be to
25 you?

1 A It look like a 400 form or --

2 Q It might be a title?

3 A -- title.

4 Q Up at the top.

5 A It say "State of Florida Department of
6 Highway and Safety Motor Vehicle every" --

7 Q Do you see where it says "Motor Vehicle
8 Power of Attorney/Odometer Disclosure" at the very top?
9 Actually, it's below where --

10 A Yes.

11 Q -- it says "State of" --

12 A I see that.

13 Q Okay. It's not uncommon today for
14 automobile dealers to use powers of attorney to
15 transfer titles; correct?

16 A I guess. Like I say, our floorplan
17 usually handled the power of attorney or whatever.

18 Q Okay.

19 A I've never.

20 Q Okay. Does -- is there anything on this
21 Exhibit Number 7 that appears to be significant to you?
22 I'll just tell you it's not a trick question. I don't
23 see anything unusual about it, it just seems to support
24 the title work that we already looked at.

25 A Yeah, from what I -- yeah, that's how --

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1 I don't see --

2 Q Okay. And I'm assuming you never saw
3 that?

4 A I ain't.

5 Q At the time of purchase either?

6 A No, sir.

7 Q That's something that --

8 A Like I say, all the title work goes --
9 since I never did actually sell it to another dealer on
10 hand for my behalf, I sold it at auction, it go from
11 NextGear to the auction.

12 MR. GREG STUDEMAYER: Okay. Now let's go to page
13 88.

14 MR. RYAN STUDEMAYER: Line 4.

15 MR. GREG STUDEMAYER: 88 line 4?

16 MR. RYAN STUDEMAYER: Yep.

17 MR. GREG STUDEMAYER: Okay.

18 READING -

19 Q All right. You plan on having a
20 conversation with Otis now?

21 A To tell you the truth, I want to get
22 this over with. I don't -- you know, like I -- when it
23 was first brought to my attention, we had the
24 conversation with them, and from what he told us he
25 waiting on you guys so he can pay your guy.

1 Q Oh, oh.

2 A So other than that, that was when the
3 conversation when it first went on. Other than that I,
4 you know --

5 Q Well, I'm going to tell you something,
6 I've never been one to run from a paycheck.

7 A Yeah.

8 MR. GREG STUDEMEYER: All right, page 89, 2 to 7.

9 READING -

10 Q Were you aware that Otis had lost his
11 license to sell cars?

12 A No, I -- no, sir, I was never aware of
13 it.

14 Q Do you know what Otis is doing now?

15 A I -- I see he's posted that he's working
16 for BMW of Columbia.

17 MR. GREG STUDEMEYER: Page 90, line 24.

18 READING -

19 Q Do you -- do you understand the
20 significance of entrusting an automobile to an
21 automobile dealer?

22 A I don't know any, you know, going to
23 that, no, I don't.

24 Q Okay. You probably need to know that.
25 Okay. Is your email address still

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EX 1000

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1 kaleighbaby@hotmail.com?

2 A Yes.

3 Q Okay. Take a look at Exhibit 10 and let
4 me know when you're ready to talk about it, please,
5 sir.

6 A Uh-huh.

7 Q Okay, is that yes?

8 A Yes, sir.

9 Q Okay. I'm -- okay.

10 A I'm sorry.

11 Q No, do you -- do you recognize this
12 document?

13 A It goes straight to the email, so I -- I
14 don't recognize the document at all. But I see where
15 it does show either buyer's amount, amount the vehicle
16 sold for and everything like that.

17 Q Okay. And does all that appear to be
18 accurate to you in terms of when the sale took place?

19 A Around August 15/16, yes.

20 Q Yeah. Okay, and you see who the -- who
21 was acting on behalf of the -- purportedly acting on
22 behalf of the buyer in that case?

23 A I see from this paper, yes.

24 Q And who would that be?

25 A It has Otis Morris' name on it. Yes.

1 Q Okay. Let me ask you a really stupid
2 question: If Otis sold this Infiniti sometime in May,
3 I'm not going to say May the 10th --

4 A Uh-huh.

5 Q -- but sometime in May to this young
6 lady named Tarica Worthy in Columbia, and she paid him
7 \$36,000.00 for it, do you know of any way that Otis
8 could buy the car from you three months later?

9 A I -- I don't have any way -- you know,
10 I'm not for sure if he -- you know, I never knew he
11 sold it to her. I don't have any recognition of --

12 Q Right.

13 A -- who he sold the vehicle to or what,
14 you know.

15 Q Right.

16 A I don't have any knowledge of that.

17 Q Right. Well, let's take a -- just a
18 real light -- let's take an imaginary example. Let's
19 just, you know, let's suppose that you sell the car to
20 the court reporter; okay? Let's say you sold the car
21 to her today, and let's say it's just a Nissan and she
22 pays you for it, and she drives it every day. It's her
23 car. She drives it back and forth to work. Do you
24 know of any legitimate way that you could buy that car
25 from somebody other than her three months later?



1 A No, I don't.

2 Q I don't either. I think you have
3 Exhibit Number 11, and after you have a chance to look
4 at it, let me know.

5 A Okay.

6 Q Do you recognize that document?

7 A It looks like a written check draft from
8 -- I don't know if it was from Mathes to Dixon's.

9 Q Okay. Is it -- let me ask you this: Is
10 it basically a summary of the transaction that took
11 place in Darlington in August of 2016?

12 A It looks like when we sold it in
13 Darlington.

14 Q Okay. All right. And it appears that
15 Dixon Automotive sold it to Mathes Auto Sales?

16 A Yeah. I take it that's who the buyer
17 was at that time. Yeah.

18 Q All right. And I may have asked you
19 this already, but you work at -- this sale took place
20 on this OVE, there never was a car crossing an auction
21 block in Darlington?

22 A No.

23 Q Okay. This OVE, it sounds to me, tell
24 me if this is accurate: It's kind of like a Craig's
25 List, but it's only for dealers?

1 A If that's what you -- how you want to
2 put it, yeah.

3 Q It's just a place online to list a car
4 for sale?

5 A Yes.

6 Q But only dealers can participate?

7 A Yes.

8 Q All right. This is Exhibit Number 12
9 I'll hand that to you. How far is Darlington from
10 where you live up here in Rock Hill?

11 A I'm not for sure.

12 Q Like 150 miles or something like that
13 maybe?

14 A I guess, I'm not for sure. I'm now sure
15 how far it is.

16 Q You ever driven there?

17 A I -- the only time I pass Darlington is
18 when I'm going to the beach.

19 Q Okay.

20 A I haven't been; when Gerald was doing
21 business he might have went down there to the auction.
22 We go to like several different auctions.

23 Q But you never go to the auction in
24 Darlington?

25 A Me personally? I -- I -- usually

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1 online.

2 Q Okay.

3 A I usually do it online.

4 Q Okay. But when -- have you ever been
5 present at the auction in Darlington?

6 A No, I never been present at the auction
7 in Darlington.

8 Q Okay. So when this Infiniti was sold,
9 Dixon Automotive, and as I understand it you're the
10 guy --

11 A Uh-huh.

12 Q -- for Dixon's because Gerald's home
13 retired?

14 A Yes.

15 Q When you sold this car you were a couple
16 of -- at least a couple of hours away, probably in
17 Charlotte working your other job?

18 A I might have been. I don't, you know --

19 Q Okay. And the car was sold online and
20 you probably didn't know until sometime later in the
21 day or the next morning.

22 A When they list -- when you list it, they
23 send you and say this car -- your car is sold, you have
24 to get it to Manheim Darlington Auction, you know. You
25 know, once someone buys on OVE, they notify you it was

1 sold, you know. You have to get the car to the
2 auction.

3 Q Well, I thought what you told me was
4 that y'all delivered the car to the auction before it
5 was sold.

6 A No. Once it sold, once the car's sold,
7 I didn't say -- once the car sold, you deliver the car
8 to the auction, not before.

9 Q Okay.

10 A Not before.

11 Q Okay. All right. Let's see, I think we
12 have handed you Exhibit Number 12.

13 A Yes.

14 Q And are you familiar with that document?

15 A Yes.

16 Q Did you --

17 A Yes, sir.

18 Q Did Manheim Darlington provide you with
19 a copy of that document after the sale?

20 A They probably sent it to my email. They
21 send the bill of sale to NextGear.

22 Q Okay.

23 A NextGear Capital.

24 Q All right. So that -- this reflects the
25 date of the sale of the vehicle from Dixon's



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1 Automotive?

2 A Yes, it says "sale date 8/16."

3 Q Okay. And that's the day it was sold,
4 but not necessarily the date that it was delivered to
5 Darlington?

6 A It was -- yeah, it had to be delivered
7 to -- to somewhere in that time. I can't say what date
8 it was delivered or what, you know.

9 MR. GREG STUDEMEYER: Okay. Page 109, lines 3 to
10 9.

11 READING -

12 Q But when we talked before about prior
13 situations where vehicles had been delivered and
14 dropped off with Otis in Columbia, cars that you had
15 bought at auctions --

16 A Uh-huh.

17 Q -- that's something that took place
18 before?

19 A Yes, sir.

20 Q Okay. Do you know about how many times?

21 A No, sir.

22 MR. GREG STUDEMEYER: Page 110, line 5.

23 READING -

24 Q Okay. If you were to communicate with
25 Otis, would it be either by text message or email or

1 phone call?

2 A Probably phone call.

3 Q Okay. And do you recall any kind of
4 phone call with Otis during the summer of 2016 that
5 went along the lines of, hey Otis, where the hell is my
6 car?

7 A No, sir.

8 Q You didn't have any kind of call with
9 him?

10 A Not saying, no, never where the hell is
11 my car. I -- right here to Gerald's, when I had it
12 dropped off right to Darlington. I never asked where
13 my car was because I knew I always had, you know --

14 Q Okay. Was there any --

15 A -- and I --

16 Q -- telephone communication along the
17 lines of Otis, where's my money?

18 A No, not -- not where is my money. If
19 you're not going to buy the vehicle, you know, I'll get
20 -- bring -- I need my car, vehicle back to me.

21 Q Okay.

22 A If you're not going to -- you know, if
23 you don't have the money to purchase it.

24 Q Okay. All right. Y'all did have a
25 conversation like that?



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1 A If you don't have the money to purchase
2 it, if you're not going to be able to purchase the
3 vehicle, that's why I -- I needed the car back.

4 Q Okay.

5 A So that's why I got the car back.

6 Q Okay. Now, do you have any way of
7 helping me determine when that conversation would have
8 took -- taken place?

9 A I can't tell you. I'm not -- know what
10 day, so what, you know --

11 Q All right, I understand.

12 A Like I said, when this -- when I sold it
13 at Manheim Darlington, it was done with me. I -- I
14 never thought about it. I just felt it was another
15 unit moved, so I didn't hold on to anything because I
16 knew I had possession of my vehicle when I took it to
17 the auction. So anything else besides that --

18 Q Okay. Was there anybody other than Otis
19 that you turned cars over to from time to time like
20 that?

21 A I'm pretty sure I had, probably another
22 partner. C&A Automotive might have looked at a car
23 that was like that before too, so.

24 Q Where are they located?

25 A In Monroe.

1 Q Okay. Did you ever have any trouble
2 with them getting your car back?

3 A No, sir.

4 Q Did you ever have any trouble getting
5 your money?

6 A No, sir.

7 Q Okay. Anybody else that you have turned
8 cars over to like that?

9 A I -- I can't recall at this time or if,
10 you know --

11 Q Okay.

12 A When you do business sales, selling
13 cars, you know, you look around. I never had trouble.
14 As long as I can get my car I never -- you know, I
15 never, you know, really paid that too much attention.

16 Q Okay. And have you ever sued a car
17 dealer?

18 A No, sir.

19 Q Have you ever filed a claim against a
20 car dealer's bonding company?

21 A No, sir.

22 Q Have you ever filed criminal charges
23 against an automobile dealer?

24 A No, sir.

25 Q Okay. Have you ever had a lawyer send a



1 letter to an automobile dealer on your behalf?

2 A I -- now, I don't know if Mr. Leland was
3 -- had to send one for this, for this one. Other than
4 that I don't know, sir.

5 Q Okay. Tell me, other than the
6 inconvenience, and I'm sure it's more than that, but
7 other than the inconvenience of having to be here today
8 and having to send copies of things in response to
9 subpoenas, how this whole set of facts has impacted you
10 or your company.

11 A It has impacted me very heavily, because
12 I no longer -- I lost my line of credit with NextGear
13 due to the situation. And I -- like I had a
14 \$250,000.00 line of credit with NextGear, and hadn't
15 had any problems until this situation arose. So it --
16 it limits on how I buy certain cars or how I -- I let
17 them sit because of this.

18 Q Okay. Have you been able to replace
19 that \$250,000.00 line of credit?

20 A No. I -- no, I haven't.

21 Q Do you have a line of credit now?

22 A No, I don't.

23 Q Okay. What do you say caused you to
24 lose that line of credit?

25 A This was -- this was the reason to me.

1 But they -- they tried to say, well, the car wasn't at,
2 you know, at the lot when certain -- sometimes you
3 might have a car that you had to wait till an auditor
4 come and you get there maybe, because I was at work
5 before the auditor to come and look. But I didn't lose
6 it until this situation arise. And when the situation
7 arise I lost my \$250,000.00 line of credit. They
8 opened me back up for 30 days and then I guess -- I
9 guess as this went on, they called and came back.
10 Well, they didn't come back. They didn't call me.
11 They just shut me down again.

12 When I looked at my account I was locked out
13 again. And they told me they was going to have to
14 terminate, terminate my business with NextGear Capital.

15 Q Okay. Did they ask you for any money?

16 A I got a call several months after this
17 saying to see what all was going on and did I want to
18 pay for this car or something. But I -- you know, I
19 didn't feel like they was paid for when the car -- when
20 I sold it at the auction. So I didn't feel I owed
21 NextGear anything. I lost money because they forced me
22 to sell my cars that I had on my line at the time when
23 they closed me down. So they gave me a certain amount
24 of time to sell any cars I had on my line at the time
25 and got -- they told me they was going to give me a

1 certain amount of time. But then it come January when
2 I had a curtailment done. They told me I had to get it
3 paid off. And that was a \$40,000.00
4 Escalade, Cadillac Escalade. So I ended up losing like
5 five or six thousand dollars on that car.

6 MR. GREG STUDEMEYER: Page 116, 13 to 19.

7 READING -

8 Q Do -- do you understand the big picture
9 of what's going on here?

10 A I see now it's -- look like Mr. Morris
11 done a fraud on everybody, you know, from what I'm
12 looking at. But right now I'm just, you know, wanting
13 to get clear of it, you know. Wanting to get this
14 thing settled the best way we can.

15 MR. GREG STUDEMEYER: Now, that concludes this
16 deposition.

17 THE COURT: Mr. Stanley, anything to add?

18 MR. STANLEY: No, sir.

19 THE COURT: Mr. Greeley?

20 MR. GREELEY: Nothing, Your Honor, at this time.

21 MR. GREG STUDEMEYER: Your Honor, I have one live
22 witness that should be fairly short. And you wanted to
23 try to end up by around five o'clock?

24 THE COURT: Yes, sir.

25 MR. GREG STUDEMEYER: Okay. I think we can get

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1 Q Okay. Now, how long have you been in the automobile
2 business?

3 A Forty years.

4 Q Okay. And where were most of those forty years at?

5 A Thirty-six of the forty was with the Jim Hudson
6 Automotive Group.

7 Q Okay. And where does Mr. Hudson own an automobile
8 business?

9 A Mr. Hudson has six rooftops in the City of Columbia,
10 one rooftop in the City of Augusta, Georgia, and
11 Capital City Rides.

12 Q Okay. All right. For the majority of your time, where
13 you spent forty years or whatever it was, what was your
14 title with the Jim Hudson Organization?

15 A I was the Chief Financial Officer. In that position, I
16 handled all the business matters of all the
17 corporations.

18 Q Okay. Now, are you familiar with Otis Morris?

19 A Yes, sir. I am.

20 Q How long have you known Otis?

21 A I first met Otis in about the late 80's. He worked
22 first as a salesperson. He then moved from sales --
23 and I'm going from my recollection, you know -- to a
24 used car manager at our Mitsubishi store. That was
25 about '92, I think. In about '97, he was transferred

1 to our Lexus store as a used car manager, and after a
2 short period at Lexus, his employment was -- he left
3 the company. I don't know if it was Pete Olmstead, the
4 general manager, Otis's decision, or a joint decision.
5 It was over the matter of a car that had disappeared on
6 a sale in Atlanta, Georgia.

7 Q Okay. When was the next time you had any kind of
8 contact with Otis while you were working for the Jim
9 Hudson Organization?

10 A As I said from '92 to '97, on a basis when the
11 manager's meetings -- just normal course of doing
12 business.

13 Q Okay. But after '97, whenever Otis parted company
14 with --

15 A After Otis left the company, I would say we had no
16 business dealings until 2015.

17 Q Okay.

18 A I retired as being the CFO in December 2014. Mr.
19 Hudson purchased the property that Mr. Morris owned,
20 and it was to be used by me to run Capital City Rides.

21 Q Okay. Where is that property located?

22 A It's at 1231 Broad River Road.

23 Q Okay. When did that purchase take place?

24 A The purchase negotiation started somewhere around
25 October or November of '14. The closing was about the



1 middle of January --

2 Q Okay. And --

3 A -- of the next year.

4 Q -- that was a purchase of the real estate by the Jim
5 Hudson --

6 A Real estate, furniture, and fixtures.

7 Q Okay. And what about retention of Otis?

8 A Otis was continued as a salesperson. Todd, a guy that
9 worked for Otis, we kept, and he had a part-time
10 bookkeeper, Ms. Pat Canaday, that I kept.

11 Q Okay. And the guy you're talking about, Todd, is he
12 also a former USC football player?

13 A He is.

14 Q What's his last name?

15 A Berry.

16 Q Okay. And he played back in '94, '95, back in there?

17 A To the best of my knowledge, those dates are close.

18 Q Now, Donald, let me ask you this: If you would, just
19 tell the judge if you have encountered any type of
20 trouble with Otis while he was in your employment for
21 fraud and deceit.

22 MR. STANLEY: Objection, Your Honor.

23 THE COURT: All right. What grounds?

24 MR. STANLEY: It's not relevant to anything that
25 he has experienced in his business, unless it has

1 something to do with this particular transaction. But
2 anything else he has experienced in the past is not
3 relevant to this situation.

4 THE COURT: Okay. Mr. Studemeyer, how's this
5 relevant?

6 MR. GREG STUDEMEYER: Your Honor, this is relevant
7 because this is intended to show a common scheme plan.
8 Prior bad acts are admissible for that purpose. We are
9 seeking punitive damages, and without the testimony of
10 Mr. Deese on this issue, we would otherwise not
11 corroborate that.

12 THE COURT: All right. Well, why don't you phrase
13 it a different way? You said a common scheme or plan.
14 Is he scheming with other people or is he doing it on
15 his own?

16 MR. GREG STUDEMEYER: Well, we can demonstrate
17 that, and I would ask that you allow me to make an
18 offer of proof.

19 THE COURT: One moment, please. Mr. Stanley?

20 MR. STANLEY: Your Honor, unless he can show that
21 there is some commonality or similar scheme to the one
22 that is at issue in this case, this testimony or
23 anything outside of commonality or similar scheme is
24 irrelevant. Now, he's here talking about a scheme
25 dealing with -- or he's complaining about a title, as I



1 understand it. I mean, we've been all over the place
2 today, but you know it sounds to me like he's talking
3 about the inappropriateness of handling the title.
4 Now, if Mr. Deese is here to talk about a similar
5 scheme to what we're talking about here today, maybe
6 it's relevant; it's relevant. But if it's not similar
7 or common, then it's not relevant.

8 MR. GREG STUDEMEYER: All right. Well, let me
9 just ask him that question.

10 THE COURT: You going to withdraw your question
11 and rephrase it?

12 MR. GREG STUDEMEYER: Yeah, let me do that.

13 THE COURT: Okay.

14 BY MR. GREG STUDEMEYER:

15 Q Don, if you would, can you tell the judge whether or
16 not you have encountered fraud and deceit from Mr.
17 Morris in connection with automobile titles while he
18 worked for you?

19 A Yes.

20 Q Okay. Let's talk about that. Tell us about that.

21 A On or about July of 2015, starting in the first week of
22 July and going through the end of July, there were five
23 purchases by Capital City Rides from Pro Bowl Motors.
24 In that purchase, Otis had gone online, got serial
25 numbers, descriptions of cars, and created bills of

1 sale.

2 He had gone to my office manager. She worked for
3 me 25 years, and had her give him a check for these
4 vehicles. All five of these vehicles are in my notes.
5 All five of these vehicles were sold to others. We
6 never got the car. It was a scheme. It was a simple
7 scheme. Just take the information that's at the
8 auction, tell the office manager that we have a
9 problem. No, we got the car sold, and obtain the check
10 so you can actually pay the auction so you can sell the
11 customer the car itself. All right?

12 I found out, as my job was to go out and purchase
13 vehicles. I came in sometime toward the -- it was
14 about the first week in August of '15, and my office
15 manager, Ms. Deborah Quinn, is standing in the door
16 crying. And I said to Deborah, I said, what is the
17 problem? She said, Mr. Deese, I've got to show you
18 something.

19 And she showed me these five bills of sale, and
20 everything to do that looked like a genuine sale. It
21 was a shell. It was a shell that we paid money and the
22 money was deposited into Pro Bowl Motors. All right?
23 From that, about ten minutes later, I had Otis in my
24 office. That was like on a Tuesday. I asked Otis,
25 explain this to me. He started talking and I realized



1 that I had a problem. So I said, Otis, I'm gonna give
2 you until Friday to clear this matter up. We'll meet
3 here in my office Friday and go over this.

4 So, the meeting was supposed to be at 4:00. When
5 Otis walked out of my office, I called my CPA, Steve
6 Luoma, who was also the Hudson CPA, and said, I've got
7 a problem, and I think it's serious. I want you here
8 representing the Hudson Group this coming Friday at
9 4:00. It'll be self-explanatory, but I think I've got
10 a title problem on several vehicles.

11 So, Otis came in. We had our meeting. Steve
12 Luoma was present. I was present. At the ending of
13 the meeting, Otis signed the document that said he was
14 responsible for those items, and I had to pick up the
15 phone and call my employer, and that's the first time
16 in 38 years he yelled at me and cussed me. All right?

17 From that, the next chain of events was I had to
18 send Otis over to talk and meet with Mr. Keith Hudson.
19 Mr. Keith Hudson terminated Otis. Otis came back. It
20 was my duty to stay there and to make sure that Otis
21 left the building and took his property, which I did.
22 The next day, I was summoned to the management company.
23 I think it was the next Monday, sir. I went into the
24 office.

25 My replacement, a lady by the name of Karen Hines,



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1 met with me. She said, well, Deese, Mr. Hudson said
2 when he's done, he's done. I said, I beg your pardon?
3 They had put me in the position of being the person
4 that stole the money almost. I don't know if we're
5 gonna keep it open. I want you to go find buyers for
6 our contracts. Yes, ma'am. So at that point in time,
7 I contacted two buyers who came in. Two sets of
8 buyers, two amounts of money. We sold off probably 150
9 of our accounts.

10 After that, I sent Mr. Hudson an email. I said,
11 Mr. Hudson, I've worked for you 38 years. In May of
12 1980, we joined forces, and I'm still working for Mr.
13 Hudson today. I said, but if we're gonna end, I don't
14 want to end and you thinking I'm part of a scheme to
15 steal money from you. I said, let's at least run it
16 through the end of tax season and see how you feel
17 about that. He says, okay, but you've got to fire
18 Deborah. Deborah's the one who had given him the
19 checks while this scheme was going on.

20 I said, Mr. Hudson, if you're going to do that,
21 can't you -- and you're gonna close this anyway, can't
22 we at least let Deborah stay until you decide to close
23 the doors? And he said, okay. When I make up mind,
24 I'll let you know.

25 MR. GREELEY: Objection to anything that Mr.

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1 Hudson may have said to him.

2 THE COURT: Okay. Mr. Studemeyer?

3 THE WITNESS: Okay.

4 BY MR. GREG STUDEMEYER:

5 Q So, what did you have to do?

6 A What I had to do was I had to terminate a 25-year
7 employee for something that -- she had worked with Otis
8 in the earlier time. I'll tell the Court, I'll tell
9 his attorney, Otis is a good car man. Otis was a good
10 manager. I don't know where he drifted. I'm not
11 trying to explain that. I can tell you I have training
12 enough to prove it, sir. I can also tell you that
13 Deborah still hasn't found a job, and that's been a
14 while. I can tell you that they took my salary \$16,000
15 to \$6,000.

16 Q Per?

17 A Month. Okay?

18 Q You lost \$10,000 a month?

19 A Yes, sir. I lost my demonstrator, and I lost my group
20 insurance. Now, I'm not gonna tell you that Otis did
21 not come with funds from selling off stuff to take care
22 of this \$104,000 deficit.

23 Q That's how much money was missing from the company?

24 A That's how much of the five units that was unpaid at
25 the time of the scheme; okay? All was paid but \$9,143

1 that was paid by Travelers on his bond.

2 Q/ Anybody paid you back for your lost income?

3 A No, sir.

4 Q Anybody compensated you for your lost demo?

5 A No.

6 Q Anybody taken care of your group health insurance?

7 A No.

8 Q That's all the questions I have.

9 CROSS-EXAMINATION

10 BY MR. STANLEY:

11 Q Mr. Deese, are you working now?

12 A Yes, sir.

13 Q Where do you work?

14 A For Capital City Rides.

15 Q So you're still there?

16 A Yes, sir.

17 Q Okay. Are you the manager?

18 A Yes, sir.

19 Q You all bought Capital City Rides from Pro Bowl Motors?

20 A We bought the real estate, sir.

21 Q Bought the real estate. And you recall, I was involved
22 in that closing?

23 A I beg your pardon, sir?

24 Q You recall me being involved --

25 A I'm not trying to be rude.

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- 1 Q I'll speak up.
- 2 A Hearing aids.
- 3 Q I'll speak up.
- 4 A Okay.
- 5 Q Do you recall that I was involved in that closing?
- 6 A No, sir. I wasn't involved in that closing.
- 7 Q You all bought that property when?
- 8 A I believe we started negotiating about October or
- 9 November of '14, and I think the closing was in
- 10 January, about the middle of January.
- 11 Q And when you closed in January '15, did you all move
- 12 into the building?
- 13 A Yes, sir.
- 14 Q Did you have a dealer's license?
- 15 A Yes, sir.
- 16 Q You did?
- 17 A Yes, sir.
- 18 Q In January of 2015 when you moved in, you had a
- 19 dealer's license?
- 20 A I don't recall, sir. I know that we had an application
- 21 on file. I don't know if we had to operate under
- 22 Otis's for a week or two until ours came out.
- 23 Q Yeah. You didn't have a dealer's license; did you?
- 24 You sold cars without a dealer's license; didn't you?
- 25 A No, sir.

1 Q You didn't have to sell your cars to Otis and let Otis
2 sell your cars under his license?

3 A I would have to check the dates on getting the dealer's
4 license, and I'd be more than happy to do that for you
5 and the court. I know that one of the first things
6 that we do, having seven other dealerships, is we gonna
7 have to find out how to file for a dealer's license.

8 Q Would it be proper for you to move into that property
9 in January of 2015, sell your cars without a dealer's
10 license?

11 A Not without a proper dealer's license.

12 Q You couldn't do it; could you?

13 A No, sir.

14 Q So, if you didn't get a dealer's license until March --

15 A I don't know the date of that dealer's license.

16 Q Well, let's make the assumption you didn't get one
17 until March.

18 A I would think that'd be a stretch.

19 Q How about February?

20 A Let's say February.

21 Q Okay. So any cars that you sold from January to
22 February of 2015 --

23 A January of '16, sir, till about March the 1st, and I'm
24 not even sure we sold any.

25 Q Okay.

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- 1 A I would have to go check the record.
- 2 Q But if you did --
- 3 A But if I did. Yes, sir.
- 4 Q -- and you didn't have a dealer's license --
- 5 A Yes, sir. I would have --
- 6 Q -- Jim Hudson was in violation of South Carolina law?
- 7 A We would have had to let -- as you just indicated, sell
- 8 them to Otis just for him to sell.
- 9 Q Right. So --
- 10 A But that is not what happened.
- 11 Q But what y'all actually were doing, you had no dealer's
- 12 license, and so you would sell them to him, and then he
- 13 would sell them for you under his license, and then pay
- 14 you money?
- 15 A I don't believe that to be as accurate as you're
- 16 indicating. I know that we met with Mr. Terry Pugh who
- 17 was then the local dealer guy, and I know that he was
- 18 working on the fast track to get us the license as
- 19 quickly as possible. I don't know if there were a few
- 20 units in that period of time, but there weren't many,
- 21 if any.
- 22 Q Mr. Deese, this is common. You've been in this
- 23 business a long time.
- 24 A Forty years.
- 25 Q And it's common for you all to move vehicles around in

1 this business to get them sold so that everybody makes
2 money and everybody's happy; isn't that right?

3 A More definition.

4 Q Well --

5 A Yes.

6 Q I mean, everybody cooperating, working together, and
7 making it happen; isn't that right?

8 A I'm not gonna use that terminology.

9 Q Okay.

10 A You use it.

11 Q All right. Well, I'm gonna use another terminology.

12 These cars that you said Otis was buying, didn't you
13 authorize him to buy?

14 A No, sir.

15 Q Isn't it the reason that your money was taken from you
16 is because of you authorizing everything that's
17 happening?

18 A No, sir.

19 Q You didn't have that?

20 A I did.

21 Q Well, why would you lose money then?

22 A I didn't.

23 Q Well, you testified.

24 A What I testified was that he had a scheme, and when he
25 was bringing paperwork to my office manager for



1 vehicles that he told her that he had sold and she did
2 it without permission, and she's terminated.

3 Q Well, how about your money?

4 A Beg your pardon?

5 Q How about your money? I thought you just told Mr.
6 Studemeyer that you lost money.

7 A I lost ten grand a month salary.

8 Q Why?

9 A Because the anger that Mr. Hudson had toward the event
10 that took place, took place in the fact as it was if I
11 had been the person doing this scheme instead of Otis.

12 Q Isn't it because you were the person that authorized
13 it?

14 A No, sir.

15 Q You don't think Mr. Morris got a document saying that
16 you --

17 A He brought --

18 Q -- authorized it?

19 A No, sir. I don't.

20 Q All right. Thank you, sir.

21 A All right.

22 MR. STANLEY: No more questions.

23 THE COURT: Mr. Greeley?

24 MR. GREELEY: No questions.

25 THE COURT: Any redirect, Mr. Studemeyer?

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