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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Case Tracking No. 2018-000171

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS

Civil Action No. 2017-CP-10-02148

J. C. Nicholson, Jr., Circuit Court Judge

Cleo Sanders Respondent

v.

Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick Dodge
Chrysler Jeep Ram, Santander Consumer USA Holdings, Inc., Isiah S. White, Danny Anderson
and Patrick Bachrodt, Jr. Defendants

Of whom, Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram and Isiah S. White are the Appellants

AMENDED RECORD ON APPEAL

C. Steven Moskos, Esquire
C. Steven Moskos, PA
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 763-5297 Ofc

Attorney for Respondent Cleo Sanders

John T. Lay, Jr.
Jessica A. Waller
Alice P. Adams
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
Columbia, SC 29202
(803) 779-1833

*Attorneys for Appellants Savannah
Highway Automotive Company, a
General Partnership d/b/a Rick
Hendrick Dodge Chrysler Jeep
Ram and Isiah S. White*

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1	STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
2	COUNTY OF CHARLESTON	)	2017-CP-10-2148
3	CLEO SANDERS,	)	
4	PLAINTIFF,	)	MOTION TO COMPEL HEARING
5	vs.	)	TRANSCRIPT OF RECORD
6	SAVANNAH HIGHWAY AUTOMOTIVE	)	
7	COMPANY, ET AL.,	)	
8	DEFENDANT.	)	

9

10

Thursday, November 16, 2017
Charleston, South Carolina

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13

B E F O R E:

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The Honorable J.C. Nicholson, Jr.

15

A P P E A R A N C E S:

17

C. Steven Moskos, Esquire
Attorney for Plaintiff

18

John T. Lay, Jr., Esquire
Attorney for Defendant

19

20

Brian A. Calub, Esquire
Attorney for Santander Consumer USA Holdings, Inc.

21

22

23

Maria Dempsey, RPR
Official Court Reporter
Charleston County Circuit Court
Ninth Judicial Circuit
Charleston, South Carolina

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3

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E X H I B I T S

(No Exhibits Proffered.)

1 THE COURT: Who's here representing who?

2 MR. MOSKOS: Your Honor, my name is Steve Moskos. I'm
3 here on behalf of Mr. Sanders, the plaintiff.

4 THE COURT: Okay.

5 MR. LAY: Your Honor, John T. Lay here representing
6 Hendrick.

7 THE COURT: Representing Hendrick's?

8 MR. LAY: Yes, sir.

9 THE COURT: Okay.

10 MR. CALUB: Your Honor, Brian Calub for defendant
11 Santander Consumer USA Holdings, Inc.

12 THE COURT: For the holding company?

13 MR. CALUB: Yes, Your Honor.

14 THE COURT: Okay. What is it, a motion to dismiss by
15 which, Hendrick's?

16 MR. LAY: Yes, sir. This is just a motion to compel
17 arbitration and the stay of the proceeding pursuant to --
18 until the arbitration agreement or until the arbitration has
19 been completed. Just to give you some quick background on
20 this, this complaint was filed in May of 2017. We answered
21 in July and we filed the motion for -- to compel arbitration
22 in September. This emanates from Mr. Sanders' purchase of
23 a Dodge Charger.

24 THE COURT: I've read the complaint. Okay.

25 MR. LAY: You got it.

1 THE COURT: All right. The retail installment
2 contract --

3 MR. LAY: Absolutely.

4 THE COURT: -- and all the information in the
5 complaint, but go ahead.

6 MR. LAY: Yes, sir. There was an arbitration agreement
7 in the retail installment contract. It complies with the
8 FAA. It specifically mentions the FAA and says it's
9 pursuant to the Federal Arbitration Act. South Carolina
10 public policy requires arbitration and supports arbitration
11 in the event that there an is arbitration clause in the
12 installment contract. Here we have that.

13 It also recognizes that it can be assigned in the
14 arbitration agreement, that the assignees are -- have to
15 comply with the arbitration clause as well. So on its face
16 we have the installment contract, we have a signature, we
17 got an arbitration clause that meets federal law, which
18 preempts any sort of South Carolina statute regarding an
19 arbitration. It should go to arbitration.

20 Now, there are really four things that have been
21 raised about why plaintiff thinks that it's a problem. One
22 would be that it's not FAA, that FAA is not mentioned, that
23 this has to comply with the state statute.

24 THE COURT: Well, I think the use of vehicles would
25 make it interstate. Okay. So go on to number two.

1 MR. LAY: Yes, sir. Number two would be that there's
2 no standing to challenge or to enforce the arbitration
3 agreement, because the installment sales contract was
4 actually assigned to Santander. The problem with that is
5 that the arbitration agreement specifically recognizes that
6 assigns would have to be bound to the arbitration agreement
7 and to third parties, and that is something that the
8 plaintiff can enforce or the dealership can enforce. Either
9 one can enforce it.

10 THE COURT: Who is it assigned to?

11 MR. LAY: Santander.

12 THE COURT: To who?

13 MR. LAY: To Santander.

14 THE COURT: What is that?

15 MR. CALUB: Your Honor, Santander Consumer USA
16 Holdings, Inc. is the assignee, is a company that basically
17 underwrites the loans, and then they do deals like these and
18 then they assign it.

19 THE COURT: Well, who owns it?

20 MR. CALUB: Pardon me?

21 THE COURT: Who owns it?

22 MR. CALUB: Who owns Santander?

23 THE COURT: Yeah.

24 MR. CALUB: I believe it's Santander Bank. It's a sub
25 of Santander Bank.

1 THE COURT: Okay. So that was who was underwriting
2 the -- I guess underwriting what? The purchase? Providing
3 the money for the purchase?

4 MR. CALUB: It would have funded the deal. That's
5 technically the way these work. Effectively, Santander
6 would put up the money to fund the loan and then buy the
7 retail sales contract.

8 THE COURT: What happened to the Chrysler Credit,
9 whatever they call their credit bureau?

10 MR. CALUB: Chrysler Credit?

11 MR. LAY: It would be similar to Chrysler, that's not
12 what this is, but it would be a similar situation as to
13 Chrysler Credit.

14 THE COURT: I mean, like you use Wells Fargo, anybody
15 else?

16 MR. LAY: Yes, sir.

17 MR. CALUB: Correct, Your Honor.

18 THE COURT: All right. Go ahead.

19 MR. LAY: So the arbitration agreement recognizes it,
20 and we have cited two cases that also recognize that you
21 can -- it does not have to be someone that is directly
22 related to the actual installment sales contract. It can be
23 an assignee, which is the AT&T case is one of the cases that
24 we cited in our brief that recognizes the ability of us to
25 assign. Then on the other part of this is a waiver. I

1 think it's been suggested it was a waiver, because there was
2 initially some discovery that was sent to us. We asked for
3 an extension, and then while the extension was pending, we
4 decided to move forward with the arbitration. So we filed
5 the motion to stay and to compel arbitration, the case law,
6 and we cited the -- I mean, it's replete with cases
7 recognizing that, for example, 14 months is not too long.
8 Here we have two and a half months from the date of our
9 answer to the date that we filed the motion to arbitrate.

10 THE COURT: What's your fourth issue?

11 MR. LAY: The fourth issue is authentication of the
12 installment sales contract.

13 THE COURT: Of what?

14 MR. LAY: Authentication. They're claiming that it
15 needed to be authenticated, really for two reasons. That's
16 not accurate. One, in their pleadings they've recognized
17 they signed an installment sales contract, which they
18 actually pled. And the Umbower (ph) case recognizes that
19 when you have a contract with the signature like that,
20 unless they're actually specifically putting up evidence to
21 that challenges the authenticity, that you don't have to
22 provide an affidavit to support the authenticity of the
23 contract.

24 Second, under the rules of evidence gives us a
25 self-authenticating document, unless they specifically, if

1 there's a signature on it, unless they specifically say that
2 they -- that it's not authenticated, and I think they've
3 been really careful here to not say that that's not the
4 installment sales contract. They just said they need to be
5 authenticated, which is not supported by the law.

6 His client's got a copy of it, they went and got the
7 dealer contract, who's got a signature on the installment
8 sales contract. It's got an arbitration clause on it that
9 makes FAA, we filed it timely. This is something that
10 should be arbitrated, with all due respect.

11 THE COURT: Okay. Thank you. Yes, sir.

12 MR. MOSKOS: I'm going to sort of work backwards, Your
13 Honor.

14 THE COURT: Okay.

15 MR. MOSKOS: First of all, the burden is on the
16 defendant to prove that it has a contract with my client and
17 that it has a valid arbitration agreement. That's their
18 burden, not mine. So what did they do in their motion?
19 They put part of some agreement; we don't know if it came
20 from my client's contract or 50 million other contracts that
21 they've done. They did not provide any affidavit at the
22 time of filing the motion, which is required by South
23 Carolina Rules of Civil Procedure Rule 6. When they filed
24 their brief at the beginning of the week on -- well, they
25 emailed it on Monday. They still hadn't put an affidavit

1 attached to the -- to the brief -- identifying the document.
2 If you take a look at what they sent, it's almost illegible.
3 I mean, there are little markings on there, you could tell
4 something was there, but you can't necessarily tell what is
5 actually there.

6 Mr. Lay wants to be able to come in and say, Your
7 Honor, I'm representing the defendant, and therefore, you
8 have to accept this contract. There is no doubt that my
9 client bought the car from Rick Hendrick, but whether or not
10 this particular -- this particular retail installment sales
11 contract belongs to my client, you can't tell. And there's
12 nobody who's authenticated the document, and the rules
13 require, at the time of the filing of the motion, if an
14 affidavit is required, it has to be filed with the motion.
15 They're just not complying with the law, and hoping you'll
16 overlook it.

17 Now, one of the issues that -- or one of the things
18 you brought up just a moment ago, Judge, is basically how
19 this transaction works, and in a car deal, what happens is,
20 the customer goes in and buys a car. Normally, they are --
21 or in most cases they don't have money to pay outright, so
22 what happens is the dealership extends credit. Doesn't loan
23 money, extends credit to the customer. They work out a
24 deal. The dealership then turns around and goes to a third
25 party, in this case Santander, which I believe also used

1 a -- well, I think at this point they've already gone
2 through a purchase of Chrysler Capital, but nevertheless,
3 Santander looks at the contract and decides whether it wants
4 to buy this retail installment sales contract from the
5 dealership. There is a contract between the dealership and
6 the bank or financing institutions.

7 As to the requirements of these retail installment
8 sales contracts and various representations of warranties
9 made between the bank and the dealership, if the bank says
10 yes, I will or it will purchase the retail installment sales
11 contract from the dealer, then the dealership assigns all of
12 its rights and interests in that contract to the bank. The
13 customer is then required to pay the bank, and the bank
14 services the loan, and the dealership is out. And it's
15 really clear that they're out, because, you know, when
16 people don't pay for their cars, it's not the dealership
17 that walks in and says, oh, by the way, we're going to
18 repossess the car, we're going to take the car, sell it, and
19 apply it to anything you owe. No, it's the bank that does
20 that.

21 Everything was assigned, including the arbitration
22 agreement that they claim is part of the retail installment
23 sales contract. The document that they have put or attached
24 to their brief, it's typical that these documents are
25 extremely long and tend to be two sides, front side and back

1 side. The defendant, out of just necessity, has the front
2 side as three pages and the back side as three pages. If
3 you look at the third page of that document at the bottom,
4 it specifically says that the dealership is assigning its
5 interests to -- says, seller assigns its interest in
6 contract to -- and it's hard to read. I'm assuming it's
7 Santander, assignee, under the terms of seller's agreement
8 with assignee. There's a secondary contract who governs
9 these documents. And then there's some signatures below
10 that.

11 So just on its face -- and there has been absolutely
12 no testimony, no affidavits, nothing to contradict this, by
13 its face, the document has been assigned to Santander, and
14 Santander is the only one in this group of people that can
15 enforce this particular contract as asserted by Mr. Lay here
16 today. Since Rick Hendrick doesn't have any authority under
17 this contract -- and quite frankly, Your Honor, did you have
18 an opportunity to take a look at the brief that I prepared?

19 THE COURT: No, I haven't, but I will. Go ahead.

20 MR. MOSKOS: Let me -- if you don't mind, Your Honor, I
21 have a copy of the brief, if that will help you?

22 THE COURT: If you got a copy.

23 MR. MOSKOS: Yes, sir. And in there, I talk about the
24 South Carolina requirements, and South Carolina has
25 specifically said that South Carolina contract law carries a

1 presumption that an individual, who is not a party to a
2 contract, lacks privity to enforce it. So the presumption
3 is against the defendant, and the defendant has failed to
4 carry or meet that, its burden to overcome that presumption.

5 So at the end of the day, Your Honor has to make a
6 couple of decisions. One, has Rick Hendrick provided the
7 Court with any evidence, any admissible evidence that
8 there's an arbitration agreement between the parties? And
9 that, of course, is going to have to deal with whether Your
10 Honor finds that they have complied with the Rules of Civil
11 Procedure and Rules of Evidence.

12 The second thing, if you decide, yes, they have
13 complied, and yes, one thing I want to address, because
14 Mr. Lay brought that up, he now is trying very artfully to
15 say that because of my complaint, that validates and
16 authenticates the document that he's presented, and he wants
17 you to take a look at his Exhibit A and conclude that some
18 mark that is on a signature line is supposed to be my
19 client's signature, and that we're agreeing through our
20 pleadings that that's the right document. That is pretty
21 farfetched, especially when you take a look at this exhibit.
22 I mean, it's just almost impossible to read. And just
23 because my client entered into a retail installment sales
24 contract at the time of the sale doesn't necessary mean that
25 it's this particular document. That is his burden to prove.

1 One of the issues that I brought up to the Court,
2 quite frankly I agree with Mr. Lay, that South Carolina, the
3 South Carolina Arbitration Act is not going to apply.
4 However, throughout his memo -- excuse me, his motion and
5 his memo, he talks about how the South Carolina Arbitration
6 Act requires --

7 THE COURT: I think you're under -- there is no
8 question there's interstate --

9 MR. MOSKOS: So I just brought that up --

10 THE COURT: If an attorney's conversation on the
11 telephone with somebody in North Carolina, going to North
12 Carolina to take depositions, it's interstate. It's
13 interstate, okay?

14 MR. MOSKOS: Yes, sir.

15 THE COURT: I don't know if you're familiar with that
16 case or not.

17 MR. MOSKOS: Well, I'm not, but my point is simply that
18 it was addressed in their memos, and so I just --

19 THE COURT: I understand, but I don't think there's any
20 question that arbitration has to apply, okay?

21 MR. MOSKOS: Yes, sir.

22 THE COURT: And you don't have to have it underlined
23 and in capital, italics on the front page under the federal.

24 MR. MOSKOS: I think I've addressed all of the issues.

25 THE COURT: All right. Let me ask you one question.

1 MR. MOSKOS: Yes, sir.

2 THE COURT: There's several exceptions to arbitration
3 requirements in South Carolina nixed out over the years by
4 the Supreme Court. Other than the privity issue, does this
5 contract meet any of the other exceptions, in your opinion,
6 or have you looked at that aspect of it?

7 MR. MOSKOS: If you're talking about
8 unconscionability --

9 THE COURT: Well, that's one them. There's several
10 others.

11 MR. MOSKOS: I have not looked at it close enough to
12 determine if those other -- any of those others might apply.
13 I can't say whether they do or not.

14 THE COURT: I can't sit here and list them all to you.

15 MR. MOSKOS: And I can't remember them either, but I
16 can't say so at this point, Your Honor.

17 THE COURT: Okay. Anything in reply?

18 MR. LAY: Yes, sir, just two points. I'm going to
19 hand -- I just have this case from Maryland that applies in
20 this situation, I want to hand it up to the Court. I
21 believe it was emailed to you yesterday, but this deals with
22 the assignment issue. I think that is the principal point.

23 THE COURT: Has the assignment issue been addressed by
24 South Carolina?

25 MR. LAY: No, sir.

1 THE COURT: Okay.

2 MR. LAY: Your Honor, I'm going to hand this case up to
3 you, which is the Umbower (ph) case as well. So let me
4 address two quick points. First on the assignment issue.

5 THE COURT: What district is this in?

6 MR. LAY: That's going to be dealing with the
7 authentication issue.

8 THE COURT: I understand, but I said what district?

9 MR. LAY: Oh, it's U.S. District Court in Kansas.

10 THE COURT: Kansas?

11 MR. LAY: Kansas.

12 THE COURT: District Court in Kansas, that's all you
13 have?

14 MR. LAY: Well, it's the only thing -- well, we got two
15 things. We got the rule, and then I got a case on point,
16 which is what this is.

17 THE COURT: Well, the Maryland case was on point too,
18 and is mostly a very persuasive argument, not binding on
19 your story, but go ahead.

20 MR. LAY: Okay. Well, the Maryland case is dealing
21 with the assigning issue. This was just dealing with the
22 authentication issue.

23 THE COURT: Okay. All right. Go ahead.

24 MR. LAY: Yes, sir.

25 THE COURT: Agreement is persuasive argument, authority

1 is for the Court to consider.

2 MR. LAY: And that's the only reason I provided it.

3 THE COURT: I understand.

4 MR. LAY: I'll deal with the assigning issue first.

5 The arbitration agreement says specifically that the
6 arbitrability of the claim between you and us or our
7 employees and agents, successors or assigns, which arises
8 out of or relates to your credit application purchase or
9 condition of this vehicle, this contract -- and it goes on
10 and on. So specifically references that assigns would be
11 part of it. It goes on to say --

12 THE COURT: I understand that, but do you reserve any
13 right for Hendrick's to enforce that contract once it's been
14 assigned?

15 MR. LAY: Through the arbitration agreement, that
16 clause which says --

17 THE COURT: I understand the contract, but does the
18 contract reserve a right for you to enforce arbitration once
19 you've assigned it all to the lending institution?

20 MR. LAY: It is fully assigned once it goes to the
21 lending institution.

22 THE COURT: That's correct. So the contract itself has
23 to give you certain rights after the assignment, does it
24 not, and does it do that?

25 MR. LAY: The arbitration agreement itself -- there are

1 two cases that we point to. One is the AT&T case, and what
2 it says is that if there's an issue about whether -- if
3 there has been an assignment, and whether there's an issue
4 about whether they're standing on that, it still has to be
5 sent to the arbitrator to make the ultimate decision about
6 whether or not you can enforce that arbitration clause.
7 That's what that AT&T case says. So even if there is an
8 issue like he's saying, which I don't believe there is,
9 because it recognizes third parties as well, it still has to
10 go to the arbitrator to make the ultimate decision about
11 whether that arbitration clause --

12 THE COURT: The AT&T case?

13 MR. LAY: Yes, sir.

14 THE COURT: Where is that from?

15 MR. LAY: It is ninth circuit.

16 THE COURT: Okay. Thank you, sir.

17 MR. LAY: And then on the authentication issue, this is
18 the way the Unbower (ph) case dealt with it. Said, one,
19 there's been a reference to a retail installment contract
20 like this, and it is commercial paper, like what this is,
21 that would -- whether has it been a challenge that says this
22 is, in fact, an inauthentic document, it is
23 self-authenticated document, which is what we have.

24 THE COURT: Who's challenging it today?

25 MR. LAY: No, sir, I don't -- respectfully, I don't

1 think -- what he's saying is it's not authenticated. I
2 haven't heard him say that is an inauthentic document.

3 THE COURT: That's not his burden. Your burden, under
4 the rules of evidence is to authenticate the document.

5 MR. LAY: It's self-authenticating, though.

6 THE COURT: Well, yes and no, I don't know, but go
7 ahead. If it comes under, I guess, the business records, it
8 may self-authenticate. I don't know, I haven't even thought
9 about that.

10 MR. LAY: Well, if it's commercial paper based on a
11 signature, then it would be a self-authenticating document.
12 And my point is this, and this is what this case recognizes,
13 if you want to come in here and say that it is inauthentic,
14 then fine, I'm very much open. If he's truly saying that
15 that is not the installment contract which his client signed
16 and has a copy of and got another copy of it, they have to
17 deal with it.

18 THE COURT: I understand.

19 MR. LAY: He can -- I'm open to him supplementing the
20 record, putting an affidavit in saying that's not my
21 signature, and then we can deal with that, and then litigate
22 that and determine whether it should go to arbitration once
23 we figure out if he's truly saying --

24 THE COURT: Well, I don't think he's saying that. I
25 think --

1 MR. LAY: I don't either.

2 THE COURT: -- he's saying you haven't authenticated
3 today, and that's necessary, by affidavit or testimony.
4 Okay. I think that's what you're saying, correct?

5 MR. LAY: Well, when you take a look at it, you can't
6 tell what's on there, that's part of the problem, and nobody
7 has authenticated it as saying this is his contract.

8 THE COURT: I understand, but you're not saying the man
9 didn't sign the contract. You just know this particular
10 portion of the contract that's in the motion is out of the
11 agreement.

12 MR. LAY: Oh, no, no, sir. No, sir. What I'm saying
13 is, if you take a look at the first three pages of Exhibit
14 A, you can't tell whose contract that is because it's of
15 such poor quality. You can't -- you can't tell, and it's
16 their burden to put that before Your Honor.

17 THE COURT: I understand.

18 MR. LAY: And they haven't authenticated as even
19 saying, hey, this is it.

20 THE COURT: Well, his position is it's
21 self-authenticated. What's your position on that?

22 MR. LAY: Well, I've just been given this case. I
23 haven't even had the chance to get through the head notes,
24 much less the case. I don't think it's self-authenticating.
25 You know, under the Business of Records Act, they would have

1 to bring in somebody who is competent to testify.

2 THE COURT: Custodian of the records.

3 MR. LAY: Custodian of records, this is what we have,
4 this is, you know, this is the way we keep it. They haven't
5 done any of that.

6 THE COURT: But there's some documents that are
7 self-authenticating, such as the RMC -- true copy from the
8 RMC office.

9 MR. LAY: Right. A document that has been filed with
10 the Court, I would agree, it would be self-authenticating,
11 but just to simply say, hey, this is a document we whipped
12 out of our file and it supposedly has your client's
13 signature on it, that means it's okay, I don't think that's
14 self-authenticating, but I have not heard that argument
15 until just now.

16 THE COURT: Okay.

17 MR. LAY: Your Honor, one last thing. I mean, the
18 reason is, we weren't aware that he was challenging the
19 authenticity until yesterday we got the brief and, you know,
20 yes, that is a challenge in the authenticity on it, you
21 know, the document that his client signed. I'm glad to
22 supplement or he can supplement if he's challenging it. I
23 just want the right decision on it in the record form.
24 Here's part of it --

25 THE COURT: Let me say this. I'm not inclined to --

1 well, nevermind. Go ahead. What were you going to say?

2 MR. LAY: Well, part of the problem is, Your Honor,
3 this motion has been outstanding since September the 7th,
4 and I have not received any breach until this past Monday.
5 I did what I could to provide Your Honor with some
6 information. Frankly, I thought it was just going to be
7 them walking in with their motion and saying, here's this
8 little square from a document, my client's bound by it, and
9 then on Monday I got this brief with their arguments. And
10 so frankly, I haven't had a chance to --

11 THE COURT: Why don't we do this, okay, I'm going to
12 give you time to prepare an affidavit addressing the
13 authentication of the document, and the entire document, not
14 just a portion of it. He's entitled to look at the
15 document, and a copy you can read. He's entitled to look at
16 that and see if, in fact, that is the document. And you're
17 entitled to submit an affidavit to that, okay?

18 Now, having said that, I'm going to give you time,
19 for the plaintiff, to address any of the exceptions to the
20 arbitration case in this particular fact scenario, okay, in
21 South Carolina, which other than the privity issue, you
22 haven't addressed. I'm going to give both of you 10 days to
23 submit that to the Court, and I'll take it under advisement,
24 and once I receive that information, I'll make a decision.
25 (END OF TRANSCRIPT OF RECORD.)

CERTIFICATE OF REPORTER

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State of South Carolina)
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County of Charleston)

I, Maria Dempsey, Official Court Reporter for the Ninth
Judicial Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had and evidence
introduced in the trial of the captioned case, relative to
appeal, in the Circuit Court for Charleston County, South
Carolina, on the 16th day of November 2017.

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

May 3, 2018

Maria Dempsey, RPR
Official Court Reporter
Charleston County Circuit Court
Ninth Judicial Circuit
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Cleo Sanders,	)	CASE NO. 2017-CP-10-02148
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
Savannah Highway Automotive	)	
Company, et al.,	)	
	)	
DEFENDANTS.	)	
	)	

January 9, 2018

Charleston, South Carolina

B E F O R E:

The Honorable J. C. Nicholson

A P P E A R A N C E S:

C. Steven Moskos, Esquire
For the Plaintiff

Alice P. Adams, Esquire
For the Defense

Certified Transcript Provided For: Alice P. Adams, GWB

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E X

HEARING

-- 03

EXHIBITS - None Proffered

CERTIFICATION OF TRANSCRIPT

-- 11

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 MR. MOSKOS: Steve Moskoss for Mr. Sanders.

2 THE COURT: Who is here for the defendant?

3 MS. ADAMS: Your Honor, I am Alice Adams with Gallivan,
4 White & Boyd. I am here for Savannah Highway Auto Company,
5 Santander Consumer USA, and Isiah White.

6 THE COURT: Okay. It is a motion by the plaintiff; is
7 that correct?

8 MR. MOSKOS: Yes, sir.

9 THE COURT: All right. Motion to compel. What do you
10 want?

11 MR. MOSKOS: Well, they haven't answered any of my
12 discovery. I would like to have answers to my discovery.

13 THE COURT: Basic -- basic interrogatories?

14 MR. MOSKOS: Basic inter- -- well, it is not just
15 basic. I have filed it with the court. The discovery ---

16 THE COURT: So they haven't answered anything?

17 MR. MOSKOS: They haven't answered anything.

18 THE COURT: When did you serve them?

19 MR. MOSKOS: I sent discovery July 21 to Rick Hendrick
20 and July 22 to Santander. They both asked for extensions.
21 I granted Rick Hendrick an extension until September 8.

22 Frankly, on September 7th Rick Hendrick filed a motion
23 to compel arbitration which you heard in mid November, and
24 you have denied that motion.

25 Since that denial I have not received any additional --

1 I haven't received any discovery responses.

2 THE COURT: When can you answer the discovery?

3 MS. ADAMS: Well, Your Honor, I believe -- if I may be
4 heard.

5 THE COURT: Yes, ma'am.

6 MS. ADAMS: Part of the issue in this case is obviously
7 the arbitration issue for our defendants who believe that
8 the matter is subject to arbitration.

9 I understand Your Honor has orally ruled or asked for
10 proposed orders from the parties. That order has not been
11 issued yet.

12 But since that time there has also been a motion by
13 Defendant Santander for basically the same reasons that the
14 contract between the parties require arbitration.

15 The reason we have ---

16 THE COURT: That is what the argument was last time.

17 MS. ADAMS: It is -- that is what I understand, Your
18 Honor. And I ---

19 THE COURT: So they are making the same argument again
20 in another case or what?

21 MS. ADAMS: No, sir. I was not present at that
22 hearing. But from what I have researched and understand
23 that the -- Your Honor asked that ---

24 THE COURT: That is the case where they assigned the
25 contract to someone else and I ruled that when they assigned

1 it they lost everything, didn't have the right to proceed
2 under it.

3 MS. ADAMS: That is correct. I understand that is what
4 Your Honor's ruling will be. We have not seen that order.
5 But Santander which is the party who received the assignment
6 that is whose motion has been filed also to compel
7 arbitration and set aside -- I mean to compel arbitration
8 and to ---

9 THE COURT: Well, why does that motion prevent you from
10 answering discovery?

11 MS. ADAMS: And I want to get to that point, Your
12 Honor. The reason we have not answered discovery to this
13 point is that the plaintiff has continually taken the
14 position in this matter that if we engage in discovery we
15 have waived our right to arbitration. And we are --
16 honestly, I am here saying ---

17 THE COURT: Well, I don't think you have because you
18 have been participating in it. I will put in the order you
19 haven't waived discovery.

20 Get the answers -- get the discovery done in 30 days.
21 Put in the order that you are not waiving your argument
22 for -- any arguments that you may have for arbitration,
23 okay.

24 MS. ADAMS: And, yes, Your Honor; and I want to bring
25 to the court's attention we have tried to do that before

1 today. We have asked that we could produce documents and as
2 long as the plaintiff would not take that position.

3 And in fact we have produced a dealer agreement with
4 that agreement that he would not use -- that the plaintiff
5 would not use that.

6 THE COURT: Okay. That is fine. Just get me an order
7 and I will sign it.

8 MS. ADAMS: Thank you, Your Honor.

9 THE COURT: Now what about this other motion. Y'all
10 filed the same motion again?

11 MS. ADAMS: Well, it is on behalf of a different
12 defendant from whom I understand Your Honor took the
13 position had received the assignment. And so that defendant
14 is entitled to the matter -- it is our position ---

15 THE COURT: So it is a different defendant?

16 MS. ADAMS: It is a different defendant so ---

17 THE COURT: Which defendant is it this time?

18 MS. ADAMS: Defendant Santander which is the defendants
19 who received the assignment according to Your Honor's
20 ruling.

21 And so if that motion is granted then the entire matter
22 would be stayed, which is part of the reason I am here
23 before you is that it will waste a lot of time and energy
24 and be judicially inefficient when the matter may be stayed
25 as a result of Santander's motion.

1 THE COURT: All right, you sued the assignee also;
2 right?

3 MR. MOSKOS: Yes, sir.

4 THE COURT: Okay.

5 MR. MOSKOS: Now I have also ---

6 THE COURT: And they have raised the same motion?

7 MR. MOSKOS: Yes, sir.

8 THE COURT: Okay.

9 MR. MOSKOS: Now what I did is I before -- what was
10 it -- back in December I tried to get in touch with both
11 defendants, Santander and Rick Hendrick, to get consent to
12 dismiss Santander under Rule 41. I have not been able to
13 get a hold of either one on the phone.

14 THE COURT: You are going to dismiss who now?

15 MR. MOSKOS: Santander, the company that has ---

16 THE COURT: Well, you can -- you can just do -- can't
17 you do a voluntary dismissal ---

18 MR. MOSKOS: Well, ---

19 THE COURT: --- and submit it to the court?

20 MR. MOSKOS: I would love to do that, but the way I
21 understand the rules is if the defendants have answered I
22 have to get their consent. And they won't consent.

23 And I don't understand ---

24 THE COURT: Well, file a motion to take a non-suit
25 then.

1 MR. MOSKOS: Well, I filed a motion to dismiss
2 Santander. And it is now in the system somewhere.

3 THE COURT: All right, who represents them?

4 MS. ADAMS: Your Honor, we represent Defendant
5 Santander and ---

6 THE COURT: All right, he wants -- he wants to take a
7 non-suit against your client. Why are you opposed to that?

8 MS. ADAMS: We are opposed to that because we have the
9 belief that this matter is subject to arbitration. All the
10 defendants believe that it is subject to arbitration.

11 THE COURT: Well, that doesn't prevent him from taking
12 a non-suit.

13 MS. ADAMS: Well, Your Honor ---

14 THE COURT: He is the one that sued you. He can back
15 off of the suit anytime he chooses.

16 MS. ADAMS: It -- it feels like procedural game-ship to
17 avoid arbitration.

18 THE COURT: Well, I don't know if it is or not, but he
19 has a right to take a non-suit in his lawsuit. Does he not?

20 MS. ADAMS: Your Honor, I cannot consent to Defendant
21 Santander being dismissed unless they are dismissed with
22 prejudice.

23 THE COURT: All right, have you got an oral motion for
24 the court?

25 MR. MOSKOS: Your Honor, I would ask to dismiss

1 Santander from this lawsuit without prejudice.

2 THE COURT: All right. Granted.

3 Get the discovery done.

4 MS. ADAMS: And, Your Honor, can I have some
5 clarification that we will be able to raise any other valid
6 objections to some of the excessive language ---

7 THE COURT: I just said I will give you the right to do
8 that. Okay.

9 MS. ADAMS: Thank you, Your Honor. I appreciate it.

10 THE COURT: All right. Thank you very much.

11 MR. MOSKOS: Your Honor, I have an order for the court
12 if I can hand it up dealing with the dismissal.

13 THE COURT: Yes, sir.

14 (WHEREUPON, document presented to the court.)

15 MR. MOSKOS: Thank you, sir.

16 (WHEREUPON, counselors confer.)

17 MS. ADAMS: Your Honor, if ---

18 THE COURT: The order -- the order on the arbitration
19 has been filed downstairs. You can pull it up on Court Plus
20 to get a copy of it, okay.

21 MS. ADAMS: On Rick Hendrick's motion?

22 THE COURT: Right.

23 MS. ADAMS: Thank you, Your Honor. And can I just
24 preserve for the record today that we did not have notice
25 that this matter was going to be ---

1 THE COURT: He made an oral motion. I granted it,
2 okay.

3 MS. ADAMS: Thank you, Your Honor. I just wanted ---

4 THE COURT: And I will dismiss the written motion
5 because it has been heard orally.

6 MS. ADAMS: All right. I just wanted to preserve for
7 the record that we did not receive notice of it.

8 THE COURT: That is fine.

9 MS. ADAMS: Thank you.

10 THE COURT: Thank you very much.

11 MR. MOSKOS: And does that resolve -- that should
12 resolve then Santander's motion to compel arbitration since
13 they are no longer a party?

14 THE COURT: Right.

15 MR. MOSKOS: Yes, sir. Thank you.

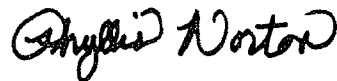
16 (WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on January 9, 2018.

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

A handwritten signature in black ink that reads "Phyllis Norton". The signature is written in a cursive, flowing style.

PHYLLIS NORTON, CVR

Date: February 12, 2018

Certified Transcript Provided For: Alice P. Adams, GWB
Certification Reference #2018-0212

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CLEO SANDERS

Plaintiff,

SAVANNAH HIGHWAY AUTOMOTIVE
COMPANY, A GENERAL PARTNERSHIP D/B/A
RICK HENDRICK DODGE CHRYSLER JEEP RAM,
SANTANDER CONSUMER USA HOLDINGS, INC.,
ISIAH S. WHITE, DANNY ANDERSON, and
PATRICK BACHRODT, JR.

Defendants

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

17- CP-10 -

2148

FILED
2017 MAY -1 PM 4:49
JULIE J. ANDERSON
CLERK OF COURT
BY

(Please Print)

Submitted By: C. Steven Moskos, P.A.

Address: 4000 Faber Place Drive, Suite 300
North Charleston, SC 29405

SC Bar #: 7938

Telephone #: (843) 763-5297

Fax #:

Other:

E-mail: csmoskos@earthlink.net

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

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)
Lemon Law | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | | | |
| ☐ Pharmaceuticals (630)
☒ Unfair Trade Practices (640)
☐ Out-of State Depositions (650) | | | |

Submitting Party Signature:



Date:

4/26/17

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CLEO SANDERS,

Plaintiff

vs.

SAVANNAH HIGHWAY AUTOMOTIVE
COMPANY, A GENERAL
PARTNERSHIP D/B/A RICK HENDRICK
DODGE CHRYSLER JEEP RAM,
SANTANDER CONSUMER USA
HOLDINGS, INC., ISIAH S. WHITE,
DANNY ANDERSON, AND PATRICK
BACHRODT, JR.

Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 17-CP-10-2148

SUMMONS

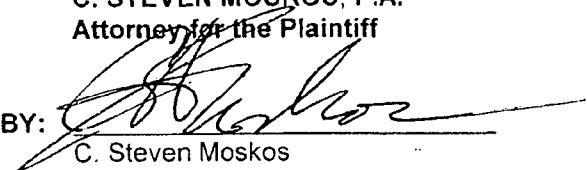
FILED
2017 MAY -1 PM 4:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein; a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the attorney for the Plaintiff, C. Steven Moskos, at his office located at 4000 Faber Place Drive, Suite 300, North Charleston, South Carolina 29405, within thirty (30) days of the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

C. STEVEN MOSKOS, P.A.
Attorney for the Plaintiff

BY: 

C. Steven Moskos
4000 Faber Place Drive, Suite 300
North Charleston, SC 29405
Telephone: (843) 763-5297

Charleston, South Carolina

4/26/17, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
CLEO SANDERS,	)	CASE NO. 17-CP-10- <u>2148</u>
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	(JURY TRIAL)
	)	
SAVANNAH HIGHWAY	)	
AUTOMOTIVE COMPANY, A	)	
GENERAL PARTNERSHIP D/B/A	)	
RICK HENDRICK DODGE CHRYSLER	)	
JEEP RAM, SANTANDER	)	
CONSUMER USA HOLDINGS, INC.,	)	
ISIAH S. WHITE, DANNY ANDERSON,	)	
and PATRICK BACHRODT, JR.	)	
	)	
Defendants	)	

FILED
2017 MAY -1 PM 4:19
JULIE J. ANDERSON
CLERK OF COURT
BY _____

Cleo Sanders, complaining of Defendants, would allege as follows:

1. That Cleo Sanders is a resident of Georgia.
2. That Defendant Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick Dodge Chrysler Jeep Ram, hereinafter Rick Hendrick, is a partnership organized and licensed under the laws of the State of South Carolina with its principal place of business in the County of Charleston, State of South Carolina.
3. That Defendant Santander Consumer USA Holdings, Inc., hereinafter Santander, is a corporation organized and licensed under the laws of a State other than South Carolina but is doing business in the State of South Carolina.
4. That Isaiah S. White is, upon information and belief, a resident of Charleston County, South Carolina, and upon further information and belief, a salesman of

Hendrick Chrysler, action at all relevant times as a dealer, agent, officer, manger, and representative of Rick Hendrick.

5. That Danny Anderson (Anderson) is, upon information and belief, a resident of Charleston County, South Carolina, and upon further information and belief, was the General Sales Managers of Hendrick Chrysler, acting at all relevant times as a dealer, agent, officer, manger, and representative of Rick Hendrick. Upon information and belief, at the time of these events, Mr. Anderson had been in the car business for approximately twenty years.
6. That upon information and belief, Patrick Bachrodt, Jr. (Bachrodt) is currently a resident of Illinois, and upon further information and belief, was Anderson's superior at Hendrick Chrysler, acting at all relevant times as a principal, owner, dealer, agent, officer, manger, and representative of Rick Hendrick.
7. That upon information and belief, Defendant Anderson first joined Rick Hendrick Chrysler as a sales manager in 2000. Based upon his performance, Anderson was promoted as Rick Hendrick Chrysler's general sales manager in 2011.
8. That upon information and belief, while employed as the general sales manager Rick Hendrick Chrysler, Anderson was one of only twenty-one (21) employees from Hendrick Corporation, LLC selected to participate in the first general managers' training program sponsored by the National Automobile Dealers Association.
9. That upon information and belief, based in part on Anderson's high performance as the company's general sales manager, Rick Hendrick Chrysler was recognized with the Walter P Chrysler award for two (2) years in a row, an honor bestowed upon the top two (2) percent of Chrysler dealerships in the country.

10. That upon information and belief, Chrysler Capital, which was Rick Hendrick Chrysler's financing arm, approved a new customer finance incentive whereby customers would receive financing approval for any new vehicle with either a \$2000 cash down payment for a trade-in vehicle of equivalent value.
11. That upon information and belief, in addition to this customer finance incentive, Chrysler Capital offered dealers such as Rick Hendrick Chrysler incentive money for hitting certain goals of sales in new cars.
12. That upon information and belief, to ensure that Rick Hendrick Chrysler would received this incentive money, the company, by and through its principal/owner/agent, Patrick Bachrodt, Jr., devised a scheme whereby the company would acquire junkyard titles and use them to report sham trade-in vehicles to Chrysler Capital so that buyers who could not otherwise receive financing were sold new cars financed by Chrysler Capital.
13. That upon information and belief, as part of this scheme, Rick Hendrick Chrysler, by and through its principal/owner/agent, Patrick Bachrodt, Jr., actively instructed and required Defendant Anderson to obtain these junkyard titles in order to facilitate the sham vehicle sales transactions. Bachrodt also used Anderson's computer login information to facilitate the sham vehicle sales transactions himself.
14. That upon information and belief, initially, Anderson refused Bachrodt's directives, but he relented when he was told by Bachrodt that this was how he was to conduct business if he was to work at Rick Hendrick Chrysler.
15. That upon information and belief, as a result of the fraudulent scheme facilitated by Bachrodt, total net sales at Rick Hendrick Chrysler tripled from \$1.2 million in 2010

to an estimated \$5 million in 2013.

16. Upon information and belief, management and executives high up in the Hendrick Corporation, LLC chain were fully aware of, and approved, the fraudulent scheme being perpetrated by its principal/owner/agent, Patrick Bachrodt, Jr.
17. That upon information and belief, the Defendants used this scheme, or portions thereof, regarding sales of cars financed by other financial institutions.
18. That on August 9, 2012, Cleo Sanders went to the Defendant's place of business because he had seen a 2012 Dodge Charger RT on sale for \$29,999 on the internet.
19. That Mr. Sanders was looking to trade in his 2007 Chrysler 300 because it had mechanical issues.
20. That upon arrival at the dealership, Mr. Sanders asked to speak with the internet sales manager.
21. That Mr. Sanders met with Isaiah White, who was acting at all times within his scope of employment as a dealer, employee, agent, officer, and/or authorized representative of Defendant Rick Hendrick.
22. That Mr. Sanders also met with Danny Anderson, who was acting at all times within his scope of employment as a dealer, employee, agent, officer, and/or authorized representative of Rick Hendrick.
23. That after looking at the Dodge Chargers on the lot, Mr. White took Mr. Sanders into the dealership where Mr. Sanders recognized Danny Anderson.
24. That Mr. Sanders does not have any experience working at a car dealership or in the financing department of a car dealership or financing institution and therefore,

Mr. Sanders does not know what is and is not needed by a dealership to assign or a financing institution interested in buying a RISC.

25. That, at Defendants' request, Mr. Sanders provided personal information to Defendants, such as Social Security Number, Date of Birth, Address, Phone Number, Drivers License Number and Income and Employment Details for a credit check.
26. That at the time of the conversation, Mr. Sanders told Mr. Anderson that he was on short-term disability and was receiving \$1,584.00 every month for the next four months.
27. That Mr. Anderson used Mr. Sanders' paycheck stub that indicated he made \$840.00 per week before taxes for the credit application.
28. That the used car manager drove the 2007 Chrysler 300 then offered Mr. Sanders a trade-in amount that was not enough to pay off the vehicle.
29. That after Mr. Sanders showed the used car manager an offer from CarMax, the offer for the 2007 Chrysler 300 was increased to \$19,200.
30. That Mr. Anderson brought a 2012 Dodge Charger SE for Mr. Sanders to test drive.
31. That Mr. Sanders insisted he did not want the basic model.
32. That Mr. Anderson told Mr. Sanders the 2012 Dodge Charger SE was the only vehicle he could buy unless he wanted a \$675.00 monthly car payment.
33. That because he was having issues with the 2007 Chrysler 300, Mr. Sanders agreed to purchase the 2012 Dodge Charger SE.
34. That Defendant Rick Hendrick's agents and employees knew Mr. Sanders was receiving disability when they received his personal information.

35. That Defendant used Mr. Sanders' personal information to request a credit report, containing additional personal information.
36. That Defendant, by and through its agents and employees, informed Mr. Sanders that he was approved for a loan to purchase the 2012 Dodge Charger SE, VIN: 2C3CDXBGXCH301688.
37. That Mr. Sanders asked why he could not purchase the vehicle for \$29,999, the price he saw on the internet.
38. That Mr. White informed him the vehicle was not offered for that price and that there must have been a mistake.
39. That Defendant prepared a retail installment sales contract (RISC) with Mr. Sanders as the Debtor/Buyer of the subject vehicle and Rick Hendrick Dodge Chry Jeep Ram as the Creditor/Seller.
40. That after Defendant's agent and employee told Mr. Sanders some of the terms of the retail installment contract, Defendant's finance manager had Mr. Sanders sign the RISC.
41. That Mr. Sanders traded in his 2007 Chrysler 300 as part of the payment towards the 2012 Dodge Charger SE, VIN: 2C3CDXBGXCH301688.
42. That Defendant's agent and employee presented numerous documents to Mr. Sanders for his signature.
43. That upon information and belief, Defendant Rick Hendrick contacted Defendant Santander in order to assign the RISC to Defendant Santander.
44. That upon information and belief, Defendants misrepresented Mr. Sanders' income to Defendant Santander.

45. That based on the false information provided by Defendants, Defendant Santander agreed to purchase the RISC from Defendant Rick Hendrick.
46. That upon information and belief, Defendant Rick Hendrick sold and assigned the RISC with Mr. Sanders to Defendant Santander.
47. That as a result of Defendant falsifying the loan documents, Mr. Sanders immediately had a monthly payment that was approximately 37% of his pre-tax monthly income.
48. That Mr. Sanders has not been able to afford the subject vehicle.
49. That Mr. Sanders has had to request deferments for payments on the loan.
50. That Mr. Sanders had trouble paying the monthly car payment as a result of the falsified loan submitted to Defendant Santander.
51. That Mr. Sanders had trouble affording such payment terms imposed by the RISC, all of which was known or should have been known to Defendant Rick Hendrick at the time the RISC was signed.
52. That on or about January 30, 2017, Defendant Santander repossessed the subject vehicle from Mr. Sanders as he could not make the monthly note payments.
53. That as a result of buying the RISC, Defendant Santander is subject to all claims and defenses Mr. Sanders can bring against Defendant Hendrick.
54. That as a result of Defendants' actions, Mr. Sanders has had to hire an attorney to represent him in this action.

FOR A FIRST CAUSE OF ACTION
(Conversion)

55. That Plaintiff repeats the preceding paragraphs as if repeated herein verbatim.

56. That Defendant Rick Hendrick and Defendant Rick Hendrick's agents and employees assumed and exercised the unauthorized right of ownership over Mr. Sanders' goods and personal chattels to the alteration of their condition and to the exclusion of Mr. Sanders' rights.
57. That as a result of Defendants' conversion, Mr. Sanders has lost the use of his 2007 Chrysler 300, he has lost the value of his 2007 Chrysler 300, the 2012 Charger has been repossessed, Santander has placed negative information on his credit report, and he has been inconvenienced, embarrassed, and humiliated.
58. That as a result of Defendants' conversion, Mr. Sanders demands actual damages, together with punitive damages, together with the costs and disbursements of this action.

FOR A SECOND CAUSE OF ACTION
(UTPA VIOLATION)

59. That Mr. Sanders repeats the preceding paragraphs as if repeated herein verbatim.
60. That the aforementioned acts and practices of Defendants were unfair and deceptive.
61. That the aforementioned acts and practices of Defendants are against the public interest and that these acts and practices are capable of repetition.
62. That Defendant has repeated these acts and practices.
63. That Defendants' actions were willful and wanton in that Defendants knew or should have known that their conduct was unfair and deceptive and, therefore, a violation of this State's statutes concerning unfair and deceptive acts and practices.
64. That as a result of Defendants' UTPA violation, Mr. Sanders has lost the use of his

2007 Chrysler 300, he has lost the value of his 2007 Chrysler 300, the 2012 Charger has been repossessed, Santander has placed negative information on his credit report, and he has been inconvenienced, embarrassed, and humiliated.

65. That as a result of Defendants' unfair and deceptive acts or practices in violation of this State's statutes, Mr. Sanders prays for his actual damages, together with punitive damages not to exceed three times his actual damages, together with attorney's fees, together with the costs and disbursements of this action.

FOR AN THIRD CAUSE OF ACTION
(Regulation of Motor Vehicle Dealers Act)

66. That Mr. Sanders repeats the preceding paragraphs as if repeated herein verbatim.
67. That Mr. Sanders is informed and believes that the malicious and deceptive acts and practices of Defendants constitutes a violation of Section 56-15-10 et. seq. of the South Carolina Code of Laws 1976.

68. That Defendants negligently, willfully, intentionally, recklessly, and maliciously violated the Act as alleged herein and, more particularly:

- A. knowingly overstating Mr. Sanders' income in order to sell a car to an otherwise unqualified buyer;
- B. misrepresenting and/or failing to disclose material facts to Mr. Sanders, such as monthly payment amount he would be required to pay;
- C. failing to maintain accurate and complete records which truthfully reported the circumstances of the sale transactions with Mr. Sanders;
- D. making promises and representations that were not made honestly and in good faith; and that were arbitrary, in bad faith, and unconscionable; and
- E. in such other and further particulars as may be demonstrated at trial.

69. That as a result of Defendants' deceptive acts and practices, Mr. Sanders has lost

the use of his 2007 Chrysler 300, he has lost the value of his 2007 Chrysler 300, the 2012 Charger has been repossessed, Santander has placed negative information on his credit report, and he has been inconvenienced, embarrassed, and humiliated.

70. That as a result of Defendants' violation of this State's Statutes dealing with the regulation of motor vehicle dealers, Mr. Sanders demands two times his actual damages, together with punitive damages not to exceed three times the actual damages, together with attorney fees, together with the costs and disbursements of this action.

FOR A FOURTH CAUSE OF ACTION
(Fraud)

71. That Mr. Sanders repeats all forgoing paragraphs as if repeated herein verbatim.
72. That Defendant Rick Hendrick's agents and employees made false representations of material facts regarding the subject vehicles discounts, financing, and purchase information.
73. That Defendant Rick Hendrick's agents and employees knew or should have known that the representations which were made to Mr. Sanders were false.
74. That Defendant Rick Hendrick's agents and employees intended for Mr. Sanders to rely on their false statements.
75. That Defendant Rick Hendrick's agents and employees hide the truth from Mr. Sanders as to how what information Hendrick would provide to Defendant Santander.
76. That Mr. Sanders was unaware of the falsity of the representations at the time the

representations were made, and Mr. Sanders was unable to discover the falsity of the representations made by Defendant's agents and employees.

77. That Mr. Sanders had a right to rely and did rely upon the representations made by Defendant Rick Hendrick's agents and employees.
78. That Defendant Rick Hendrick and its agents and employees had an obligation to completely and accurately inform Mr. Sanders about the assignment of the RISC and other matters regarding the financing of the subject vehicle.
79. That as a result of Defendants' fraud, Mr. Sanders has lost the use of his 2007 Chrysler 300, he has lost the value of his 2007 Chrysler 300, the 2012 Charger has been repossessed, Santander has placed negative information on his credit report, and he has been inconvenienced, embarrassed, and humiliated.
80. That as a result of Defendants' fraud, Mr. Sanders demands actual damages, together with punitive damages, together with prejudgment interest, together with the costs and disbursements of this action.

FOR A FIFTH CAUSE OF ACTION
(Negligent Misrepresentation)

81. That Mr. Sanders repeats the preceding paragraphs as if repeated herein verbatim.
82. That Defendant Rick Hendrick and its agents and employees made false representations regarding Mr. Sanders' ability to afford such payments.
83. That Defendant Rick Hendrick and its agents and employees had a pecuniary interest in making the false representations to Mr. Sanders in the form of substantial financial benefits and incentives resulting from the sale of this car.
84. That Defendant Rick Hendrick and its agents and employees owed a duty of care

to Mr. Sanders to accurately communicate information related to financing terms and monthly payments.

85. That Defendant Rick Hendrick and its agents and employees breached the duty of care owed to Mr. Sanders by failing to exercise due care in failing to properly inform Mr. Sanders and Santander about the financing terms and monthly payments.
86. That Mr. Sanders justifiably relied upon the false representations made by Defendant Rick Hendrick and its agents and employees.
87. That Mr. Sanders suffered a pecuniary loss as the proximate result of his reliance upon Defendant Rick Hendrick's and its agents' and employees' representations.
88. That as a result of Defendants' negligent misrepresentations, Mr. Sanders has lost the use of his 2007 Chrysler 300, he has lost the value of his 2007 Chrysler 300, the 2012 Charger has been repossessed, Santander has placed negative information on his credit report, and he has been inconvenienced, embarrassed, and humiliated.
89. That as a result of Defendants' negligent misrepresentations, Mr. Sanders demands that Defendants reimburse him for his actual damages, together with punitive damages, together with prejudgment interest, together with the costs and disbursements of this action.

FOR A SIXTH CAUSE OF ACTION
(NEGLIGENCE)

90. That Mr. Sanders repeats all forgoing paragraphs as if repeated herein verbatim.
91. That Defendants owed a duty to Mr. Sanders in one or more of the following particulars:

- A. To request complete and accurate consumer financial information;
 - B. To submit complete and accurate consumer financial information to assignees;
 - C. To completely and truthfully inform Mr. Sanders of his credit and financing options;
 - D. To refrain from misrepresenting Mr. Sanders' income to potential assignees of the retail installment sales contract;
 - E. To completely and accurately execute retail installment sales contracts;
 - F. To inform Mr. Sanders of the true and complete costs involved in purchasing a vehicle;
 - G. To refrain from providing customers with false or misleading information.
 - H. To do those things which a reasonable, prudent person would do under the circumstances then and there prevailing.
92. That Defendants failed to perform one or more of the aforementioned duties.
93. That as a result of Defendants' negligence, carelessness, recklessness, wilfulness, and wantonness, Mr. Sanders has lost the use of his 2007 Chrysler 300, he has lost the value of his 2007 Chrysler 300, the 2012 Charger has been repossessed, Santander has placed negative information on his credit report, and he has been inconvenienced, embarrassed, and humiliated.
94. That as a result of Defendants' negligence, carelessness, recklessness, wilfulness, and wantonness, Mr. Sanders demands that Defendants reimburse him for his actual damages, together with punitive damages, together with prejudgment interest, together with the costs and disbursements of this action.

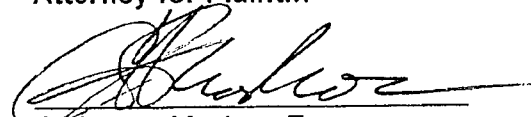
WHEREFORE, Mr. Sanders prays for judgment against Defendants as follows:

- A. In the First Cause of Action for actual damages, together with punitive damages, together with statutory damages, together with attorney's fees,

together with the costs and disbursements of this action.

- B. In the Second Cause of Action for three (3) times his actual damages, together with attorney's fees, together with the costs and disbursements of this action.
- C. In the Third Cause of Action, for two (2) times his actual damages, together with punitive damages not to exceed three (3) times his actual damages, together with attorney's fees, together with the costs and disbursements of this action.
- D. In the Fourth Cause of Action for actual damages, together with punitive damages, together with prejudgment interest, together with the costs and disbursements of this action.
- E. In the Fifth Cause of Action for actual damages, together with punitive damages, together with prejudgment interest, together with the costs and disbursements of this action.
- F. In the Sixth Cause of Action for actual damages, together with punitive damages, together with prejudgment interest, together with the costs and disbursements of this action.
- G. For such other and further relief as this Court deems just and proper.

C. STEVEN MOSKOS, P.A.
Attorney for Plaintiff

BY: 

C. Steven Moskos, Esq.
S.C. Bar No.: 7938
4000 Faber Place Drive, Ste. 300
North Charleston, SC 29405
843-763-5297
Email: csmoskos@earthlink.net

Charleston, South Carolina

4/26, 2017

C. STEVEN MOSKOS, P.A.

Attorney and Counselor at Law

C. Steven Moskos
Board Certified Civil Trial Attorney
Board Certified Civil Pretrial Advocate
By the National Board of Trial Advocacy
Supreme Court of South Carolina Certified Mediator

M

4000 Faber Place Drive, Suite 300
North Charleston, SC 29405
Telephone: (843) 763-5297
www.moskoslawfirm.com
csmoskos@earthlink.net

April 24, 2017

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

Re: Cleo Sanders vs. Savannah Highway Automotive Company, et. al.
Case No.: 17-CP-10-

Dear Ms. Armstrong:

Please find enclosed for filing the Summons and Complaint in regards to the above referenced matter. Also enclosed is the Civil Cover Sheet and my office check in the amount of \$150.00 for the filing fee.

If you have any questions, please do not hesitate to contact me.

Sincerely,



C. STEVEN MOSKOS

CSM/drc
Enclosures

cc.: Cleo Sanders

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Cleo Sanders,

Plaintiff,

vs.

Savannah Highway Automotive Co., a
General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander
Consumer USA Holdings, Inc., Isiah S.
White., Danny Anderson, and Patrick
Bachrodt, Jr.

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A NUMBER: 2017-CP-10-2148

**DEFENDANTS SAVANNAH HIGHWAY
AUTOMOTIVE CO., D/B/A RICK
HENDRICK DODGE CHRYSLER JEEP
RAM AND DEFENDANT ISIAH S.
WHITE'S ANSWER TO PLAINTIFF'S
COMPLAINT**

(Jury Trial Demanded)

FILED
2017 JUL 12 AM 11:51
JULIE J. ARMSTRONG
CLERK OF COURT

Defendants Savannah Highway Automotive Co., d/b/a Rick Hendrick Dodge Chrysler Jeep Ram and Defendant Isiah S. White (collectively "Defendants"), by and through their undersigned counsel, hereby answer the Complaint of Plaintiff Cleo Sanders ("Plaintiff") herein as follows:

FOR A FIRST DEFENSE
(12(b)(6))

1. Defendants would show that Plaintiff has failed to allege facts sufficient to constitute a cause of action against one or both of them, for which reason Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE
(General Denial)

2. Each and every paragraph of Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained is denied.

3. Defendants admit the allegations of Paragraph 1 upon information and belief.

4. Defendants admit the allegations of Paragraph 2.

5. Defendants are currently without knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 3, and therefore deny the same and demand strict proof thereof.

6. Defendants admit the allegations of Paragraph 4.

7. As the allegations of Paragraph 5, Defendants admit only that Anderson was employed at Rick Hendrick between 2010 and 2013. Defendants deny the remaining allegations of Paragraph 5 and demand strict proof thereof.

8. As to the allegations of Paragraph 6, Defendants admit only that Bachrodt, Jr. was employed at Rick Hendrick between 2010 and 2013. Defendants deny the remaining allegations of Paragraph 6 and demand strict proof thereof.

9. As to the allegations of Paragraph 7, Defendants admit only that Anderson was employed at Rick Hendrick in 2011. Defendants deny the remaining portions of Paragraph 7 and demand strict proof thereof.

10. Defendants deny the allegations of Paragraphs 8 and 9.

11. Defendants deny the allegations of Paragraphs 10 through 17.

12. As to the allegations of Paragraph 18, Defendants admit only that Plaintiff came to the dealership on August 9, 2012. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 18, and therefore deny the same and demand strict proof thereof.

13. Defendants deny the allegations of Paragraph 19 as stated.

14. Defendants without knowledge or information sufficient to form a belief as to the allegations of Paragraph 20, and therefore deny the same and demand strict proof thereof.

15. Upon information and belief, Defendants admit the allegations of Paragraph 21.

16. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraph 22, and therefore deny the same and demand strict proof thereof.

17. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraph 23, and therefore deny the same and demand strict proof thereof.

18. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraph 24, and therefore deny the same and demand strict proof thereof.

19. Upon information and belief, Defendants admit the allegations of Paragraph 25.

20. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraph 26, and therefore deny the same and demand strict proof thereof.

21. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraphs 27 and 28, and therefore deny the same and demand strict proof thereof.

22. As to the allegations of Paragraph 29, Defendants admit only that the trade payoff amount for Plaintiff's 2007 Chrysler 300 was \$19,200. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 29, and therefore deny the same and demand strict proof thereof.

23. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraphs 30 through 32 and therefore deny the same and demand strict proof thereof.

24. As to the allegations of Paragraph 33, Defendants admit only that Plaintiff purchased a 2012 Dodge Charger SE. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraph 33 and therefore deny the same and demand strict proof thereof.

25. As to the allegations of Paragraph 34, Defendants admit only that Defendants were in possession of Plaintiff's Earnings Statement from SKF USA, Inc. Defendants deny the remaining portions of Paragraph 34 and demand strict proof thereof.

26. As to the allegations of Paragraph 35, Defendants admit the use of Plaintiff's personal information was necessary to request a credit report and that Plaintiff consented to the use of his personal information to request a credit report.

27. Defendants admit the allegations of Paragraph 36.

28. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraphs 37 and 38 and therefore deny the same and demand strict proof thereof.

29. Defendants admit the allegations of Paragraph 39.

30. Paragraph 40 is denied as stated. Further responding, Defendants state Plaintiff was informed of all of the terms of the retail installment contract either orally or upon visual inspection and review. Further responding, Defendants admit that Plaintiff signed the retail installment sales contract.

31. Defendants admit the allegations of Paragraph 41.

32. Defendants admit the allegations of Paragraph 42.

33. Paragraphs 43 through 45 are denied.

34. Defendants admit the allegations of Paragraph 46.

35. Paragraph 47 is denied and strict proof demanded thereof.

36. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraphs 48 and 49 therefore deny the same and demand strict proof thereof.

37. Paragraphs 50 and 51 are denied.

38. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraph 52 and therefore deny the same and demand strict proof thereof.

39. Paragraph 53 is a legal conclusion which requires no response from Defendants.

40. Paragraph 54 is denied.

ANSWERING THE FIRST CAUSE OF ACTION
(Conversion)

41. Paragraph 55 is a statement of incorporation that requires no response from Defendants. To the extent a response is required, Defendants incorporate herein all preceding Paragraphs as if set forth below verbatim.

42. Paragraphs 56 through 58 are denied.

ANSWERING THE SECOND CAUSE OF ACTION
(UTPA Violation)

43. Paragraph 59 is a statement of incorporation that requires no response from Defendants. To the extent a response is required, Defendants incorporate herein all preceding Paragraphs as if set forth below verbatim.

44. Paragraphs 60 through 65 are denied.

ANSWERING THE THIRD CAUSE OF ACTION
(Regulation of Motor Vehicle Dealers Act)

45. Paragraph 66 is a statement of incorporation that requires no response from Defendants. To the extent a response is required, Defendants incorporate herein all preceding Paragraphs as if set forth below verbatim.

46. Paragraphs 67 through 70, including all subparts, are denied.

ANSWERING THE FOURTH CAUSE OF ACTION
(Fraud)

47. Paragraph 71 is a statement of incorporation that requires no response from Defendants. To the extent a response is required, Defendants incorporate herein all preceding Paragraphs as if set forth below verbatim.

48. Paragraphs 72 through 80 are denied.

ANSWERING THE FIFTH CAUSE OF ACTION
(Negligent Misrepresentation)

49. Paragraph 81 is a statement of incorporation that requires no response from Defendants. To the extent a response is required, Defendants incorporate herein all preceding Paragraphs as if set forth below verbatim.

50. Paragraphs 82 through 89 are denied.

ANSWERING THE SIXTH CAUSE OF ACTION
(Negligence)

51. Paragraph 90 is a statement of incorporation that requires no response from Defendants. To the extent a response is required, Defendants incorporate herein all preceding Paragraphs as if set forth below verbatim.

52. Paragraphs 91 through 94, including all subparts, are denied.

53. The Complaint's "WHEREFORE" Paragraph, including all subparts, is denied.

FOR A THIRD DEFENSE
(Comparative Negligence/Gross Negligence/Recklessness)

54. Plaintiff's claims against Defendants are barred by the negligence, gross negligence, and recklessness of Plaintiff, which is the sole proximate cause of the injuries and damages allegedly sustained by Plaintiff. If it is determined that Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of all Defendants, which is specifically denied, then Plaintiff

should be totally barred from recovery, and if it is determined that Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of all Defendants, then the amount of recovery available to Plaintiff should be reduced by the percentage of Plaintiff's own negligence, carelessness, recklessness and gross negligence.

FOR A FOURTH DEFENSE
(Negligence of Others)

55. Plaintiff's claims are barred by the intervening and superseding negligence of others, which prevents any recovery by Plaintiffs against Defendants.

FOR A FIFTH DEFENSE
(Assumption of the Risk)

56. Plaintiff's claims are barred by the doctrine of assumption of risk.

FOR A SIXTH DEFENSE
(Statute of Limitations)

57. Plaintiff's claims are barred by the applicable statute of limitations.

FOR A SEVENTH DEFENSE
(Specificity)

58. Plaintiff has failed to plead his fraud claim with the required specificity, and therefore, such claims are barred.

FOR AN EIGHTH DEFENSE
(Mandatory Arbitration)

59. Plaintiff's claims are subject to mandatory arbitration.

FOR A NINTH DEFENSE
(Laches, Waiver and Estoppel)

60. Plaintiff's claims are barred by the doctrine of laches, waiver and / or estoppel.

FOR A TENTH DEFENSE
(Unclean Hands)

61. Some or all of Plaintiff's claims are barred under the doctrine of unclean hands.

FOR AN ELEVENTH DEFENSE
(Consent/Authorization/Privilege)

62. Plaintiff's claims are barred by his giving of consent, authorization, and / or privilege.

FOR A TWELFTH DEFENSE
(Failure to Mitigate Damages)

63. Plaintiff's claims are barred, in whole or in part, by her failure to mitigate damages as required by law.

FOR A THIRTEENTH DEFENSE
(Set Off/Credit)

64. Defendants would show that they are entitled to a set off and/or credit, in whole or in part, for some or all of Plaintiff's alleged damages.

FOR A FOURTEENTH DEFENSE
(Unconstitutionality of Punitive Damages)

65. Defendants would show that Plaintiff's claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina constitution in one or more of the following particulars:

- a. That the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.
- b. That, even if a standard governing the award of punitive damages does exist, this standard is void for vagueness.
- c. That the amount of punitive damages awarded is based upon the wealth of Defendants in violation of its right to equal protection of the laws.

FOR A FIFTEENTH DEFENSE
(Reservation)

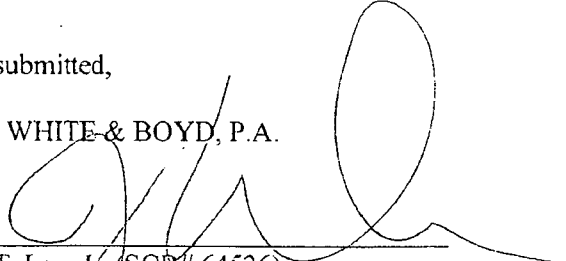
66. Defendants hereby give notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserve the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

BY:



John T. Lay, Jr. (SCB# 64526)
Jessica A. Waller (SCB# 100256)
1201 Main Street, Suite 1200 (29201)
Post Office Box 7368
Columbia, South Carolina 29202
TEL: (803) 779-1833
FAX: (803) 779-1767
jlay@gwblawfirm.com
jwaller@gwblawfirm.com

**COUNSEL FOR DEFENDANTS SAVANNAH
HIGHWAY AUTOMOTIVE CO., D/B/A RICK
HENDRICK DODGE CHRYSLER JEEP RAM AND
ISIAH S. WHITE**

Columbia, South Carolina
July 10, 2017.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Cleo Sanders,

Plaintiff,

vs.

Savannah Highway Automotive Co., a
General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander
Consumer USA Holdings, Inc., Isiah S.
White, Danny Anderson, and Patrick
Bachrodt, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

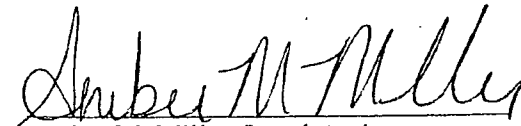
C/A#: 2017-CP-10-2148

CERTIFICATE OF SERVICE

FILED
2017 JUL 12 AM 11:51
JULIE J. ARMSTRONG
CLERK OF COURT

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U. S. Mail, postage prepaid, or by other delivery as indicated, to all parties of record at the address(es) shown below.

<u>DOCUMENT:</u>	DEFENDANTS SAVANNAH HIGHWAY AUTOMOTIVE CO., D/B/A RICK HENDRICK DODGE CHRYSLER JEEP RAM AND DEFENDANT ISIAH S. WHITE'S ANSWER TO PLAINTIFF'S COMPLAINT
<u>COUNSEL SERVED:</u>	C. Steven Moskos, Esq. C. Steven Moskos, P.A. 4000 Faber Place Drive Suite 300 Charleston, South Carolina 29405 Graham H. Claybrook, Esq. McGuire Woods LLP 201 North Tryon Street Suite 3000 Charlotte, North Carolina 28226


Amber M. Miller, Legal Assistant

Columbia, South Carolina
July 10, 2017

July 10, 2017

VIA US MAIL

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

RE: *Cleo Sanders vs. Savannah Highway Automotive Co., a General Partnership d/ba
Rick Hendrick Dodge Chrysler Jeep Ram, et al.*
Case No.: 2017-CP-10-2148
GWB File No.: 8493-6

Dear Ms. Armstrong:

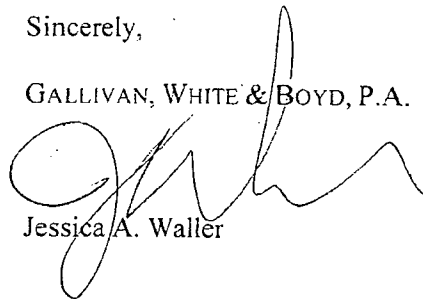
Enclosed for filing with your office are the original and one (1) copy of Defendants Savannah Highway Automotive Co., d/b/a Rick Hendrick Dodge Chrysler Jeep Ram and Defendant Isiah S. White's Answer to Plaintiff's Complaint. I would appreciate you filing the original and returning a clocked copy to me in the envelope provided for your convenience.

By copy of this letter, I am serving the Answer to Plaintiff's Complaint upon counsel of record.

With kind regards, I am

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.



Jessica A. Waller

JAW:amm

Enclosures

cc: C. Steven Moskos, Esq.
Graham H. Claybrook, Esq.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CLEO SANDERS,

Plaintiff,

v.

SAVANNAH HIGHWAY AUTOMOTIVE
COMPANY, A GENERAL PARTNERSHIP
D/B/A CHRYSLER JEEP RAM,
SANTANDER CONSUMER USA
HOLDINGS, INC., ISIAH S. WHITE,
DANNY ANDERSON, and PATRICK
BACHRODT, JR.,

Defendants.

IN THE COURT OF COMMON PLEAS FOR
THE NINTH JUDICIAL CIRCUIT

CASE NO. 17-CP-10-2148

FILED
2017 JUL 20 PM 12:33
JULIE J. ANDERSON
CLERK OF COURT

SANTANDER CONSUMER USA HOLDINGS, INC.'S ANSWER

COMES NOW Defendant Santander Consumer USA Holdings, Inc. ("Santander")¹ and respectfully answers the Complaint filed May 1, 2017 by Plaintiff Cleo Sanders (the "Complaint") as follows:

GENERAL ALLEGATIONS

1. Santander lacks information and belief sufficient to respond to the allegations of Paragraph 1 of the Complaint, and therefore denies them and demands strict proof thereof.
2. Santander lacks information and belief sufficient to respond to the allegations of Paragraph 2 of the Complaint, and therefore denies them and demands strict proof thereof.

¹ Santander is a holding company that does not finance automobile loans such as the one at issue in this litigation. Santander Consumer USA Inc. provides such loans and is the correct defendant in this litigation.

3. In response to the allegations of Paragraph 3 of the Complaint, Santander states that it is a corporation organized and existing under the laws of the state of Texas. Santander admits that it does business in the State of South Carolina.

4. Santander lacks information and belief sufficient to respond to the allegations of Paragraphs 4-42 of the Complaint as the allegations do not appear to be directed at Santander, and therefore denies them and demands strict proof thereof.

43. Santander admits the allegations of Paragraph 43.

44. Santander lacks information and belief sufficient to respond to the allegations of Paragraph 44 of the Complaint, and therefore denies them and demands strict proof thereof

45. Santander lacks information and belief sufficient to respond to the allegations of Paragraph 45 of the Complaint to the extent that it alleges that Santander received "false information." Santander admits the remaining allegations of Paragraph 45.

46. Santander admits the allegations of Paragraph 46.

47. Santander lacks information and belief sufficient to respond to the allegations of Paragraph 47 of the Complaint, and therefore denies them and demands strict proof thereof.

48. Santander lacks information and belief sufficient to respond to the allegations of Paragraph 48 of the Complaint, and therefore denies them and demands strict proof thereof.

49. Santander lacks information and belief sufficient to respond to the allegations of Paragraph 49 of the Complaint, and therefore denies them and demands strict proof thereof.

50. Santander lacks information and belief sufficient to respond to the allegations of Paragraph 50 of the Complaint, and therefore denies them and demands strict proof thereof.

51. Santander lacks information and belief sufficient to respond to the allegations of Paragraph 51 of the Complaint, and therefore denies them and demands strict proof thereof.

52. Santander admits the allegations of Paragraph 52.

53. Santander states that the allegations of Paragraph 53 state a legal conclusion to which no response is required. To the extent a response is required, Santander denies the allegations of this paragraph and demands strict proof thereof.

54. Santander states that the allegations of Paragraph 5 state a legal conclusion to which no response is required. To the extent a response is required, Santander denies the allegations of this paragraph and demands strict proof thereof.

ANSWERING "FOR A FIRST CAUSE OF ACTION (Conversion)"

55. Santander realleges the foregoing as if fully set forth herein.

56. Santander lacks information and belief sufficient to respond to the allegations of Paragraph 56 of the Complaint, and therefore denies them and demands strict proof thereof.

57. Santander lacks information and belief sufficient to respond to the allegations of Paragraph 57 of the Complaint, and therefore denies them and demands strict proof thereof. To the extent that the allegations of this paragraph purport to state wrongdoing by Santander, Santander specifically denies all such wrongdoing express or implied.

58. Santander lacks information and belief sufficient to respond to the allegations of Paragraph 58 of the Complaint, and therefore denies them and demands strict proof thereof. To the extent that the allegations of this paragraph purport to state wrongdoing by Santander, Santander specifically denies all such wrongdoing express or implied.

ANSWERING "FOR A SECOND CAUSE OF ACTION (UPTA VIOLATION)"

59. Santander realleges the foregoing as if fully set forth herein.

60. Santander denies the allegations of Paragraph 60.

61. Santander denies the allegations of Paragraph 61.

62. Santander denies the allegations of Paragraph 62.

63. Santander denies the allegations of Paragraph 63.

64. Santander denies the allegations of Paragraph 64.

65. Santander denies the allegations of Paragraph 65.

ANSWERING "FOR A THIRD CAUSE OF ACTION (Regulation of Motor Vehicle Dealers Act)"

66. Santander realleges the foregoing as if fully set forth herein.

67. Santander states that the allegations of Paragraph 67 state a legal conclusion to which no response is required. To the extent a response is required, Santander denies the allegations of this paragraph and demands strict proof thereof.

68. Santander denies the allegations of Paragraph 68.

69. Santander denies the allegations of Paragraph 69.

70. Santander denies the allegations of Paragraph 70.

ANSWERING "FOR A FOURTH CAUSE OF ACTION (Fraud)"

71. Santander realleges the foregoing as if fully set forth herein.

72. Santander lacks information and belief sufficient to respond to the allegations of Paragraphs 72-78 of the Complaint, and therefore denies them and demands strict proof thereof.

79. Santander lacks information and belief sufficient to respond to the allegations of Paragraph 79 of the Complaint, and therefore denies them and demands strict proof thereof. To the extent that the allegations of this paragraph purport to state wrongdoing by Santander, Santander specifically denies all such wrongdoing express or implied.

80. Santander lacks information and belief sufficient to respond to the allegations of Paragraph 80 of the Complaint, and therefore denies them and demands strict proof thereof. To

the extent that the allegations of this paragraph purport to state wrongdoing by Santander, Santander specifically denies all such wrongdoing express or implied.

ANSWERING "FOR A FIFTH CAUSE OF ACTION (Negligent Misrepresentation)"

81. Santander realleges the foregoing as if fully set forth herein.

82. Santander lacks information and belief sufficient to respond to the allegations of Paragraphs 82-87 of the Complaint, and therefore denies them and demands strict proof thereof.

88. Santander lacks information and belief sufficient to respond to the allegations of Paragraph 88 of the Complaint, and therefore denies them and demands strict proof thereof. To the extent that the allegations of this paragraph purport to state wrongdoing by Santander, Santander specifically denies all such wrongdoing express or implied.

89. Santander lacks information and belief sufficient to respond to the allegations of Paragraph 89 of the Complaint, and therefore denies them and demands strict proof thereof. To the extent that the allegations of this paragraph purport to state wrongdoing by Santander, Santander specifically denies all such wrongdoing express or implied.

ANSWERING "FOR A SIXTH CAUSE OF ACTION (Negligence)"

90. Santander realleges the foregoing as if fully set forth herein.

91. Santander denies the allegations of Paragraph 91.

92. Santander denies the allegations of Paragraph 92.

93. Santander denies the allegations of Paragraph 93.

94. Santander denies the allegations of Paragraph 94.

AFFIRMATIVE DEFENSES

Santander states the following affirmative defenses, without accepting the burden of proof that may be on Plaintiff in this matter, reserving the right to amend and/or supplement its

responses to Plaintiff's allegations, as well as these avoidances and defenses, as additional information is obtained through the discovery process or otherwise.

1. Plaintiff has failed, in whole or in part, to state a claim upon which relief may be granted.

2. Plaintiff's claims are barred, in whole or in part, by the statute of limitations.

3. Plaintiff has suffered no damages resulting from any conduct on the part of Santander.

4. Santander's liability to Plaintiff, if any, is limited to the payments made by Plaintiff to Santander.

5. Plaintiff's damages, if any, were caused by third parties over which Santander exercises no authority or control.

WHEREFORE, Santander prays that the Court:

1. Dismiss the Complaint as against Santander;

2. Deny Plaintiff an award of his costs and expenses incurred in this action, including reasonable attorneys' fees;

3. Grant Santander an award of its costs and expenses incurred in this action, including reasonable attorneys' fees to the extent permitted by contract and/or law; and

4. Grant such further legal and equitable relief as the Court may deem just and proper.

Dated: July 18, 2017



Graham H. Claybrook (S.C. Bar No. 102508)

McGuireWoods LLP

201 N. Tryon Street, Suite 3000

Charlotte, NC 28202

Telephone: (704) 343-7147

Fax: (704) 373-8830

gclaybrook@mcguirewoods.com

*Attorneys for Defendant Santander Consumer USA
Inc.*

CERTIFICATE OF SERVICE

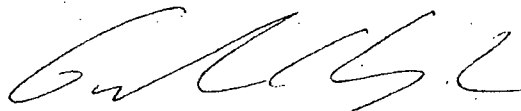
17-cv-10-2148

I hereby certify that I have on this 18th day of July, 2017, caused a true copy of the foregoing to be delivered via REGULAR MAIL.

Steven Moskos, Esq.
C. Steven Moskos, P.A.
4000 Faber Place Drive, Suite 300
North Charleston, SC 29405
Attorneys for Plaintiff

John T. Lay, Esq.
Jessica Waller, Esq.
Gallivan, White & Boyd P.A.
P.O. Box 7368
Columbia, SC 29202
*Attorneys for Defendants Savannah Highway
Automotive Company, Isiah A. White*

FILED
2017 JUL 20 PM 12:33
JULIE A. ANDERSON
CLERK OF COURT
BY _____



Graham H. Claybrook

McGuireWoods LLP
Fifth Third Center
201 North Tryon Street
Suite 3000
Charlotte, NC 28202
Tel 704.343.2000
Fax 704.343.2300
www.mcguirewoods.com

Graham H. Claybrook
Direct: 704.343.7147

McGUIREWOODS

gclaybrook@mcguirewoods.com

July 18, 2017

VIA U.S. MAIL

Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

RE: *Cleo Sanders v. Savannah Highway Automotive Company, et al.*
Charleston County Court of Common Pleas Case No. 17-CP-10-2148

Dear Ms. Armstrong:

Enclosed please find an original and one copy of Defendant Santander Consumer USA Holdings, Inc.'s Answer and Affirmative Defenses.

Please file the original and return a file-stamped copy to me in the self-addressed stamped envelope enclosed.

Thank you for your kind assistance. Should you have any questions, please do not hesitate to contact our office.

Very truly yours,

McGuireWoods LLP



Graham H. Claybrook

GHC:en
Enclosures

c: Steven Moskos, Esq. (w/encl.)
John T. Lay, Esq. (w/encl.)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Cleo Sanders,

Plaintiff,

vs.

Savannah Highway Automotive Co., a
General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander
Consumer USA Holdings, Inc., Isiah S.
White, Danny Anderson, and Patrick
Bachrodt, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

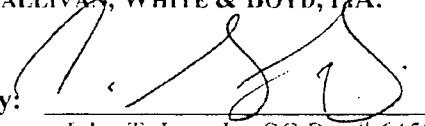
C/A#: 2017-CP-10-2148

NOTICE OF APPEARANCE

FILED
CLERK OF COURT
2018 JAN -9 AM 11:16
BY

NOW COMES the undersigned, who hereby notes their appearances for the Defendant,
Santander Consumer USA Holdings, Inc., in the above-captioned matter.

GALLIVAN, WHITE & BOYD, P.A.

By:  for JTL

John T. Lay, Jr., SC Bar # 64526
Jessica A. Waller, SC Bar #100256
PO Box 7368
Columbia, SC 29202
jlay@gwblawfirm.com
jwaller@gwblawfirm.com
(803) 779-1833 Ofc
(803) 779-1767 Fax

*Attorneys for Defendants Savannah Highway
Automotive Co., d/b/a Rick Hendrick Dodge
Chrysler Jeep Ram, Isiah S. White and
Santander Consumer USA Holdings, Inc.*

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Cleo Sanders,

Plaintiff,

vs.

Savannah Highway Automotive Co., a
General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander
Consumer USA Holdings, Inc., Isiah S.
White, Danny Anderson, and Patrick
Bachrodt, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

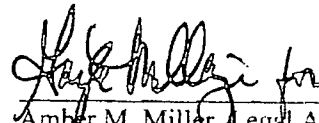
C/A#: 2017-CP-10-2148

CERTIFICATE OF SERVICE

FILED
2018 JAN - 9 AM 11:16
CLERK OF COURT

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U. S. Mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the address(es) shown below.

DOCUMENT:	NOTICE OF APPEARANCE
<u>COUNSEL SERVED:</u>	C. Steven Moskos, Esq. C. Steven Moskos, P.A. 4000 Faber Place Drive Suite 300 Charleston, South Carolina 29405 Graham H. Claybrook, Esq. McGuire Woods LLP 201 North Tryon Street Suite 3000 Charlotte, North Carolina 28226


Amber M. Miller, Legal Assistant

Columbia, South Carolina
January 9, 2018



JESSICA A. WALLER
A member of the South Carolina Bar
Direct Dial: 803.724.1722
jwaller@GWBlawfirm.com

January 9, 2018

VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: *Cleo Sanders vs. Savannah Highway Automotive Co., a General Partnership
d/b/a Rick Hendrick Dodge Chrysler Jeep Ram, Santander consumer USA
Holdings, Inc., Isiah S. White, Danny Anderson, and Patrick Bachrodt, Jr.*
Charleston County Case No.: 2017-CP-10-02148
GWB File No.: 8493-6

Dear Ms. Armstrong:

Enclosed for filing with your office are the original and one (1) copy of the Notice of Appearance in the above-referenced matter on behalf of Santander Consumer USA Holdings, Inc. I would appreciate you filing the original and returning a clocked copy to me by the awaiting individual from my office.

By copy of this letter, I am serving the Notice of Appearance upon counsel of record.

With kind regards, I am

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.



JAW

Jessica A. Waller

JAW:amm

Enclosure

cc: C. Steven Moskos (*via email only*)
Graham H. Claybrook (*via email only*)

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-10-2148

Cleo Sanders
PLAINTIFF(S)

Savannah Highway Automotive Company
DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion to Dismiss or Stay and to Compel Arbitration, filed on September 7, 2017, came before this Court on November 16, 2017. Within 15 days from the date of hearing, the Defendant may prepare an affidavit regarding the authenticity of the retail sales agreement and Plaintiff may address the case law presented at the hearing and any applicable exceptions to compelling arbitration.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

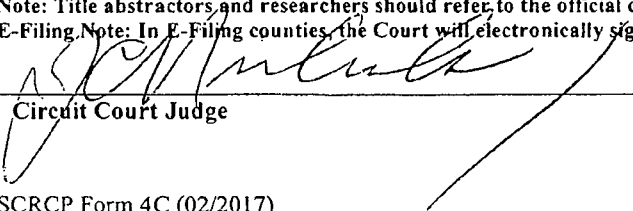
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2117
Judge Code

11/16/2017
Date

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-10-2148

Cleo Sanders
PLAINTIFF(S)

Savannah Highway Automotive Co., et al.
DEFENDANT(S)

Submitted by:

2018 JAN 18 PM 4:03

JULIE J. ARMSTRONG
CLERK OF COURT

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's oral motion for voluntary nonsuit against Santander Consumer USA Holdings, Inc., made at the hearing held on January 9, 2018, is granted. The oral motion also encompasses Plaintiff's written motion to dismiss Santander filed on December 29, 2017. Accordingly, Santander is dismissed from this action and its remaining motions are rendered moot; specifically its Motion to Dismiss or Stay and to Compel Arbitration filed on December 14, 2017.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2117

Judge Code

01/10/2018

Date

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 17-CP-10-2148
	)	
CLEO SANDERS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
SAVANNAH HIGHWAY	)	
AUTOMOTIVE COMPANY, A	)	
GENERAL PARTNERSHIP D/B/A	)	
RICK HENDRICK DODGE	)	
CHRYSLER JEEP RAM, ISIAH S.	)	
WHITE, DANNY ANDERSON, and	)	
PATRICK BACHRODT, JR.,	)	
	)	
Defendants	)	

This matter came before the Court on January 9, 2018 on Mr. Sanders' Motion to Compel responses to his Interrogatories and Requests for Production which he served on Defendant Savannah Highway Automotive Company, hereinafter Rick Hendrick, on July 21, 2017. Defendant Rick Hendrick was drafting its discovery responses, but requested and received an extension of time until September 8, 2017 to respond to Mr. Sanders's discovery. On September 7, 2017, Defendant Rick Hendrick filed a motion to compel arbitration without providing any discovery responses. On October 11, 2017, Mr. Sanders filed his Motion to Compel responses to his discovery requests.

On November 16, 2017, the Court heard Defendant Rick Hendrick's Motion to Compel Arbitration. On December 7, 2017, the Court notified the Parties by email that Defendant's motion was denied. A formal Order denying the motion was filed January 10, 2018.

On January 9, 2018, the Court heard Mr. Sanders' Motion to Compel responses to his discovery requests. As of the hearing date, Defendant Rick Hendrick had not responded to Mr. Sanders' discovery requests. Mr. Sanders' motion was granted. Defendant Rick Hendrick was ordered to respond to Mr. Sanders' discovery requests within thirty days from the date of the hearing.

Defendant Rick Hendrick requested that its response to Mr. Sanders' discovery not be deemed a waiver any of its rights to arbitration under its September 7, 2017 motion to compel arbitration. That request is granted.

Therefore, it is Ordered that Defendant Rick Hendrick shall respond fully and completely to Mr. Sanders' Interrogatories and Requests for Production by February 8, 2018.

AND IT IS SO ORDERED.

J. C. Nicholson, Jr.
Judge Ninth Judicial Circuit

Charleston, South Carolina

_____, 2018

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Cleo Sanders,

Plaintiff,

vs.

Savannah Highway Automotive Co., a
General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander
Consumer USA Holdings, Inc., Isiah S.
White, Danny Anderson, and Patrick
Bachrodt, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A#: 2017-CP-10-02148

**ORDER GRANTING PLAINTIFF'S
MOTION TO COMPEL**

This matter is before the Court on Plaintiff's Motion to Compel Defendant Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick Dodge Chrysler Jeep Ram (Hendrick) to respond to Plaintiff's Interrogatories and Request for Production, which were served on Hendrick on July 21, 2017. On January 9, 2018, a hearing was held at which time Plaintiff was represented by C. Steve Moskos, Esquire and Hendrick was represented by Alice Price Adams, Esquire.

At the motion hearing, Hendrick submitted it had not responded to discovery so as not to waive its position that the matter was subject to arbitration. Plaintiff had previously asserted that Hendrick's participation in discovery waived its right to compel and/or participate in arbitration. Further, Hendrick requested that in the event the Court compelled it to respond to discovery, that it be afforded the opportunity to object to specific discovery requests in light of the basis for its concern for waiving its position regarding arbitration.

Based upon the foregoing, it is ordered that Hendrick respond to Plaintiff's Interrogatories and Requests to Produce within 30 days of this hearing date. Further, Defendant shall not waive its position regarding its right to compel and/or participate in arbitration by responding to said discovery. Further, this Order shall not preclude Hendrick from raising appropriate objections to specific discovery requests as permitted by law and the South Carolina Rules of Civil Procedure.

AND IT IS SO ORDERED.

The Honorable J. C. Nicholson, Jr.
Ninth Judicial Circuit

Charleston, South Carolina
_____, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2017-CP-10-2148
	)	
CLEO SANDERS,	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
SAVANNAH HIGHWAY	)	
AUTOMOTIVE COMPANY, A	)	
GENERAL PARTNERSHIP D/B/A	)	
RICK HENDRICK DODGE	)	
CHRYSLER JEEP RAM,	)	
SANTANDER CONSUMER USA	)	
HOLDINGS, INC., ISIAH S.	)	
WHITE, DANNY ANDERSON, and	)	
PATRICK BACHRODT, JR.,	)	
	)	
Defendants	)	
	)	

ORDER

2016 JAN 10 AM 11:09
JAMES C. BAKER
CLERK OF COURT

This matter came before the Court on November 16, 2017, on Defendant Savannah Highway Automotive Company's (Rick Hendrick) and Mr. White's Motion to Compel Arbitration. Upon consideration of the materials submitted to the Court and the arguments presented by the parties, Defendants' Motion is denied for the reasons stated herein.

Factual Background

The contract at issue is a retail installment sales contract between the Plaintiff and Defendants for the sale of a motor vehicle. Imbedded within the contract is an arbitration clause. At the hearing, the Plaintiff contested the authenticity of the contract and arbitration clause because Defendants' failed to file an affidavit alongside their motion. Nevertheless, the Court provided Defendants with fifteen days to file a late affidavit. Plaintiff was also permitted to submit to the Court any other reasons to invalidate the alleged arbitration clause. Defendants

timely submitted an affidavit from Brandon Hackcloer, a finance and insurance manager for Defendant Rick Hendrick, stating he personally witnessed Plaintiff sign the retail installment sales contract attached to his affidavit. Despite portions appearing illegible, this Court finds that the contract attached to the affidavit is an accurate copy of the one signed by Plaintiff. The Plaintiff also contest the motion on the grounds that Defendants do not have a right to compel arbitration because the contract was assigned to Santander. This Court agrees.

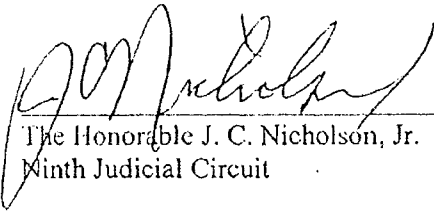
Legal Analysis

The Federal Arbitration Act applies to this dispute because the contract at issue evidences a transaction involving commerce. 9 U.S.C.A. § 2. However, State law governs the issue of assignment as it goes to the enforceability of the arbitration clause. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007) (“[g]eneral contract principles of state law apply in a court’s evaluation of the enforceability of an arbitration clause.”). Under South Carolina law, “[a]n assignment of a right is a manifestation of the assignor’s intention to transfer it by virtue of which the assignor’s right to performance by the obligor is extinguished in whole or in part and the assignee acquires a right to such performance.” *Moore v. Weinberg*, 373 S.C. 209, 219–20, 644 S.E.2d 740, 745 (Ct. App. 2007) (quoting Restatement (Second) of Contracts § 317(1) (1981)). Generally, once a contract is properly assigned the assignor retains no interest in the right transferred. *See BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 624, 731 S.E.2d 547, 549 (2012) (“[a]n assignee stands in the shoes of the assignor”); *see also duPont de-Bie v. Vredenburg*, 490 F.2d 1057, 1061 (4th Cir. 1974). It necessarily follows that an assignor’s right to compel arbitration is lost once it assigns a contract containing an arbitration clause. *See In re Wholesale Grocery Prod. Antitrust Litig.*, 97 F. Supp. 3d 1101, 1106 (D. Minn.

2015), *aff'd*, 850 F.3d 344 (8th Cir. 2017) (holding the assignment extinguished assignor's right to compel arbitration); *See also*, *HT of Highlands Ranch, Inc. v. Hollywood Tanning Sys., Inc.*, 590 F. Supp. 2d 677, 684 (D.N.J. 2008) (holding assignor could not compel arbitration in contracts it assigned).

In this case, Rick Hendrick purported to assign all of its interests in the retail installment sales contract to Santander. This is supported by the form contract submitted by Rick Hendrick, which states at the bottom of the front page, "Seller assigns its interest in this contract to Santander Consumer USA (Assignee) under the terms of the Seller's agreement(s) with Assignee." It also does not appear that Defendant retained any rights under the retail installment sales contract or the arbitration clause, specifically. As a result, Defendants' right to compel arbitration was extinguished when contract was assigned to Santander.

For the foregoing reasons, Defendants' motion to compel arbitration is **Denied**.


The Honorable J. C. Nicholson, Jr.
Ninth Judicial Circuit

Charleston, South Carolina

January 8, 2018

C. STEVEN MOSKOS, P.A.

Attorney and Counselor at Law

C. Steven Moskos
Board Certified Civil Trial Attorney
Board Certified Civil Pretrial Advocate
By the National Board of Trial Advocacy
Supreme Court of South Carolina Certified Mediator

M

4000 Faber Place Drive, Suite 300
North Charleston, SC 29405
Telephone: (843) 763-5297
www.moskoslawfirm.com
csmoskos@earthlink.net

January 12, 2018

Gallivan White & Boyd
ATTN: John T. Lay
1201 Main Street, Suite 1200
Columbia, SC 29201

Re: Cleo Sanders vs. Savannah Highway Automotive Company, et. al.
Case No.: 17-CP-10-2148

Dear Mr. Lay:

Please find enclosed a copy of the filed Order denying Defendant Rick Hendrick's Motion to Compel Arbitration.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Carole S. Baker
Legal Assistant to C. Steven Moskos

Enclosure

cc.: Graham Claybrook, Esq.
Cleo Sanders

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Cleo Sanders,

Plaintiff,

vs.

Savannah Highway Automotive Co., a
General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander
Consumer USA Holdings, Inc., Isiah S.
White, Danny Anderson, and Patrick
Bachrodt, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A#: 2017-CP-10-02148

**ORDER GRANTING PLAINTIFF'S
MOTION TO COMPEL**

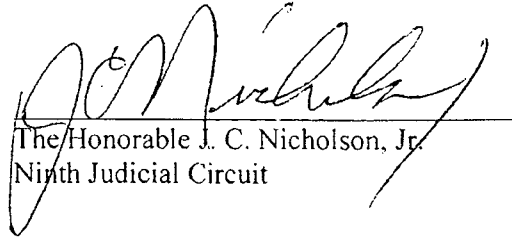
2018 FEB 20 PM 2:25
FILED
CLERK OF COURT
BY

This matter is before the Court on Plaintiff's Motion to Compel Defendant Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick Dodge Chrysler Jeep Ram (Hendrick) to respond to Plaintiff's Interrogatories and Request for Production, which were served on Hendrick on July 21, 2017. On January 9, 2018, a hearing was held at which time Plaintiff was represented by C. Steve Moskos, Esquire and Hendrick was represented by Alice Price Adams, Esquire.

At the motion hearing, Hendrick submitted it had not responded to discovery so as not to waive its position that the matter was subject to arbitration. Plaintiff had previously asserted that Hendrick's participation in discovery waived its right to compel and/or participate in arbitration. Further, Hendrick requested that in the event the Court compelled it to respond to discovery, that it be afforded the opportunity to object to specific discovery requests in light of the basis for its concern for waiving its position regarding arbitration. However, this Court previously denied Hendrick's Motion to Compel Arbitration.

Based upon the foregoing, it is ordered that Hendrick respond to Plaintiff's Interrogatories and Requests to Produce within 30 days of this hearing date. Further, Defendants, except Rick Hendrick, shall not waive its position regarding its right to compel and/or participate in arbitration by responding to said discovery. Further, this Order shall not preclude Hendrick from raising appropriate objections to specific discovery requests as permitted by law and the South Carolina Rules of Civil Procedure.

AND IT IS SO ORDERED.



The Honorable J. C. Nicholson, Jr.
Ninth Judicial Circuit

Charleston, South Carolina
February 16, 2018

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Cleo Sanders,

Plaintiff,

vs.

Savannah Highway Automotive Co., a General Partnership
d/b/a Rick Hendrick Dodge Chrysler Jeep Ram, Santander
Consumer USA Holdings, Inc., Isiah S. White, Danny
Anderson, and Patrick Bachrodt, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2017-CP-10-2148

**MOTION AND ORDER INFORMATION
COVER SHEET**

Defendant's Attorney: Jessica A. Waller, SC Bar No. 100256 Gallivan, White & Boyd, P.A. PO Box 7368 Columbia, SC 29202 jwaller@gwblawfirm.com (803) 779-1833 Ofc; (803) 779-1767 Fax	Plaintiff's Attorney: C. Steven Moskos 4000 Faber Place Dr. Suite 300 Charleston, SC 29405 csmoskos@earthlink.net (843) 763-5297 Ofc
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Dismiss or Stay and to Compel Arbitration Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☒ Defendant 9/5/17 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other: ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP)	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION Date Filed: _____ Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Cleo Sanders,

Plaintiff,

vs.

Savannah Highway Automotive Co., a
General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander
Consumer USA Holdings, Inc., Isiah S.
White., Danny Anderson, and Patrick
Bachrodt, Jr.

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A NUMBER: 2017-CP-10-2148

**DEFENDANTS SAVANNAH HIGHWAY
AUTOMOTIVE CO., D/B/A RICK
HENDRICK DODGE CHRYSLER JEEP
RAM AND DEFENDANT ISIAH S.
WHITE'S MOTION TO DISMISS OR
STAY AND TO COMPEL ARBITRATION**

FILED
2017 SEP -7 PM 2:28
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that Defendants Savannah Highway Automotive Co. d/b/a Rick Hendrick Dodge Chrysler Jeep Ram ("Hendrick") and Isiah S. White (collectively "Defendants"), by and through their undersigned attorneys, will move at a date and time to be set by the Court for an Order staying this action and compelling arbitration pursuant to 9 U.S.C. 3 and S.C. Code Ann. 15-48-20, due to a conspicuous arbitration clause between Plaintiff and Defendants.

Plaintiff's claims purport to arise from his financed purchase of a 2012 Dodge Charger SE. The sales and finance contract between Hendrick and Plaintiff, referenced in Plaintiff's Complaint, contains an arbitration clause, which states:

ARBITRATION CLAUSE
PLEASE REVIEW - IMPORTANT - AFFECTS YOUR LEGAL RIGHTS
EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.
IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US, INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.
Any claim or dispute, whether in contract, tort, statute or otherwise, (including the interpretation and scope of the Arbitration Clause) and the arbitrability of the claim or dispute) between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall at your or our election be resolved by neutral binding arbitration and not by a court action. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Clause shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action. You expressly waive any right you may have to arbitrate a class action. Arbitration shall be conducted by the American Arbitration Association, 1633 Broadway, New York, New York 10019 (www.adr.org) or any other organization that you choose, subject to our approval. You may get a copy of the rules of these organizations by contacting the arbitration organization or visiting its website.

As set forth in the Arbitration Clause, Plaintiff agreed to arbitrate his claims arising out of his "credit application, purchase or condition of th[e] vehicle." Plaintiff further agreed that any dispute would be resolved by "neutral, binding arbitration and not by a court action." The sales and finance contract was entered into in conjunction with the transactions at issue in this lawsuit, and it, and other documents pertaining to the transaction, were signed Plaintiff.

South Carolina has a policy "to favor arbitration of disputes." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596 (2001). "There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration." *Towles v. United HealthCare Corp.*, 338 S.C. 29, 37 (Ct. App. 1999). Here, the sales agreement, federal law, and state law mandate that the Court should dismiss or stay this action in favor of arbitration.

Under the Federal Arbitration Act (the "FAA"), a court must stay "any suit or proceeding" pending arbitration of "any issue referable to arbitration under an agreement in writing for such arbitration." 9 U.S.C. § 3. The Supreme Court of the United States has held that the FAA's substantive provisions are to be enforced in state courts as well as in federal courts. *See Southland Corp. v. Keating*, 465 U.S. 1, 16 (1984) (resolving conflict between state law and the FAA by enforcing the arbitration clause and holding that the state law violated the Supremacy Clause); *see also Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 271-72 (1995). According to the Supreme Court:

Section 2 [of the FAA] is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary. The effect of the section is to create a body of federal substantive law of arbitrability, applicable to any arbitration agreement within coverage of the Act.

Moses H. Cone Mem. Hosp. v. Mercury Const. Corp., 460 U.S. 1, 24 (1983). The FAA requires that courts enforce arbitration agreements, *see* FAA §§ 2 and 3, and the Supreme Court has

unambiguously held that courts must follow these provisions. *Am. Exp. Co. v. Italian Colors Rest.*, 133 S. Ct. 2304, 2309 (2013); *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 220-21 (1985). Likewise, South Carolina courts have held that “[u]nless the parties have contracted to the contrary, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538 (2001).

South Carolina state law compels the same result. Under S.C. Code Ann. § 15-48-20(a), (d), where a valid agreement to arbitrate is found, “the court shall order the parties to proceed with arbitration” and “[a]ny action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made.” *See, e.g. Charleston Nat. Country Club, LLC v. Kane*, 2006 WL 6109178 (S.C. Com. Pl. Apr. 10, 2006) (“If an issue is subject to an arbitration provision, the court shall stay the proceeding and order the parties to proceed to arbitration.”). Both federal and state law therefore dictate that Plaintiff’s claims, which arise from a sales agreement containing a valid arbitration agreement, proceed in arbitration and that this action be dismissed or stayed.

Because the Arbitration Clause expressly applies to Hendrick, its employees, it necessarily would include Defendant White, and former employees Anderson, and Bachrodt. Additionally, because the Arbitration Clauses expressly apply to claims against Hendrick’s “assigns”, it necessarily would include Defendant Santander Consumer USA, the assignee of the contract. As such, all claims should be referred to arbitration and this civil action should be dismissed and/or otherwise stayed.

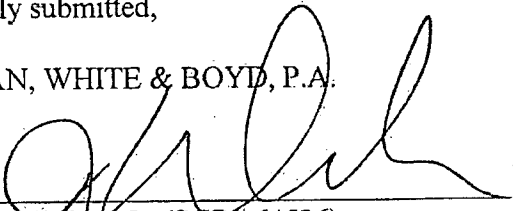
This motion is based upon 9 U.S.C. 3, S.C. Code Ann. 15-48-20, the pleadings, the arbitration clause in the contract, and the laws of this state that may apply.

WHEREFORE, Defendants respectfully request that the Court enter an Order that Plaintiff is compelled to arbitrate his claims and dismiss or otherwise stay this civil action.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

BY:



John F. Lay, Jr. (SCB# 64526)
Jessica A. Waller (SCB# 100256)
1201 Main Street, Suite 1200 (29201)
Post Office Box 7368
Columbia, South Carolina 29202
TEL: (803) 779-1833
FAX: (803) 779-1767
jlay@gwblawfirm.com
jwaller@gwblawfirm.com

**COUNSEL FOR DEFENDANTS SAVANNAH
HIGHWAY AUTOMOTIVE CO., D/B/A RICK
HENDRICK DODGE CHRYSLER JEEP RAM AND
ISIAH S. WHITE**

Columbia, South Carolina
September 5, 2017.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Cleo Sanders,

Plaintiff,

vs.

Savannah Highway Automotive Co., a
General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander
Consumer USA Holdings, Inc., Isiah S.
White, Danny Anderson, and Patrick
Bachrodt, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A#: 2017-CP-10-2148

CERTIFICATE OF SERVICE

FILED
2017 SEP -7 PM 2:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U. S. Mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the address(es) shown below.

<u>DOCUMENT:</u>	DEFENDANTS SAVANNAH HIGHWAY AUTOMOTIVE CO., D/B/A RICK HENDRICK DODGE CHRYSLER JEEP RAM AND DEFENDANT ISIAH S. WHITE'S MOTION TO DISMISS OR STAY AND TO COMPEL ARBITRATION
<u>COUNSEL SERVED:</u>	C. Steven Moskos, Esq. C. Steven Moskos, P.A. 4000 Faber Place Drive Suite 300 Charleston, South Carolina 29405 Graham H. Claybrook, Esq. McGuire Woods LLP 201 North Tryon Street Suite 3000 Charlotte, North Carolina 28226


Amber M. Miller, Legal Assistant

Columbia, South Carolina
September 5, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Cleo Sanders,

Plaintiff,

vs.

Savannah Highway Automotive Co., a
General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander
Consumer USA Holdings, Inc., Isiah S.
White., Danny Anderson, and Patrick
Bachrodt, Jr.

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A NUMBER: 2017-CP-10-2148

**DEFENDANTS SAVANNAH HIGHWAY
AUTOMOTIVE CO., D/B/A RICK
HENDRICK DODGE CHRYSLER JEEP
RAM AND DEFENDANT ISIAH S.
WHITE'S MEMORANDUM IN SUPPORT
OF THEIR MOTION TO DISMISS OR
STAY AND TO COMPEL ARBITRATION**

FILED
2017 NOV 15 PM 2:19
JULIE J. ANDERSON
CLERK OF COURT

Defendants Savannah Highway Automotive Co., d/b/a Rick Hendrick Dodge Chrysler
Jeep Ram ("Hendrick") and Isiah S. White ("White") (collectively "Defendants") hereby files its
Memorandum of Law in Support of Defendants' Motion to Dismiss or Stay and to Compel
Arbitration.

PRELIMINARY STATEMENT

On May 1, 2017, Plaintiff Cleo Sanders' ("Plaintiff") filed this impermissible Action
against Defendants, enumerating several causes of action and seeking monetary damages arising
out of his purchase and finance of a vehicle from Defendant Hendrick. Despite the fact that the ,
contract between Hendrick (assigned to Defendant Santander Consumer USA Holdings, Inc.
("Santander")) and Plaintiff (the "Retail Installment Sales Agreement" or the "Agreement"), the
very document that underlies Plaintiff's claims against Defendants, contains a mandatory
arbitration clause ("the Arbitration Clause"), Plaintiff has filed this present Action. However,
this Action is against the intent of the agreement, Plaintiff's representations, and the policy

favoring arbitration.

If Plaintiff wishes to pursue his claims against Defendants, he must do so in the proper forum agreed to by the parties. This Court must respect the parties' contractual determination to resolve their differences in American Arbitration Association ("AAA") arbitration proceedings (or any other agreed upon arbitration organization) and stay this arbitration pursuant to 9 U.S.C. § 3 and S.C. Code Ann. § 15-48-20.

STATEMENT OF FACTS

Plaintiff's alleged claims purport to arise from his financed purchase of a 2012 Dodge Charger vehicle in August of 2012. Attached hereto as **Exhibit A** is a copy of the Retail Installment Sale Contract executed by Plaintiff in conjunction with the referenced vehicle purchase. The vehicle purchase identified represent the only instance in which Plaintiff purchased a vehicle from Defendant. The Retail Installment Sales Contract contains a prominently-displayed arbitration clause, including all capitalized letters and bold-face type as to various provisions. The Arbitration Clause states as follows¹:

¹ In Defendants' Motion, Defendants only had a partial copy of the arbitration clause due to clerical errors. The full arbitration clause is set forth herein.

ARBITRATION CLAUSE
PLEASE REVIEW - IMPORTANT - AFFECTS YOUR LEGAL RIGHTS

1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.

2. IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.

3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.

Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Clause, and the arbitrability of the claim or dispute) between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Clause shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action. You expressly waive any right you may have to arbitrate a class action. Arbitration shall be conducted by the American Arbitration Association, 1633 Broadway, 10th Floor, New York, New York 10019 (www.adr.org) or any other organization that you choose, subject to our approval. You may get a copy of the rules of those organizations by contacting the arbitration organization or visiting its website.

Arbitration shall be informal and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law in making an award. The arbitration hearing shall be conducted in the federal district in which you reside unless the Creditor-Seller is a party to the claim or dispute, in which case the hearing will be held in the federal district where this contract was executed. You will advance your filing, administration, discovery, case management, fee and your arbitrator or hearing fee all up to a maximum of \$2500, which may be reimbursed by decision of the arbitrator at the arbitrator's discretion. Each party shall be responsible for its own attorney, expert and other fees, unless provided by the arbitrator under applicable law. If the chosen arbitration organization's rules conflict with this Arbitration Clause, then the provisions of this Arbitration Clause shall control. The arbitrator's award shall be final and binding on all parties, except that in the event the arbitrator's award for a party is \$0 or against a party is in excess of \$100,000, or includes an award of injunctive relief against a party, that party may request a new arbitration under the rules of the arbitration organization by a three-arbitrator panel. The appealing party requesting new arbitration shall be responsible for the filing fee and other arbitration costs subject to a final determination by the arbitrators of a fair apportionment of costs. Any arbitration under this Arbitration Clause shall be governed by the Federal Arbitration Act (9 U.S.C. 1 et seq.) and not by any state law concerning arbitrations.

You and we retain any rights to seek help, remedies, such as rescission, and you and we retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Neither you nor we waive the right to arbitrate by using self-help remedies or filing suit. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Clause shall survive any termination, payment or transfer of this contract. If any part of this Arbitration Clause, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. If a waiver of class action rights is deemed or found to be unenforceable for any reason in a case in which class action allegations have been made, the remainder of this Arbitration Clause shall be enforceable. Notwithstanding any other provision of this Arbitration Clause, the validity and scope of the waiver of class action rights shall be decided by the court and not by the arbitrator.

Form No. 161-SC AFB 8/11

As set forth in the Arbitration Clause, Plaintiff agreed to arbitrate each of the claims asserted in this action, utilizing the AAA or other agreed-upon suitable arbitration administration organization. The Arbitration Clause requires application of the Federal Arbitration Act (the "FAA"). Pursuant to the FAA and applicable law, the Arbitration Clause is valid and enforceable in all respects. Furthermore, the Arbitration Clause was entered into in conjunction with the transaction at issue in this lawsuit, and the referenced contract was properly signed by Plaintiff. Thus, this Action should be stayed and the Arbitration Clause enforced.

ARGUMENT

South Carolina has a policy "to favor arbitration of disputes." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596 (2001). "There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration." *Towles v. United HealthCare Corp.*, 338 S.C. 29, 37 (Ct. App. 1999). Here, the Contract, federal law, and state

law mandate that the Court should stay this Action in favor of AAA arbitration.

I. A VALID AGREEMENT AND INTENT TO ARBITRATE EXISTS BETWEEN PLAINTIFF AND HENDRICK

Plaintiff signed a valid, enforceable contract that contains a mandatory arbitration provision whereby Plaintiff (and Hendrick and therefore Santander) agreed to arbitrate any dispute between the parties. Plaintiff never proposed any changes to the Agreement, never objected to any of its terms, and owned his car without incident pursuant to the Agreement for approximately five years before filing this Action.

"Where an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Park Regency, LLC v. R & D Dev. of the Carolinas, LLC*, 402 S.C. 401, 412-13, 741 S.E.2d 528, 534 (Ct. App. 2012); *accord Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App. 2001) (stating the court must interpret contractual language in its natural and ordinary sense). Furthermore, a party who signed a contract is deemed to have read and understood "the effect" of the contract. *Wachovia Bank v. Blackburn*, 394 S.C. 579, 585, 716 S.E.2d 454, 458 (Ct. App. 2011). If a person is capable of reading and understanding, that person is bound by the terms of the contract even if that person failed to read it. *Sims v. Taylor*, 281 S.E.2d 229, 230 (1981). Our courts do not treat agreements to arbitration differently and have held that a plaintiff's failure to read an arbitration provision does not render it unconscionable. *Munoz v. Green Tree Financial Corp.*, 542 S.E.2d 360, 365 (2001).

Thus, even if Plaintiff now asserts he did not understand and/or read the contract, that fact does not render the contract and the arbitration clause therein unenforceable in the face of her clear intent to arbitrate.

II. FEDERAL AND STATE LAW DICTATE THAT THE PARTIES MUST

ARBITRATE THIS DISPUTE

There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration." *Hall v. Green Tree Servicing, LLC*, 413 S.C. 267, 274, 776 S.E.2d 91, 95 (Ct. App. 2015) (quoting *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013)). Additionally, as our Supreme Court has noted, any doubt as to whether this claim is subject to arbitration must be resolved in favor of arbitration. *Id.* at 275, 776 S.E.2d at 96 (citing *Landers v. FDIC*, 402 S.C. 100, 109, 739 S.E.2d 210, 213 ("It is the policy of this state and federal law to favor arbitration and any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.") (citation and internal quotation marks omitted)). Therefore, "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute[.]" arbitration must generally be ordered. *Landers v. FDIC*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013) (citing *Am. Recovery Corp. v. Computerized Thermal Imaging*, 96 F.3d 88, 92 (4th Cir. 1996) (internal citations omitted)).

Under the FAA, a court must stay "any suit or proceeding" pending arbitration of "any issue referable to arbitration under an agreement in writing for such arbitration." 9 U.S.C. § 3. The Supreme Court of the United States has held that the FAA's substantive provisions are to be enforced in state courts as well as in federal courts. *See Southland Corp. v. Keating*, 465 U.S. 1, 16 (1984) (resolving conflict between state law and the FAA by enforcing the arbitration clause and holding that the state law violated the Supremacy Clause); *see also Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 271-72 (1995). According to the Supreme Court:

Section 2 [of the FAA] is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary. The effect of the section is to create a body of federal substantive law of arbitrability, applicable to any arbitration agreement within

coverage of the Act.

Moses H. Cone Mem. Hosp. v. Mercury Const. Corp., 460 U.S. 1, 24 (1983). The FAA requires that courts enforce arbitration agreements, *see* FAA §§ 2 and 3, and the Supreme Court has unambiguously held that courts must follow these provisions. *Am. Exp. Co. v. Italian Colors Rest.*, 133 S. Ct. 2304, 2309 (2013); *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 220-21 (1985). Likewise, South Carolina courts have held that “[u]nless the parties have contracted to the contrary, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538 (2001). “Thus, an arbitration agreement that complies with the FAA and that exists within a contract to purchase or finance a vehicle preempts any state arbitration-specific law that would otherwise invalidate the arbitration agreement.” *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 79, 749 S.E.2d 139, 145 (Ct. App. 2013)

South Carolina state law compels the same result. Under S.C. Code Ann. § 15-48-20(a), (d), where a valid agreement to arbitrate is found, “the court shall order the parties to proceed with arbitration” and “[a]ny action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made.” *See, e.g. Charleston Nat. Country Club, LLC v. Kane*, 2006 WL 6109178 (S.C. Com. Pl. Apr. 10, 2006) (“If an issue is subject to an arbitration provision, the court shall stay the proceeding and order the parties to proceed to arbitration.”). Both federal and state law therefore dictate that actions brought under the Agreement, which contains a valid arbitration agreement, proceed in arbitration and that this Action be stayed.

III. THE ARBITRATION AGREEMENT IS ENFORCEABLE UNDER GENERAL STATE LAW PRINCIPLES.

a. The Arbitration Agreement is Not Unconscionable.

As is typical with most cases dealing with arbitration clauses, Defendants anticipate that Plaintiff will assert the standard argument that the arbitration clause is unconscionable. Where the FAA applies to an arbitration agreement, courts may only invalidate arbitration agreements on general state law contract defenses, such as fraud, duress, and unconscionability. *Zabinski*, 346 S.C. at 593, 553 S.E.2d at 116). Unconscionability is "the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Simpson*, 373 S.C. at 24-25, 644 S.E.2d at 668. Thus, unconscionability only exists when there is "*both* an absence of meaningful choice and oppressive, one-sided terms." *Id.* at 25, 644 S.E.2d at 669 (emphasis added).

The Arbitration Clause is prominently displayed, including utilizing all capitalized letters and bold-face type as to various provisions. Furthermore, the arbitration clause made up the last section of the contract and is mutually binding to both parties. Moreover, the contract, directly below the Plaintiff's signature, noted that the contract could be changed. Thus, Plaintiff did not lack a meaningful choice. Additionally, the Arbitration Clause does not limit Plaintiff's ability to recover certain damages or to bring certain claims, nor does it contain one-sided terms. *Cf. Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 49-50, 790 S.E.2d 1, 4-5 (2016) (holding that D.R. Horton's attempts to disclaim implied warranty claims and prohibit any monetary damages "are clearly one-sided and oppressive."). Here, unlike D.R. Horton, there are no oppressive, one-sided terms; rather, the Arbitration Clause applies equally to both parties. As such, the Arbitration Clause is not unconscionable and is therefore enforceable.

b. Defendants Have Not Waived Their Right to Invoke the Arbitration Agreement.

Finally, like nearly all litigants who oppose arbitration contend, Defendants anticipate Plaintiff will contend that Defendants have waived their right to invoke the arbitration clause. However, the party opposing arbitration “bears the heavy burden of proving waiver.” *In re Mercury Constr. Co.*, 656 F.2d 933, 939 (4th Cir. 1981). A party may waive its right to insist on arbitration if the party “so substantially utilizes the litigation machinery that to subsequently permit arbitration would prejudice the party opposing the stay.” *Fraser v. Merrill Lynch Pierce, Fenner & Smith, Inc.*, 817 F.2d 250, 252 (4th Cir. 1987). But even in cases where the party seeking arbitration has invoked the “litigation machinery” to some degree, “the dispositive question is whether the party object to arbitration has suffered actual prejudice.” *Id.* “Neither delay nor the filing of pleadings by the party seeking a stay will suffice, without more, to establish waiver of arbitration.” *Id.* (citation omitted).

Defendants’ invocation of the arbitration clause was not untimely nor done with delay. Nor did Defendants waive its right to seek arbitration by filing an Answer in this matter. In fact, in Defendants’ Answer, the arbitration clause was enumerated as a specific defense to the Action. Moreover, nothing in the record suggests that Plaintiff has suffered actual prejudice sufficient to constitute a waiver of Defendants’ right to arbitration. *See Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (“It is only when . . . delay results in actual prejudice that it may amount to ‘default’ within the [Federal Arbitration] Act.”); *see also MicroStrategy, Inc. v. Lauricia*, 268 F.3d 244, 249-50 (4th Cir. 2001) (noting that where time between filing of action and arbitration was less than six months, there was no waiver). As such, the delay, if any, on the part of Defendants is not sufficient to support a finding of waiver.

CONCLUSION

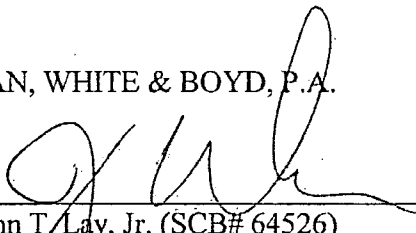
Hendrick hereby exercises its right to enforce the Arbitration Clause and compel the

arbitration of the claims asserted by Plaintiff pursuant to the terms of the Arbitration Clause. With Hendrick having elected to arbitrate the Plaintiff's claims, this Court lacks subject matter jurisdiction over this dispute, and is an improper venue for the disposition of Plaintiff's claims.² Upon entry of an order compelling arbitration of Plaintiff's action, Hendrick will work in good faith with Plaintiff and his counsel to choose a suitable arbitration organization and thereafter expeditiously arbitrate Plaintiff's claims.

For these reasons, the Court should grant Defendants' motion to stay this Action so that it can be resolved by arbitration and award Defendants' its costs and attorneys' fees.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

BY: 

John T. Lay, Jr. (SCB# 64526)
Jessica A. Waller (SCB# 100256)
1201 Main Street, Suite 1200 (29201)
Post Office Box 7368
Columbia, South Carolina 29202
TEL: (803) 779-1833
FAX: (803) 779-1767
jlay@gwblawfirm.com
jwaller@gwblawfirm.com

**COUNSEL FOR DEFENDANTS SAVANNAH
HIGHWAY AUTOMOTIVE CO., D/B/A RICK
HENDRICK DODGE CHRYSLER JEEP RAM AND
ISIAH S. WHITE**

Columbia, South Carolina
November 13, 2017.

²Because the Arbitration Clause expressly applies to claims against Hendrick's employees, the claims asserted against White should also be referred to arbitration, and dismissed from this Action. Additionally, because the Arbitration Clause expressly apply to claims against Hendrick's "assigns," the claims asserted against Santander, the assignee of Retail Installment Sales Contract at issue in this case, should also be referred to arbitration.

EXHIBIT A

Front 1

SIMPLE FINANCE CHARGE

Dealer Number

Contract Number

Buyer Name and Address (Including County and Zip Code) C/O SANDERS JR 1000 E. HIGHWAY 101 LAWRENCEVILLE, GA 30046	Co-Buyer Name and Address (Including County and Zip Code) N/A	Creditor-Seller (Name and Address) RICH HENDRICKS FORDS CREDIT CO 1000 SAVANNAH HIGHWAY CHARLESTON, SC 29407
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You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Creditor - Seller (sometimes "we" or "us" in this contract), the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-In-Lending Disclosures below are part of this contract.

New/Used/Demo	Year	Make and Model	Vehicle Identification Number	Primary Use For Which Purchased Personal, family, or household unless otherwise indicated below ☐ business ☒ agricultural
NEW	2000	FORD	1F3P141A1A0117490	

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment of \$1,500.00 is \$27,500.00
12.99%	\$1,500.00	\$26,000.00	\$27,500.00	\$27,500.00

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due
36	\$763.89	Monthly beginning 12/1/00

OR As Follows:

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

Check the insurance you want and sign below:

Optional Credit Insurance

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

Credit Life \$

Credit Disability \$

Insurance Company Name

N/A

Home Office Address

N/A

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

Other Optional Insurance

☐ N/A Type of Insurance Term

Premium \$

Insurance Company Name

N/A

Home Office Address

N/A

N/A

Type of Insurance Term

Premium \$

Insurance Company Name

N/A

N/A

Front 2

ITEMIZATION OF AMOUNT FINANCED

1 Cash Price (including \$ _____ sales tax and \$ _____ closing fee) \$ _____ (1)

2 Total Downpayment =

Trade-In _____
(Year) (Make) (Model)

Gross Trade-In Allowance \$ _____

Less Pay Off Made By Seller \$ _____

Equals Net Trade-In \$ _____

+ Cash \$ _____

+ Other \$ _____

(If total downpayment is negative, enter "0" and see 4 below) \$ _____ (2)

3 Unpaid Balance of Cash Price (1 minus 2) \$ _____ (3)

4 Other Charges Including Amounts Paid to Others on Your Behalf
(Seller may keep part of these amounts)

A Cost of Optional Credit Insurance Paid to

Insurance Company or Companies

Life \$ _____

Disability \$ _____

B Vendor's Single Interest Insurance Paid to Insurance Company \$ _____

C Other Optional Insurance Paid to Insurance Company or Companies \$ _____

D Optional Gap Contract \$ _____

E Official Fees Paid to Government Agencies

to _____ for _____ \$ _____

to _____ for _____ \$ _____

to _____ for _____ \$ _____

F Government Taxes Not Included in Cash Price \$ _____

G Government License and/or Registration Fees \$ _____

H Government Certificate of Title Fees \$ _____

I Other Charges (Seller must identify who is paid and describe purpose)

to _____ for Prior Credit or Lease Balance \$ _____

to _____ for _____ \$ _____

to _____ for _____ \$ _____

to _____ for _____ \$ _____

to _____ for _____ \$ _____

to _____ for _____ \$ _____

to _____ for _____ \$ _____

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to _____ for _____ \$ _____

to _____ for _____ \$ _____

to _____ for _____ \$ _____

to _____ for _____ \$ _____

5 Amount Financed (3 + 4) \$ _____ (5)

increase in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown below.

Other Optional Insurance

☐ N/A

Type of Insurance Term

Premium \$ _____

Insurance Company Name _____

Home Office Address _____

☐ N/A

Type of Insurance Term

Premium \$ _____

Insurance Company Name _____

Home Office Address _____

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

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

☒ Buyer Signature _____ Date _____

☒ Co-Buyer Signature _____ Date _____

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

☒ Buyer Signature _____ Date _____

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

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

OPTION: ☒ You pay no finance charges if the Amount Financed, Item 5, is paid in full on or before _____ Year _____

SELLER'S INITIALS _____

☒ If this box is checked, the following late charge applies to vehicles purchased primarily for business or agricultural use.

If a payment is not received in full within _____ days after it is due, you will pay a late charge of \$ _____ or _____ % of the part of the payment that is late, whichever is less.

If this box is not checked, the late charge in the Federal Truth-in-Lending Disclosure still applies.

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

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

Term _____ Mos _____ Name of Gap Contract _____

I want to buy a gap contract.

Front 3

to \$	for \$	\$
to \$	for \$	\$
Total Other Charges and Amounts Paid to Others on Your Behalf		\$ (4)
5. Amount Financed (3 + 4)		\$ (5)

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

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

OPTION: ☐ You pay no finance charge if the Amount Financed, Item 5, is paid in full on or before Year 1 / 1 / 1 SELLER'S INITIALS

☐ If this box is checked, the following late charge applies to vehicles purchased primarily for business or agricultural use. If a payment is not received in full within 15 days after it is due, you will pay a late charge of \$ 10.00 or 1.5 % of the part of the payment that is late, whichever is less. If this box is not checked, the late charge in the "Federal Truth-In-Lending Disclosures" still applies.

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

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

Term Mos. Name of Gap Contract

I want to buy a gap contract.

Buyer Signs X

NO COOLING OFF PERIOD

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

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

HOW THIS CONTRACT CAN BE CHANGED: This contract contains the entire agreement between you and us relating to this contract. Any change to this contract must be in writing and we must sign it. No oral changes are binding. Buyer Signs X Co-Buyer Signs X

If any part of this contract is not valid, all other parts stay valid. We may delay or refrain from enforcing any of our rights under this contract without losing them. For example, we may extend the time for making some payments without extending the time for making others. See back for other important agreements.

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

You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You acknowledge that you have read both sides of this contract, including the arbitration clause on the reverse side, before signing below. You confirm that you received a completely filled-in copy when you signed it.

Buyer Signs X Date Co-Buyer Signs X Date

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

Other owner signs here X Address

Seller signs By X Title

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

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

Seller By Title

LAW: FORM NO. 553-SC-ARB (REV. 01/11) U.S. PATENT NO. 6,480,732
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DEALER COPY

1. FINANCE CHARGE AND PAYMENTS

- a. **How we will figure Finance Charge.** We will figure the Finance Charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed.
- b. **How we will apply payments.** We may apply each payment to the earned and unpaid part of the Finance Charge, to the Amount Financed, and to other amounts you owe under this contract in any order the law permits.
- c. **How late payments or early payments change what you must pay.** We based the Finance Charge, Total of Payments, and Total Sale Price shown on the front on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
- d. **You may prepay.** You may prepay all or part of the unpaid part of the Amount Financed at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.
- e. **You may refinance a balloon payment.** A balloon payment is a scheduled payment that is more than twice as large as the average of your earlier scheduled payments. If you are buying the vehicle primarily for personal, family, or household use, you may refinance the balloon payment when due without penalty. The terms of the refinancing will be no less favorable to you than the terms of this contract. This provision does not apply if we adjusted your payment schedule to your seasonal or irregular income.

2. YOUR OTHER PROMISES TO US

- a. **If the vehicle is damaged, destroyed, or missing.** You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- b. **Using the vehicle.** You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- c. **Security Interest**
You give us a security interest in:
 - The vehicle and all parts or goods put on it.
 - All money or goods received (proceeds) for the vehicle.
 - All insurance, maintenance, service, or other contracts we finance for you; and
 - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.

This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest.

If you pay late, we may also take the steps described below.

b. **You may have to pay all you owe at once.** If you break your promises (default) we may demand that you pay all you owe at once after we give you any notice the law requires. Default means:

- You do not make any payment when due; or
- You start a proceeding in bankruptcy or one is started against you or your property; you give false, incomplete, or misleading information on a credit application; or you break any agreements in this contract, except that if you bought the vehicle primarily for personal, family, or household use, we will only treat these events as defaults if they significantly impair the prospect of payment, performance, or realization of the collateral.

The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.

- c. **You may have to pay collection costs.** If we hire an attorney who is not our salaried employee to collect what you owe, you will pay the attorney's reasonable fee and court costs as the law allows. The maximum attorney's fee you will pay will be 15% of the amount you owe. You will also pay the reasonable expenses we incur in realizing on our security interest as the law allows.
- d. **We may take the vehicle from you.** If you default, we may take (repossess) the vehicle from you after we give you any notice the law requires. We may only take the vehicle if we do so peacefully without entering into a dwelling used as a current residence. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you at your expense. If you do not ask for these items back, we may dispose of them as the law allows.
- e. **How you can get the vehicle back if we take it.** If we repossess the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. Your right to redeem ends when we sell the vehicle.
- f. **We will sell the vehicle if you do not get it back.** If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney's fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us, unless the law provides otherwise. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest rate permitted by applicable law.
- g. **What we may do about optional insurance, maintenance, service, or other contracts.** This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, we may claim benefits under these contracts and cancel them to obtain

Back a

2. YOUR OTHER PROMISES TO US

- a. If the vehicle is damaged, destroyed, or missing. You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- b. Using the vehicle. You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.

c. Security Interest

You give us a security interest in:

- The vehicle and all parts or goods put on it;
- All money or goods received (proceeds) for the vehicle;
- All insurance, maintenance, service, or other contracts we finance for you; and
- All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.

This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle.

d. Insurance you must have on the vehicle.

You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the cost of the insurance and a finance charge at the Annual Percentage Rate shown on the front of this contract. If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.

- e. What happens to returned insurance, maintenance, service, or other contract charges. If we get a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- a. You may owe late charges. You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.

Back, we may dispose of them as the law allows.

- e. How you can get the vehicle back. If we take it, if we repossess the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. Your right to redeem ends when we sell the vehicle.
- f. We will sell the vehicle if you do not get it back. If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney's fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us, unless the law provides otherwise. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest rate permitted by applicable law.
- g. What we may do about optional insurance, maintenance, service, or other contracts. This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

4. WARRANTIES SELLER DISCLAIMS

Unless the Seller makes a written warranty or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose.

This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide.

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

6. Servicing and Collection Contacts

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

7. Applicable Law

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

- e. What happens to returned insurance, maintenance, service, or other contract charges. If we get a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- a. You may owe late charges. You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.

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

6. Servicing and Collection Contacts

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

7. Applicable Law

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

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

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

ARBITRATION CLAUSE

PLEASE REVIEW - IMPORTANT - AFFECTS YOUR LEGAL RIGHTS

1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.
2. IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.

Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Clause, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Clause shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action. You expressly waive any right you may have to arbitrate a class action. Arbitration shall be conducted by the American Arbitration Association, 1633 Broadway, 10th Floor, New York, New York, 10019 (www.adr.org), or any other organization that you choose subject to our approval. You may get a copy of the rules of these organizations by contacting the arbitration organization or visiting its website.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law in making an award. The arbitration hearing shall be conducted in the federal district in which you reside, unless the Creditor/Seller is a party to the claim or dispute, in which case the hearing will be held in the federal district where this contract was executed. We will advance your filing, administration, service or case management fee and your arbitrator or hearing fee all up to a maximum of \$2500, which may be reimbursed by decision of the arbitrator at the arbitrator's discretion. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. If the chosen arbitration organization's rules conflict with this Arbitration Clause, then the provisions of this Arbitration Clause shall control. The arbitrator's award shall be final and binding on all parties, except that in the event the arbitrator's award for a party is \$0 or against a party is in excess of \$100,000, or includes an award of injunctive relief against a party, that party may request a new arbitration under the rules of the arbitration organization by a three-arbitrator panel. The appealing party requesting new arbitration shall be responsible for the filing fee and other arbitration costs subject to a final determination by the arbitrators of a fair apportionment of costs. Any arbitration under this Arbitration Clause shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and not by any state law concerning arbitration.

You and we retain any rights to self-help remedies, such as repossession. You and we retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Neither you nor we waive the right to arbitrate by using self-help remedies or filing suit. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Clause shall survive any termination, payoff or transfer of this contract. If any part of this Arbitration Clause, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. If a waiver of class action rights is deemed or found to be unenforceable for any reason in a case in which class action allegations have been made, the remainder of this Arbitration Clause shall be unenforceable. Notwithstanding any other provision of this Arbitration Clause, the validity and scope of the waiver of class action rights shall be decided by the court and not by the arbitrator.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Cleo Sanders,

Plaintiff,

vs.

Savannah Highway Automotive Co., a
General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander
Consumer USA Holdings, Inc., Isiah S.
White, Danny Anderson, and Patrick
Bachrodt, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

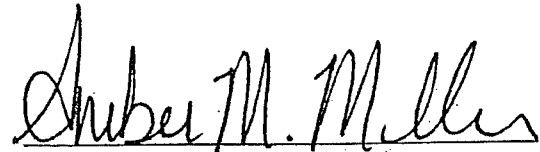
C/A#: 2017-CP-10-2148

CERTIFICATE OF SERVICE

FILED
2017 NOV 15 PM 2:19
JULIE A. ARISTON
CLERK OF COURT

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U. S. Mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the address(es) shown below.

<u>DOCUMENT:</u>	DEFENDANTS SAVANNAH HIGHWAY AUTOMOTIVE CO., D/B/A RICK HENDRICK DODGE CHRYSLER JEEP RAM AND DEFENDANT ISIAH S. WHITE'S MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS OR STAY AND TO COMPEL ARBITRATION
<u>COUNSEL SERVED:</u>	C. Steven Moskos, Esq. C. Steven Moskos, P.A. 4000 Faber Place Drive Suite 300 Charleston, South Carolina 29405 Graham H. Claybrook, Esq. McGuire Woods LLP 201 North Tryon Street Suite 3000 Charlotte, North Carolina 28226


Amber M. Miller, Legal Assistant

Columbia, South Carolina
November 13, 2017

) IN THE COURT OF COMMON PLEAS

) FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 17-CP-10-2148

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**PLAINTIFF'S BRIEF IN OPPOSITION TO
DEFENDANT SAVANNAH HIGHWAY
AUTOMOTIVE COMPANY'S MOTION TO
COMPEL ARBITRATION**

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2017 NOV 15 FRI 9:4

[Handwritten signature]

This matter comes before the Court on Defendant Savannah Highway's Motion to Compel Arbitration. The Court should deny Savannah Highway's motion because:

1. Savannah Highway has not provided the Court with an authenticated arbitration agreement signed by the Parties as required by Rule 6(d) SCRPC and Rule 901 SCRE.
2. Savannah Highway has not shown that any alleged arbitration agreement complies with SC Code Ann. §15-48-10(a) which requires a notice of an arbitration agreement in a contract to be typed in underlined capital letters on the first page of the contract.
3. Savannah Highway lacks standing to compel arbitration as it has assigned to Defendant Santander all its rights under any sales and finance contract between it and Mr. Sanders.
4. Even if Savannah Highway did have standing to compel arbitration, it has not shown that Mr. Sanders has agreed to arbitrate this matter.
5. Savannah Highway has waived its right to compel arbitration by invoking the litigation machinery.

FACTS

Mr. Sanders bought a car from Defendant Savannah Highway. Savannah Highway's employees falsified Mr. Sanders' income on his credit application to ensure that Santander would buy the Retail Installment Sales Contract from it. Savannah Highway then assigned all of its rights and obligations under the contract to Defendant Santander. Mr. Sanders could not pay for the car since his income did not support the payment. Santander repossessed and sold the car.

LAW/ANALYSIS

1. SAVANNAH HIGHWAY HAS FAILED TO PROVIDE ANY EVIDENCE THAT THE PARTIES AGREED TO ARBITRATE THIS DISPUTE.

a. Savannah Highway has failed to follow the applicable Rules to provide the Court evidence of a valid arbitration agreement.

Rule 6(d) SCRCP states, "When a motion is to be supported by affidavit, the affidavit shall be served with the motion;". Defendant's motion requires production of a valid authenticated contract. Therefore, pursuant to Rule 901 SCRE, Defendant must file an affidavit authenticating any documents used to support its motion. It has failed to do so. Therefore, the Court should strike any documents Defendant seeks to produce. Without any documents or even an affidavit from its client setting forth the terms of any arbitration agreement, Defendant Savannah Highway's motion must be denied.

b. Savannah Highway has failed to provide evidence that the Parties agreed to arbitrate this matter.

The burden is on the party seeking to compel arbitration to prove that a valid agreement to arbitrate was formed and failure to produce an agreement is grounds for denial of the motion. See, e.g., Mendez v. Puerto Rican Int'l Companies, Inc., 553 F. 3d

709 (3d Cir 2009) (denying employer's motion to stay action pending arbitration as to 41 employee plaintiffs when employer failed to produce evidence they had agreed to arbitration); Gelow v Cent. Pac. Mortgage Corp., 560 F. Supp. 2d 972 (E.D. Cal. 2008) (evidence of general practice of requiring arbitration was insufficient to prove plaintiffs agreed to arbitrate); Spaces, Inc. v. RPC Software, Inc., 2007 WL 675505 (D. Kan. Mar. 1, 2007) (party seeking to compel arbitration "bears the initial summary-judgment-like burden of establishing that it is entitled to arbitration"; competing affidavits on issue of whether parties agreed to arbitration creates a genuine issue of material fact); Pelzer Manuf'g Co. v. Sun Fire Office of London, 15 SE 562, 36 SC 213 (1892) ("if the Defendant makes an allegation of facts, the burden of proof is upon him.").

To file a Motion to Compel Arbitration, Defendant Savannah Highway must provide to the Court an authenticated copy of the arbitration agreement between the Parties. This requires an affidavit from a duly authorized representative of the Defendant who is competent to identify the document which contains the arbitration agreement and who can identify Mr. Sanders' signature. Defendant has failed to provide an affidavit from one of its employees identifying the alleged arbitration agreement or even that one exists. In fact, Defendant's Motion did not even contain a copy of any contract between the Parties. Defendant's Motion only contained part of an arbitration agreement its attorney claimed applies in this case. The arbitration language in its Motion does not evidence any signatures of Mr. Sanders or Defendant. Thus, Defendant cannot prove through its Motion that the Parties agreed to arbitrate this matter.

Three days before the hearing, Defendant's attorney submitted to the Court by email

a form brief and an unauthenticated form contract. Defendant's counsel claims Exhibit A¹ to his brief is the contract between the Parties. Defendant's counsel does not claim to have been at the dealership when Mr. Sanders purchased the car nor has he stated that he is familiar with Defendant's files and policies and procedures. Thus, defense counsel cannot authenticate the document provided.

Additionally, the document provided does not appear to be completed. Defense counsel claims the document applies to this matter but the spaces that have to be filled in for a customer appear to be blank or have illegible markings, and it does not appear that the document has been signed.

Without a properly authenticated arbitration agreement before the Court, Defendant cannot force Mr. Sanders into arbitration. Defendant's motion should be denied.

2. THE PURPORTED ARBITRATION LANGUAGE DOES NOT COMPLY WITH SOUTH CAROLINA'S ARBITRATION ACT'S REQUIREMENTS.

State law governing the formation of contracts, not the F.A.A., determines whether a valid arbitration agreement exists between parties. First Options of Chicago v. Kaplan, 514 U.S. 938, 943 (1995). In the absence of the Parties specifically incorporating the Federal Arbitration Act into their arbitration clause, South Carolina law, and thus the South Carolina Arbitration Act, governs Savannah Highway' motion. Section 15-48-10 states:

(a) A written agreement to submit any existing controversy to arbitration or

¹ On page 4 of his Brief, Defense counsel claims Mr. Sanders did not propose changes to the contract. Defense counsel ignores the fact that Defendant uses disfavored adhesion contracts that prevent customers from making changes to the preprinted terms. See Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (2007), "An adhesion contract is a standard form contract offered on a 'take-it-or-leave-it' basis with terms that are not negotiable. Adhesion contracts between dealers and consumers 'are subject to considerable skepticism upon review, due to the disparity in bargaining positions of the parties.'" Furthermore, defense counsel was not present when Mr. Sanders was at the dealership so he does not know what transpired.

a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.

Even if the Court were to find the purported arbitration language constitutes an arbitration agreement, the Court would still have to invalidate the arbitration clause under South Carolina law as it does not provide the required notice under the statute. The alleged arbitration clause is not underlined nor is it on the first page of the contract. Since it does not comply with the Act, it must be stricken from the Parties' contract. Soil Remediation Co. v. Nu-Way Environmental, Inc., 476 S.E.2d 149, 323 S.C. 454 (1996). Since Savannah Highway has not and cannot show it complied with the South Carolina Arbitration Act, it cannot rely on South Carolina law to enforce any alleged arbitration provision. Its motion should be denied.

3. Defendant Savannah Highway lacks standing to compel arbitration as it has assigned all of its rights and obligations under its sales and finance contract to Santander.

Arbitration is a matter of contract law and is available only when the parties involved contractually agreed to arbitrate. Towles v. United HealthCare Corp., 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999); Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 404 n. 12, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967) ("[T]he purpose of Congress in 1925 was to make arbitration agreements as enforceable as other contracts, but not more so."); Allied-Bruce Terminex Cos. v. Dobson, 513 U.S. 265, 270 (1995)("arbitration under the [Federal Arbitration Act] is a matter of consent, not coercion"). Arbitration will be denied

if a court determines no agreement to arbitrate existed. S.C.Code Ann. § 15-48-20(a).

The state and federal arbitration acts were not enacted to force parties into arbitration but to enforce parties voluntary agreements to arbitrate certain specified disputes. "Arbitration is simply a matter of contract between parties; it is a way to resolve disputes-but only those disputes-that the parties have agreed to submit to arbitration." First Options of Chicago, Inc., 514 US 938, 943, 115 S. Ct. 1920, 1924, 131 L. Ed. 2d 985 (1995); see also AT&T Technologies, Inc. v The Communications and Workers of Am., 475 U.S. 643, 648-649, 106 S. Ct. 1415, 89 L. Ed. 2d 648 (1986) ("Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not so agreed to submit This axiom recognizes the fact that arbitrators derived their authority to resolve disputes only because the parties have agreed in advance to submit such grievances to arbitration." (Internal citations omitted)); Equal Employment Opportunity Commission v. Waffle House, Inc., 534 U.S. 279, 122 S. Ct. 754, 151 L. Ed. 2d 755 (2002).

General contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause. Munoz v. Green Tree Fin. Corp., 343 SC 531, 542 SE2d 360 (2001); Novic v. Midland Funding, LLC, Civil Action No.: RDB-17-0177 (D. Md. Sep. 21, 2017).

The F.A.A. provides that arbitration clauses will not be enforceable if there are grounds under a state's common law of contract for invalidating the clause. 9 U.S.C. §2. The purpose of the F.A.A. is to "place arbitration agreements upon the same footing as other contracts." Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 24 (1991).

South Carolina law provides that where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine

whether the agreement exists in the first place. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (2007).

"[A]rbitrability is at bottom a question of contract interpretation; a party cannot be required to arbitrate a dispute if it has not contractually agreed to do so." Sierra Roach v. Navient Solutions, Inc., 165 F. Supp. 3d 343, 346, 2015 WL 8479195, at *3 (D. Md. Dec. 10, 2015). Therefore, "[w]hile ambiguities in the language of [an] agreement should be resolved in favor of arbitration, Volt [v. Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ., 489 U.S. 468, 478 (1980)], [the Court does] not override the clear intent of the parties, or reach a result inconsistent with the plain text of the contract, simply because the policy favoring arbitration is implicated." E.E.O.C. v. Waffle House, Inc., 534 U.S. 279, 294 (2002). Novic v. Midland Funding, LLC, Civil Action No.: RDB-17-0177 (D. Md. Sep. 21, 2017).

An assignment consists of three elements: (1) an assignor, (2) an assignee, and (3) transfer of control of the thing assigned from the assignor to the assignee. Leon v. Martinez, 84 N.Y.2d 83, 88, 614 N.Y.S.2d 972, 638 N.E.2d 511 (N.Y.1994); see also Restatement (Second) of Contracts § 317 (1981) ("An assignment of a right is a manifestation of the assignor's intention to transfer it by virtue of which the assignor's right to performance by the obligor is extinguished in whole or in part and the assignee acquires a right to such performance."). Donahue v. Multimedia, Inc., 362 S.C. 331, 608 S.E.2d 162 (S.C. App. 2005).

South Carolina contract law carries a presumption that an individual who is not a party to a contract lacks privity to enforce it. See Touchberry v. City of Florence, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988). Trancik v. USAA INS. CO., 354 S.C. 549, 581

S.E.2d 858 (S.C. App. 2003).

According to defense counsel, his Exhibit A is the financing agreement between the Parities. By its own terms, that document and all the rights and obligations therein would have been assigned to Santander. (See Complaint ¶¶46 and Defendant Savannah Highway's Answer ¶¶34; Exhibit A, Page 13 of Defendant's Brief.) Once Savannah Highway transferred its rights and interests in the agreement to Santander, it ceased to be a party to the contract. Thus, even if Defendant Savannah Highway could show it originally had a valid arbitration agreement in its financing documents, its assignment of its rights to Santander terminated its contractual rights to arbitrate disputes with Mr. Sanders. Without a valid arbitration agreement, Savannah Highway does not have standing to request arbitration. Therefore, its motion must be denied.

4. Savannah Highway has waived its right to compel arbitration by invoking the litigation machinery.

A litigant may waive its right to invoke the Federal Arbitration Act by so substantially utilizing the litigation machinery that to subsequently permit arbitration would prejudice the party opposing the stay. Maxum Founds, Inc. v. Salus Corp., 779 F. 2d 974, 981 (4th Cir. 1985).

This matter was filed May 1, 2017. Savannah Highway was served on May 10. Savannah Highway then requested, and was granted, an extension of time to answer the Complaint. (Exhibit 1.) Its Answer was filed July 12. Mr. Sanders served discovery on Savannah Highway on July 21. Savannah Highway requested, and was granted, an extension of time until September 8, to answer Mr. Sanders' discovery requests. (Exhibit 2.) On September 7, Savannah Highway filed its Motion to Compel Arbitration.

Defendant has participated in litigating this matter and has waived its rights to now move to compel arbitration. Furthermore, Savannah Highway has delayed this matter making it more difficult to find its former employees who were participants in a scheme that cheated Mr. Sanders. Savannah Highway's motion should be denied.

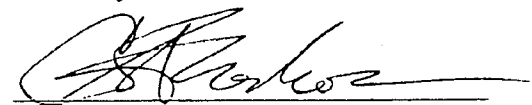
CONCLUSION

Defendant has failed to carry its burden of showing that the Parties' contract contains a provision to arbitrate. Defendant has failed to provide the alleged arbitration provision, the terms of the arbitration provision, and sufficient proof that Mr. Sanders signed the alleged arbitration provision. It has provided unauthenticated documents that appear to be incomplete or have writing that is illegible. Furthermore, Defendant has assigned all of its rights under the purported contract to Santander. Thus, Defendant has failed to meet its burden of proof. Since there is no evidence there is an agreement to arbitrate between the Parties, the Court should deny Savannah Highway's Motion to Compel Arbitration.

C. STEVEN MOSKOS, P.A.

Attorney for Plaintiff

BY:



C. Steven Moskos

4000 Faber Place Drive, Ste. 300

North Charleston, South Carolina 29405

Telephone: (843) 763-5297

Email: csmoskos@earthlink.net

Charleston, South Carolina

11/15, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Cleo Sanders,

C/A NUMBER: 2017-CP-10-2148

Plaintiff,

vs.

Savannah Highway Automotive Co., a
General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander
Consumer USA Holdings, Inc., Isiah S.
White., Danny Anderson, and Patrick
Bachrodt, Jr.

Defendants.

**DEFENDANTS SAVANNAH HIGHWAY
AUTOMOTIVE CO., D/B/A RICK
HENDRICK DODGE CHRYSLER JEEP
RAM AND DEFENDANT ISIAH S.
WHITE'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
THEIR MOTION TO DISMISS OR STAY
AND TO COMPEL ARBITRATION**

FILED
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CLERK OF COURT

Defendants Savannah Highway Automotive Co., d/b/a Rick Hendrick Dodge Chrysler Jeep Ram ("Hendrick") and Isiah S. White ("White") (collectively "Defendants") hereby files this Supplemental Memorandum of Law in Support of Defendants' Motion to Dismiss or Stay and to Compel Arbitration, addressing various issues discussed by the Court at the hearing on November 16, 2017.

ARGUMENTS

A. Authentication of Retail Installment Sales Contract

Attached hereto as **Exhibit A**, and in response to Plaintiff's contention regarding authentication of the carbon copy of the Retail Installment Sales Contract in Defendants' possession and the Court's discussion of the same, Defendants hereby submit an Affidavit of Brandon Hackeloer and an improved copy of the Retail Installment Sales Contract.

B. Other State Law Defenses to Arbitration

At the hearing, the Court permitted Plaintiff leave to address whether other state law defenses to arbitration beyond unconscionability, notably fraud and duress, would act to invalidate the otherwise valid arbitration agreement. Defendants respectfully address these defenses as well in the context of the arbitration agreement at issue in this matter.

In *AT&T Mobility, L.L.C. v. Concepcion*, the United States Supreme Court reiterated its position that "courts must place arbitration agreements on equal footing with other contracts, . . . and enforce them according to their terms[.]" 563 U.S. 333, 339 (2011) (citing *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006); *Volt Info. Scis, Inc.*, 489 U.S. at 478). The *Concepcion* decision further explained that the Federal Arbitration Act ("FAA") permits arbitration agreements to be invalidated by "generally applicable contract defenses," such as fraud, duress, or unconscionability, but not by defenses that apply solely to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue. See 131 S.Ct. at 1746 (citing *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996) (finding courts may not invalidate arbitration agreements under state laws applicable only to arbitration provisions); *Perry v. Thomas*, 482 U.S. 483, 492-93, n. 9 (1987) (finding state law, whether of legislative or judicial origin, is applicable only if it arose to govern issues concerning contract validity, revocability, and enforceability, and state-law principles that take their meaning

from the fact that an arbitration agreement is at issue does not comport with the requirements of the FAA) (citation omitted)).

Our state Supreme Court recognized this continually reiterated principal as recently as last year. *See Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 9, 791 S.E.2d 128, 132 (2016) (addressing *Concepcion's* directive); *see also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 593, 553 S.E.2d 110, 116 (2001) (noting that courts may invalidate arbitration provisions on general contract defenses, such as fraud, duress, and unconscionability, but courts may not invalidate arbitration agreements under state laws applicable *only* to arbitration provisions). However, as discussed below, the general contract defenses of fraud duress and unconscionability¹ are not applicable and therefore cannot invalidate the arbitration agreement at issue.

1. Fraud

South Carolina courts have held that “arbitration clauses are separable from the contracts in which they are included. Therefore, there must be an allegation of fraud in inducement of the arbitration agreement to avoid arbitration of the contract itself.” *S.C. Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 562, 437 S.E.2d 22, 24 (1993). Thus, “a party cannot avoid arbitration through rescission of the entire contract when there is no independent challenge to the arbitration clause.” *Id.* at 562-63, 437 S.E.2d at 24. In other words, because the arbitration clause is separable from the contract, “[f]raud as a defense to an arbitration clause must be fraud specifically as to the arbitration clause and not the contract generally.” *Id.* There must be fraud in the inducement of the arbitration agreement to avoid arbitration of the contract. *Id.* In *Great W. Coal*, the Supreme Court held that the trial judge erred in holding

¹ Initially, Plaintiff did not address Defendants’ assertion in their original memorandum in support that the arbitration agreement was not unconscionable. To the extent the matter is still before the Court, Defendants hereby incorporate their discussion regarding unconscionability into this supplemental memorandum in support.

the arbitration clause is unenforceable because although the plaintiff pled that the defendant made false representations which induced the plaintiff to undertake certain transactions, the plaintiff did not specifically plead the arbitration clause was fraudulently induced. *Id.*; *see also Carolina Care Plan, Inc. v. United HealthCare Servs.*, 361 S.C. 544, 553, 606 S.E.2d 752, 757 (2004) (holding that where plaintiff made no allegation of fraud specifically related to the arbitration agreement and only challenged the contract generally, the issue of whether the entire contract was fraudulently induced was the proper question and must be decided in arbitration).

Plaintiff's Complaint fails to allege fraud in any manner specifically related to the arbitration clause. While Plaintiff alleges Defendants made false representations regarding the financing agreement as a whole, Plaintiff has not specifically alleged that the arbitration clause was fraudulently induced. As such, fraud is not an applicable defense that would invalidate the arbitration agreement in the Retail Installment Sales Contract. *See Great W. Coal, supra.*

2. Duress

Though the FAA governs whether a dispute is arbitrable, courts must apply state law to decide issues of contract formation such as whether the arbitration agreement was entered into under duress. *Gadberry v. Rental Servs. Corp.*, No. 0:09-3327-CMC-PJG, 2011 U.S. Dist. LEXIS 19360, at *9 (D.S.C. Feb. 24, 2011) (citing *Hill v. PeopleSoft USA, Inc.*, 412 F.3d 540, 543 (4th Cir. 2005)). Under South Carolina law, "[d]uress is a condition of mind produced by improper external pressure or influence that practically destroys the free agency of a party and causes him to do an act or form a contract not of his own volition." *Holler v. Holler*, 364 S.C. 256, 612 S.E.2d 469, 474 (Ct. App. 2005) (citing *Cherry v. Shelby Mut. Plate Glass & Cas. Co.*, 191 S.C. 177, 4 S.E.2d 123, 126 (1939)).

In *Gadberry*, the South Carolina district court held that there was no evidence of duress in signing the agreement, other than a self-serving affidavit submitted by the plaintiff. *Id.* (noting that the plaintiff's affidavit stating he would not have signed the agreement except under duress was not an adequate showing of duress where the record shows the plaintiff had "free choice to sign the agreement"). Similar to *Gadberry*, Plaintiff had "free choice to sign the agreement" to purchase the vehicle in question and Plaintiff has not alleged otherwise; therefore, any argument regarding duress must fail and arbitration is warranted.

C. Standing

In its original memorandum in opposition sent to the Court a day prior to the hearing, Plaintiff alleged that Defendants lack standing to enforce the arbitration agreement in the Retail Installment Sales Contract. However, as evidenced by Plaintiff's failure to cite any South Carolina law, South Carolina courts have never held that "standing" is one of the general contractual defenses that may invalidate an otherwise valid arbitration agreement. Thus, there is no South Carolina precedent suggesting that an assertion of lack of standing can invalidate an arbitration agreement which complies with the FAA.

Moreover, the clear language of the arbitration agreement at issue mandates that the question of standing, vis a vis an assignment, is a question to be arbitrated. The Supreme Court of Alabama has addressed this precise issue. In *Oakwood Acceptance Corp. v. Hobbs*, 789 So. 2d 847, 851-52 (Ala. 2001), the Alabama Supreme Court noted that "[j]ust as the arbitrability of the merits of a dispute depends upon whether the parties agreed to arbitrate that dispute, ... so the question 'who has the primary power to decide arbitrability' turns upon what the parties agreed about *that* matter." (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943, 131 L. Ed. 2d 985, 115 S. Ct. 1920 (1995)). In *Oakwood*, the plaintiffs contended that the

defendant, the financier, did not have standing to compel arbitration because it did not present any evidence that it had been assigned the rights to the sales contract.

The *Oakwood* court noted that “when deciding whether the parties agreed to arbitrate a certain matter (including arbitrability), courts generally ... should apply ordinary state-law principles that govern the formation of contracts” and that “[c]ourts should not assume that the parties agreed to arbitrate arbitrability unless there is ‘clear and unmistakable’ evidence that they did so.” *Id.* at 852 (citing *Kaplan*, 514 U.S. at 944); *see also AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643 (1986). The *Oakwood* court analyzed the arbitration agreements at issue² and stated:

In each of the two cases now before us, the arbitration agreement clearly provides that ‘any challenges to the validity or enforceability of this Agreement shall be determined by the arbitrator(s).’ Therefore, whether *Oakwood Acceptance* has standing to enforce the arbitration agreement between *Oakwood Homes* and the plaintiffs is a question that must be decided by the arbitrator.

Id. at 852.

Here, just as in *Oakwood*, it is clear the parties agreed to arbitration arbitrability. The agreement states:

² The arbitration agreements stated, in part:

All claims, disputes and controversies arising out of or relating in any way to the sale, purchase, or occupancy of the Home or of any goods or insurance products offered or sold in connection [*850] with the contract, or arising out of the financing of the Home, including but not limited to any negotiations between the parties, the design, construction, performance, delivery, condition, installation, financing, repair or servicing of the Home, including claims for equitable relief or claims based on contract, tort, statute, warranty, or any alleged breach, default, negligence, wantonness, fraud, misrepresentation, suppression of fact, or inducement, will to the fullest extent permitted by Federal law be resolved by binding arbitration administered by the American Arbitration Association (‘AAA’) under its Commercial Arbitration Rules. Notwithstanding the above, no act to take or dispose of collateral securing payments under the Contract, (including without limitation the exercise of any rights under a mortgage, deed of trust or security interest, with or without judicial process, or obtaining a writ of attachment or sequestration), shall be subject to this Arbitration Agreement. *Any challenges to the validity or enforceability of this Agreement shall be determined by the arbitrator(s).*

Oakwood Acceptance, 789 So. 2d at 849-50 (emphasis added).

Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Clause, and the arbitrability of this claim or dispute) between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action.

Thus, the arbitrability of this action, including the issues related to Defendants' standing and arbitrability, is a decision to be decided in arbitration, by an arbitrator, pursuant to the valid arbitration agreement.

Furthermore, the *Novic* case cited by Plaintiff previously presents, at best, a discussion on the ambiguities of the arbitration agreement and painstakingly parses out commas and conjunctions. However, federal law is clear that in applying general South Carolina rules of contract interpretation to the language of an arbitration agreement subject to the FAA, this Court must, in accordance with the federal substantive law on arbitration, resolve any ambiguities as to the scope of the arbitration agreement in favor of arbitration. See *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983) (§ 2 of the FAA "creates a body of federal substantive law of arbitrability, applicable to any arbitration agreement within the coverage of the Act" and "establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration"); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985) (in construing an arbitration agreement within the coverage of the FAA, "as with any other contract, the parties' intentions control, but those intentions are generously construed as to issues of arbitrability"); *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 475 (1989) ("in applying general state-law principles of contract interpretation to the interpretation of an arbitration agreement within the scope of the Act, due regard must be given to the federal

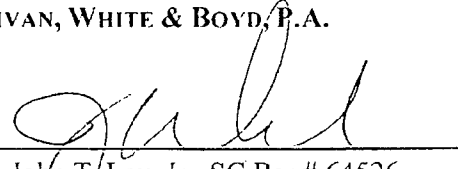
policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor of arbitration" (citation omitted)).

Thus, South Carolina and federal policy favoring arbitration mandates that if to the extent the arbitration agreement is susceptible to multiple interpretations, it should be construed in favor of arbitration.

CONCLUSION

For the reasons stated herein, and previously stated at the hearing and its original memorandum, Defendants' hereby exercise its right to compel arbitration and request their Motion to Stay and/or Dismiss and Compel Arbitration be granted.

GALLIVAN, WHITE & BOYD, P.A.

By: 

John T. Lay, Jr., SC Bar # 64526
Jessica A. Waller, SC Bar #100256
1201 Main Street, Suite 1200 (29201)
Post Office Box 7368
Columbia, SC 29202
jlay@gwblawfirm.com
jwaller@gwblawfirm.com
(803) 779-1833 Ofc
(803) 779-1767 Fax

*Attorneys for Defendants Savannah Highway
Automotive Co., d/b/a Rick Hendrick Dodge
Chrysler Jeep Ram and Isiah S. White*

November 30, 2017

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Cleo Sanders,

Plaintiff,

vs.

Savannah Highway Automotive Co., a
General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander
Consumer USA Holdings, Inc., Isiah S.
White., Danny Anderson, and Patrick
Bachrodt, Jr.

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A NUMBER: 2017-CP-10-2148

**AFFIDAVIT OF BRANDON
HACKELOER**

I, Brandon Hackeloer, being first duly sworn, depose and state as follows:

1. I am an adult citizen and resident of Charleston County, South Carolina.
2. At all times pertinent to this action, I served as a Finance and Insurance (known in the industry as "F&I") manager for Rick Hendrick Dodge Chrysler Jeep Ram, located at 1468 Savannah Highway, Charleston, South Carolina 29407 (the "Dealership"). In that capacity, I gained first-hand knowledge of the matters set forth herein.
3. My responsibilities as F&I manager included ensuring that for each vehicle purchase or lease transaction with which I was involved, the customer fully understood and executed all required documentation, and that all necessary documentation was included as a part of each deal.
4. I also helped to manage and maintain the Dealership's records associated with the sale or lease of new automobiles, including, but not limited to the records and types of records at issue in this lawsuit.
5. In conjunction with the sale of every new vehicle at the Dealership (including the one at issue in this lawsuit), the Dealership creates a new file, known as a "deal jacket," in which all pertinent, original records are placed. The deal jacket typically includes all documents signed by the customer in conjunction with a sale or lease, and various disclosure documents, among other paperwork. If a transaction is financed, every deal jacket must include an executed Retail Installment Sale Contract.
6. The Retail Installment Sales Contract utilized by the Dealership were pre-printed forms, that I believe were used in every sale completed in 2012. Every one of those

documents contained the arbitration clause as described in the Motion to Stay and/or Dismiss and Compel Arbitration.

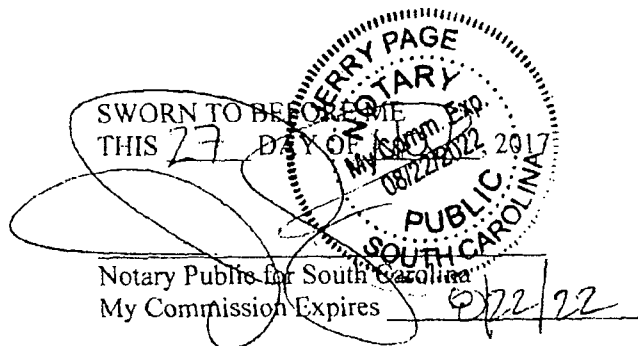
7. The Retail Sales Installment Contracts are always signed by the customer in the presence of the F&I manager or employee who is charged with working with the customer to complete all documentation necessary to complete the transaction—whether a purchase or a lease. All F&I employees at the Dealership, including me, always explain the various provisions of the documents that customers are asked to sign, including the Retail Installment Sales Contracts. Furthermore, the customer is always given the opportunity to read, review and ask questions regarding the various terms of all such documents. The Retail Installment Sales Contracts are comprised of an original, white, top sheet, followed by numerous differently-colored carbon copies, one of which goes to the customer and multiple copies of which remain in the deal jacket following completion of the transaction. When a transaction is finalized, the F&I representative charged with completing the transaction typically transfers the deal jacket to a secure, locked storage area.

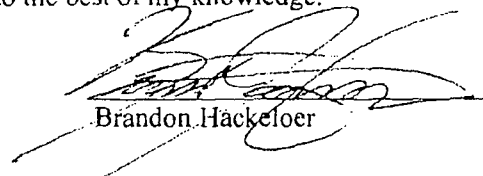
8. I served as the F&I manager and representative with respect to the vehicle transaction of Plaintiff at issue in this lawsuit.

9. Per standard practice as outlined above, I personally witnessed Plaintiff execute the Retail Installment Sales Contract, after I explained the terms of the contract and afforded him the opportunity to fully review, read and ask questions regarding those documents. I did not pressure or coerce Mr. Sanders to execute the document. He voluntarily executed the contract. After Mr. Sanders execute the contract, I signed on behalf of the Dealership. My signature is located on the bottom of the Retail Installment Sales Contract, a true and accurate copy of which is attached to this affidavit and incorporated into the Motion (though my signature is barely legible on the copy).

10. After completing the transaction for Mr. Sanders, I transferred his deal jacket to a locked, "Secured Document Area," where it presumably remained until it was sent to counsel for the Dealership upon information and belief. Prior to executing this Affidavit, I reviewed the deal jacket for Mr. Sanders' transaction. The documents appear exactly as I left them at the conclusion of the transaction.

11. I have reviewed the preceding Motion and Memorandum in Support. The statements of fact contained therein are all true to the best of my knowledge.




Brandon Hackeloe

Buyer Name and Address (Including County and Zip Code) GREG S. SIMERS, JR. 600 KNOWLEDGE DRIVE CADSON, SD 57235	Co-Buyer Name and Address (Including County and Zip Code) None	Officer SPICER (Name and Address) None
---	--	---

You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Creditor-Seller (sometimes "we" or "us") in this contract the Amount Financed and Finance Charge and \$1.00 in S.U.N.D.s according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-in-Lending Disclosures below are part of this contract.

New/Used/Demo	Year	Make and Model	Vehicle Identification Number	Primary Use For Which Purchased
NEW	2017	HONDA CARGO	2G4J11GN7H5000000	☒ Personal family or household use ☐ Other (specify below) _____ ☐ business use _____ ☐ agricultural _____ ☐ other _____

ANNUAL PERCENTAGE RATE On the Finance Charge On the Credit Balance 18.50%	FINANCE CHARGE On the Finance Charge On the Credit Balance \$17.47	Amount Financed \$100.00 Total Payments \$118.50 Monthly Payment \$9.87	Plan of Payment 12 Monthly Payments \$9.87 per Month \$118.50	Net Sales \$100.00 Cost of Goods \$82.53 Gross Profit \$17.47 Net Profit \$17.47
--	--	---	---	--

Number of Payments	Amount of Payments	When Payment Made
12	\$12.70	Monthly beginning

102A	102B	102C	102D	102E	102F	102G	102H	102I	102J	102K	102L	102M	102N	102O	102P	102Q	102R	102S	102T	102U	102V	102W	102X	102Y	102Z
------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------

[illegible]

Cash Price (including tax, title, license, dealer fees, etc.)		2001 CHRYSLER 300 SERIES	21,600.00
Total Downpayment			
Trade-In (If Any)			
Year	(Make) (Model)		
Gross Trade-In Allowance			21,600.00
Less: Pay Off Made By Seller			18,200.00
Equals Net Trade-In			3,400.00
Cash Price			18,200.00
Other		MFR. REBATE	1,000.00
Total Downpayment (if negative enter 0 and debt to bank)			2,400.00
Unpaid balance of Cash Price (if any)			18,200.00
Other Charges including Amounts Paid to Others on your Behalf			
(Seller may keep part of these amounts)			
A. Cost of Optional Credit Insurance Paid to Insurance Company or Companies			
B. Title			
C. Disposal			
D. Vendor's Share Interest Insurance Paid to Insurance Company			
E. Other Optional Insurance Paid to Insurance Company or Companies			
F. Optional Gap Contract			
G. Official Fees Paid to Government Agencies			
H. Government Taxes Not Included in Cash Price			
I. Government License and Registration Fees			
J. Government Certificate of Title Fees			
K. Other Charge (Seller must identify, if not paid and describe purpose)			
Total			
Total of Cash Price and Cash Price Balance			
Total			
Total			
Total			
Total			
Total			

insurance, you may buy the official damage insurance via contract with the (public) notary. In your deed of purchase, you have to declare that you may also conclude the official damage insurance with the notary. If you do not want to conclude the official damage insurance, you have to declare that you do not want to conclude the official damage insurance. If you do not want to conclude the official damage insurance, you have to declare that you do not want to conclude the official damage insurance.

Check the Insurance you want and sign below:

☐ Optional Credit Insurance

☐ No Credit Life ☐ Buyer's ☐ Co-Buyer's ☐ Both
☐ No Credit Disability ☐ Buyer's ☐ Co-Buyer's ☐ Both
 Premium \$ _____
☐ No Credit Life \$ _____
☐ No Credit Disability \$ _____
 Insurance Company Name _____

Home Office Address

[illegible]

Other Optional Insurance

[illegible]

Home Office Address: _____

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

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

Buyer Signature _____ Date _____

YUMKAT

Co-Buyer Signature _____ Date: _____
☒ IF CHECKED, THE TERM OF OPTIONAL CREDIT INSURANCE IS LESS THAN THE TERM OF THIS CONTRACT, AS DESCRIBED ABOVE.

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1. FINANCE CHARGE AND PAYMENTS

- How we will figure Finance Charge.** We will figure the Finance Charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed.
- How we will apply payments.** We may apply each payment to the earned and unpaid part of the Finance Charge, to the Amount Financed, and to other amounts you owe under this contract in any order the law permits.
- How late payments or early payments change what you must pay.** We based the Finance Charge, total of Payments, and Total Sale Price shown on the front on the assumption that you will make every payment on the day it is due. Your Finance Charge, total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, as an option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
- You may prepay.** You may prepay all or part of the unpaid part of the Amount Financed at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.
- You may refinance a balloon payment.** A balloon payment is a scheduled payment that is more than twice as large as the average of your earlier scheduled payments. If you are buying the vehicle primarily for personal, family, or household use, you may refinance the balloon payment when due without penalty. The terms of the refinancing will be no less favorable to you than the terms of this contract. If this provision does not apply, if we adjusted your payment schedule to your seasonal or irregular income.

2. YOUR OTHER PROMISES TO US

- If the vehicle is damaged, destroyed, or missing.** You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- Using the vehicle.** You agree not to remove the vehicle from the U.S. or Canada or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- Security Interest.** You give us a security interest in:
 - The vehicle and all parts or goods put on it.
 - All money or goods received (proceeds) for the vehicle.
 - All insurance, maintenance, service, or other contracts we finance for you, and
 - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds or premiums or charges from the contracts.
 This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle.
- Insurance you must have on the vehicle.** You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the cost of the insurance and a finance charge at the Annual Percentage Rate shown on the front of this contract. If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.
- What happens to returned insurance, maintenance, service, or other contract charges.** If we

if you pay late, we may also take the steps described below.

- You may have to pay all you owe at once.** If you break your promises (default), we may demand that you pay all you owe at once after we give you any notice the law requires. Default means:
 - You do not make any payment when due, or
 - You start or proceed in bankruptcy or one is started against you or your property, you give false, incomplete, or misleading information on a credit application, or you break any agreements in this contract, except that if you bought the vehicle primarily for personal, family, or household use, we will only treat these events as defaults if they significantly impair the prospect of payment performance, or realization of the collateral.
 The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.
- You may have to pay collection costs.** If we hire an attorney who is not our salaried employee to collect what you owe, you will pay the attorney's reasonable fee and court costs as the law allows. The maximum attorney's fee you will pay will be 15% of the amount you owe. You will also pay the reasonable expenses we incur in realizing our security interest as the law allows.
- We may take the vehicle from you.** If you default, we may take (repossess) the vehicle from you after we give you any notice the law requires. We may only take the vehicle if we do so peacefully without entering into a dwelling used as a current residence. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you at your expense. If you do not ask for these items back, we may dispose of them as the law allows.
- How you can get the vehicle back if we take it.** If we repossess the vehicle, you may pay to get it back (redeem it). We will tell you how much to pay to redeem your right to redeem it when we sell the vehicle. We will sell the vehicle if you do not get it back. If you do not redeem it, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney's fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us, unless the law provides otherwise. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest rate permitted by applicable law.
- What we may do about optional insurance, maintenance, service, or other contracts.** This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we demand that you pay all you owe at once or we repossess the vehicle, we may claim benefits under these contracts and cancel them to obtain refunds for unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

WARRANTIES/SELLER DISCLAIMS

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

Used Car Buyer's Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any

- owe or repair the vehicle.
- e. What happens to returned insurance, maintenance, service, or other contract charges? If we get a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.
3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES:
- a. You may owe late charges. You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.
5. Used Car Buyers Guide: The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale. Spanish translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.
6. Servicing and Collection Contacts: You agree that we may try to contact you in writing, by e-mail, or using prerecorded artificial voice messages, text messages, and automatic telephone dialing systems, as the law allows. You also agree that we may try to contact you in these and other ways at any address or telephone number you provide us, even if the telephone number is a cell phone number or the contact results in a charge to you.
7. Applicable Law: Federal law and the law of the state of our address shown on the front of this contract apply to this contract.

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

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

ARBITRATION CLAUSE
PLEASE REVIEW. IMPORTANT! AFFECTS YOUR LEGAL RIGHTS

1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL.

2. IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM. YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.

3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAW SUIT AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.

Any claim or dispute, whether in contract, tort, statute, or otherwise (including the interpretation and scope of this Arbitration Clause, and the arbitrability of the claim or dispute) between you and us, or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract, or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral binding arbitration and not by a court action. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Clause shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action. Yet expressly waive any right you may have to arbitrate a class action. Arbitration shall be conducted by the American Arbitration Association, 140 Broadway, 10th floor, New York, New York 10039, (www.adr.org), or any other organization that you choose subject to our approval. You may get a copy of the rules of these organizations by contacting the arbitration organization or visiting its website.

Arbitrators shall be attorneys or retired judges and shall be selected pursuant to the applicable rules. The arbitrator shall apply governing substantive law in making an award. The arbitration hearing shall be conducted in the federal district in which you reside unless the creditor/seller is a party to the claim or dispute, in which case the hearing will be held in the federal district where this contract was executed. We will advance your filing, administration, service or case management fee, and your arbitrator or hearing fee, all up to a maximum of \$2500, which may be reimbursed by decision of the arbitrator at the arbitrator's discretion. Each party shall be responsible for its own attorney, expert and other fees, unless awarded by the arbitrator under applicable law. If the chosen arbitration organization's rules conflict with this Arbitration Clause, then the provisions of this Arbitration Clause shall control. The arbitrator's award shall be final and binding on all parties, except that in the event the arbitrator's award for a party is \$0 or against a party is in excess of \$100,000, or includes an award of injunctive relief against a party, that party may request a new arbitration under the rules of the arbitration organization by a three-arbitrator panel. The appealing party requesting new arbitration shall be responsible for the filing fee and other arbitration costs subject to a final determination by the arbitrators of a fair apportionment of costs. Any arbitration under this Arbitration Clause shall be governed by the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and not by any state law concerning arbitration.

You and we retain any rights to self-help remedies, such as repossession; you and we retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, unless such action is transferred, removed or appealed to a different court. Neither you nor we waive the right to arbitrate by using self-help remedies or filing suit. Any court having jurisdiction may enter judgment on the arbitrator's award. This Arbitration Clause shall survive any termination, payoff, or transfer of this contract. If any part of this Arbitration Clause, other than waivers of class action rights, is deemed or found to be unenforceable for any reason, the remainder shall remain enforceable. If a waiver of class action rights is deemed or found to be unenforceable for any reason in a case in which class action allegations have been made, the remainder of this Arbitration Clause shall be unenforceable. Notwithstanding any other provision of this Arbitration Clause, the validity and scope of the waiver of class action rights shall be decided by the court and not by the arbitrator.

Form No. 553-SC-ARB 8/11

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Cleo Sanders

Plaintiff,

vs.

Savannah Highway Automotive Co., a
General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander
Consumer USA Holdings, Inc., Isiah S.
White, Danny Anderson, and Patrick
Bachrodt, Jr.

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

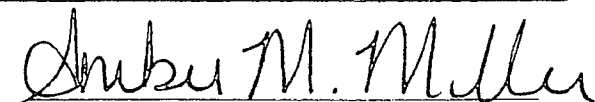
C/A#: 2017-CP-10-2148

CERTIFICATE OF SERVICE

FILED
2017 DEC -4 PM
CLERK OF COURT
BY

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U. S. Mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the address(es) shown below.

<u>DOCUMENT:</u>	DEFENDANTS SAVANNAH HIGHWAY AUTOMOTIVE CO., D/B/A RICK HENDRICK DODGE CHRYSLER JEEP RAM AND DEFENDANT ISIAH S. WHITE'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS OR STAY AND TO COMPEL ARBITRATION
<u>COUNSEL SERVED:</u>	C. Steven Moskos, Esq. C. Steven Moskos, P.A. 4000 Faber Place Drive Suite 300 Charleston, SC 29405 Graham H. Claybrook, Esq. McGuire Woods LLP 201 North Tryon Street Suite 3000 Charlotte, NC 28226



Amber M. Miller
Legal Assistant

Columbia, South Carolina
November 30, 2017



JESSICA A. WALLER
A member of the South Carolina Bar
Direct Dial: 803.724.1722
jwaller@GWBlawfirm.com

November 30, 2017

VIA US MAIL

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: *Cleo Sanders vs. Savannah Highway Automotive Co., a General Partnership*
d/b/a Rick Hendrick Dodge Chrysler Jeep Ram, et al.
Charleston County Case No.: 2017-CP-10-02148
GWB File No.: 8493-6

Dear Ms. Armstrong:

Enclosed for filing with your office are the original and one (1) copy of Defendants' Savannah Highway Automotive Co., d/b/a Rick Hendrick Dodge Chrysler Jeep Ram and Isiah S. White's Supplemental Memorandum in Support of Their Motion to Dismiss or Stay and To Compel Arbitration in the above-referenced matter. I would appreciate you filing the original and returning a clocked copy to me in the envelope provided for your convenience.

With kind regards, I am

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.

Jessica A. Waller

JAW:amm

Enclosures

cc: John T. Lay, Jr.
C. Steven Moskos
Graham H. Claybrook

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	CASE NO. 17-CP-10-2148
CLEO SANDERS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S SUPPLEMENTAL
	)	MEMORANDUM OPPOSING DEFENDANT
SAVANNAH HIGHWAY	)	SAVANNAH HIGHWAY AUTOMOTIVE
AUTOMOTIVE COMPANY, A	)	COMPANY'S MOTION TO COMPEL
GENERAL PARTNERSHIP D/B/A	)	ARBITRATION
RICK HENDRICK DODGE	)	
CHRYSLER JEEP RAM,	)	
SANTANDER CONSUMER USA	)	
HOLDINGS, INC., ISIAH S. WHITE,	)	
DANNY ANDERSON, and PATRICK	)	
BACHRODT, JR.,	)	
	)	
<u>Defendants</u>	)	

The Court heard Rick Hendrick's Motion to Compel Arbitration on November 16. The Court gave Rick Hendrick 15 days to provide the Court with an affidavit from an employee who could authenticate the retail installment sales contract attached to Defendant's Brief emailed to the Court on November 13 and filed November 15. The Court also gave Mr. Sanders 15 days to provide the Court with any other objections to the arbitration agreement.

Rick Hendrick has failed to provide an affidavit to the Court. Therefore, under the Rules, as stated in Mr. Sanders' Brief, Rick Hendrick has failed to meet its burden of proof in showing the Parties entered into an arbitration agreement. Furthermore, on November 21, 2017, Mr. Sander's counsel wrote to Mr. Lay and Ms. Waller, the attorneys for Rick Hendrick, and requested the Dealer Agreement between Rick Hendrick and Santander, the

assignee of any retail installment sales contract between the Parties. No response was forth coming. On December 1, Mr. Sanders' counsel called Mr. Lay and Ms. Waller to discuss production of the Dealer's Agreement, but both were unavailable. Mr. Lay later sent an email demanding Mr. Sanders agree not to use the production of the Dealer Agreement as a basis to assert Rick Hendrick waived any rights it has under the alleged arbitration clause and that Mr. Sanders enter into a protective order regarding the Dealer Agreement. Mr. Sander's counsel agreed to both provisions. (Ex. 1) The document provided is a very poor scanned copy and is, for the most part, illegible. (See Ex. 2 which is page 1 of 5 as an example of the remaining pages.) It is unclear whether this document even covers the issue of assignment of contracts to Santander. Mr. Sanders asks the Court to take Rick Hendrick's failure to produce a legible copy of the Dealer Agreement, as it relates to assignment of contracts to Santander, as proof that the Dealer Agreement says that any retail installment sales contract assigned to Santander transferred all the rights and obligations Rick Hendrick had to Santander. Since Rick Hendrick does not have any rights in the document it produced to the Court as the basis for its motion, its motion should be denied.

As stated at the hearing, Rick Hendrick assigned all of its interests in any contract between the Parties to Santander. This is supported by the form adhesion contract¹ submitted by Rick Hendrick, which states at the bottom of the first page, "Seller assigns its interest in this contract to _____ (Assignee) under the terms of the Seller's

¹ The South Carolina Supreme Court has stated that the Court should view contracts between consumers and automobile retailers with "considerable skepticism." Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (2007)

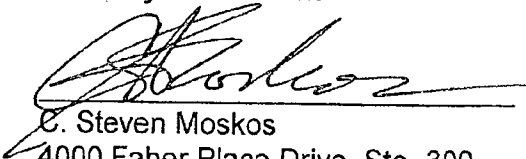
agreement(s) with Assignee." The "Seller's agreement(s) with the Assignee" is the Dealer Agreement referenced above. Rick Hendrick has not provided any proof that it retained any rights under the retail installment sales contract. Therefore, its motion to compel arbitration under the agreement alleged to be the Parties' contract must be denied.

The only other issue Mr. Sanders would raise is that if the Court were to find that Mr. Sanders signed Rick Hendrick's Exhibit A and that Rick Hendrick still had rights under the contract, Rick Hendrick still cannot enforce the arbitration agreement because the arbitration agreement is discretionary/voluntary not mandatory. The arbitration agreement states "Either you or we may choose to have any dispute between us decided by arbitration...". (Emphasis added.) It also states, "If a dispute is arbitrated....". (Emphasis added.) This language shows that if either Party to one of these retail installment sales contracts chooses to arbitrate a dispute with another Party, the other Party would have to arbitrate the matter. On the other hand, if a Party chose the Court system, the dispute would proceed through the Court system. Mr. Sanders chose to go to court. Rick Hendrick cannot now come in and force this matter into arbitration. That would place arbitration agreements on a higher level than the court system, a position the United States Supreme Court has expressly rejected.² Rick Hendrick will surely argue that it has a right to demand arbitration regardless of the wishes of Mr. Sanders. Unfortunately for Rick Hendrick, it wrote the contract. Therefore, any ambiguities in its adhesion contract should be construed against it. Mr. Sanders chose the court system. Rick Hendrick cannot now be heard to complain about the language in its contract.

² Buckeye Check Cashing, Inc. v. Cardegna, 546 US 440 (2006) (Arbitration agreements should be on equal footing with all other contracts.)

Mr. Sanders requests that the Court deny Rick Hendrick's Motion to Compel Arbitration.

C. STEVEN MOSKOS, P.A.
Attorney for Plaintiff

BY: 

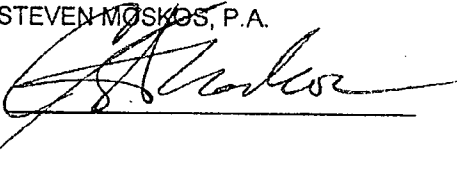
C. Steven Moskos
4000 Faber Place Drive, Ste. 300
North Charleston, South Carolina 29405
Telephone: (843) 763-5297
Email: csmoskos@earthlink.net

Charleston, South Carolina
12/1, 2017

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper, properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on December 1, 2017.

C. STEVEN MOSKOS, P.A.

By: 

C Steven Moskos

From: C Steven Moskos <csmoskos@earthlink.net>
Sent: Friday, December 01, 2017 2:37 PM
To: 'John T. Lay'
Cc: 'Jessica Waller'
Subject: RE: Sanders v Hendricks

John,

If you will produce the Dealers Agreement prior to 4:00 pm today, I will agree, for the purposes of this motion, that production of the Dealer's Agreement will not be used by me as a basis of a waiver argument. Of course, I do not believe Hendrick has any rights under the arbitration agreement to waive as it has assigned any rights it might have had to Santander. Nothing in my agreement should be construed as my agreement that Hendrick has any right to arbitration.

While I do not believe the Dealer's Agreement is confidential or proprietary, for the purposes of this Motion, I will agree to keep it confidential with the understanding that I can produce it to the court should I find information that supports my arguments against arbitration.

Please let me know how you wish to proceed.

C. Steven Moskos
4000 Faber Place Dr., Suite 300
North Charleston, SC 29405
843-763-5297 Office

From: John T. Lay [mailto:jlay@gwblawfirm.com]
Sent: Friday, December 01, 2017 1:54 PM
To: csmoskos@earthlink.net
Cc: Jessica Waller <jwaller@gwblawfirm.com>
Subject: Sanders v Hendricks

Steve,

I am receipt of your correspondence to the court and recent voicemail re the dealer agreement. In the future I would appreciate you not contacting the court to request relief on a motion that has not been heard. I believe that to be improper.

As to the request itself, you have asserted that participation in discovery is a waiver of arbitration. Therefore, in the face of that argument we are unable to provide you the agreement absent a stipulation from you that the exchange of certain limited information would NOT be a waiver of our right to arbitration. We would also need the agreement to be produced subject to a strict confidentiality agreement. Please advise as to whether these terms are agreeable. Regards.

John T. Lay

Sent from my iPad

This is a Dealer Agreement between Defendant Defendant USA Inc. ("Roadstar") and the undersigned customer ("Roadstar") dated as of the Effective Date below and hereby purchased to issue Roadstar's Product Defendant Terms and Conditions. Roadstar has in place the Roadstar Program, and therefore wishes to obtain referrals of potential customers from the Roadstar Program. Accordingly, Roadstar and Defendant agree as follows.

- [HOW OF ASSURANCE, THE OF THE INTERNATIONALLY]**

PAGE 1 OF 4



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C. STEVEN MOSKOS, P.A.

Attorney and Counselor at Law

C. Steven Moskos
Board Certified Civil Trial Attorney
Board Certified Civil Pretrial Advocate
By the National Board of Trial Advocacy
Supreme Court of South Carolina Certified Mediator

M

4000 Faber Place Drive, Suite 300
North Charleston, SC 29405
Telephone: (843) 763-5297
www.moskoslawfirm.com
csmoskos@earthlink.net

December 1, 2017

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

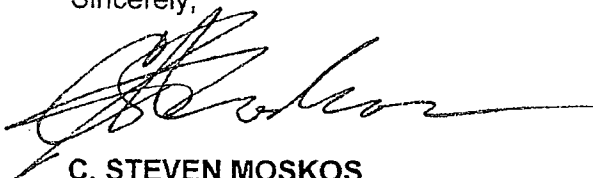
Re: Cleo Sanders vs. Savannah Highway Automotive Company, et. al.
Case No.: 17-CP-10-2148

Dear Madam Armstrong:

Please find enclosed for filing Plaintiff's Supplemental Memorandum Opposing Defendant Savannah Highway Automotive Company's Motion to Compel Arbitration in regards to the above referenced matter.

If you have any questions, please do not hesitate to contact me.

Sincerely,



C. STEVEN MOSKOS

CSM/csb
Enclosure

cc.: John T. Lay, Esq.
Graham H. Claybrook, Esq.
Cleo Sanders

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Cleo Sanders)

Plaintiff,)

vs.)

Savannah Highway Automotive Company, a
General Partnership D/B/A Rick Hendrick
Dodge Chrysler Jeep Ram, Santander
Consumer USA Holdings, Inc., Isiah S. White,
Danny Anderson, and Patrick Bachrodt, Jr.

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 17-CP-10-2148

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
C. Steven Moskos, Bar No. 7938
Address:
4000 Faber Place Drive, Suite 300
North Charleston, SC 29405
Phone: 843-763-5297 Fax _____
E-mail: csmoskos@earthlink.net Other: _____

Defendant's Attorney:
John T. Lay, Bar No. _____
Address:
1201 Main Street, Suite 1200
Columbia, SC 29201
Phone: _____ Fax _____
E-mail: _____ Other: _____

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

SECTION I: Hearing Information

Nature of Motion: Motion to Compel

Estimated Time Needed: 30 min

Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

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

Signature of Attorney for ☒ Plaintiff/☐ Defendant

10-10-17
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

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

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003) :

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 17-CP-10-2148
	)	
CLEO SANDERS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
SAVANNAH HIGHWAY	)	MOTION TO COMPEL
AUTOMOTIVE COMPANY, A	)	
GENERAL PARTNERSHIP D/B/A	)	
RICK HENDRICK DODGE CHRYSLER	)	
JEEP RAM, SANTANDER	)	
CONSUMER USA HOLDINGS, INC.,	)	
ISIAH S. WHITE, DANNY ANDERSON,	)	
and PATRICK BACHRODT, JR.	)	
	)	
Defendants	)	

FILED
 2017 OCT 11 PM 2:57
 CLERK OF COURT

TO: JOHN T. LAY, ATTORNEY FOR DEFENDANT SAVANNAH HIGHWAY
 AUTOMOTIVE COMPANY, A GENERAL PARTNERSHIP D/B/A RICK HENDRICK
 DODGE CHRYSLER JEEP RAM

PLEASE TAKE NOTICE that the Plaintiff, through his undersigned attorney, will move before the Presiding Judge, Ninth Judicial Circuit, Charleston County Courthouse, South Carolina, at such place and time as the Court may appoint, for an Order compelling Defendant Savannah Highway Automotive Company, A General Partnership D/B/A Rick Hendrick Dodge Chrysler Jeep Ram to respond to Plaintiff's Interrogatories and Request for Production and in support of this motion shows the Court as follows:

1. That on or about July 21, 2017, the Plaintiff served upon the Defendant, Savannah Highway Automotive Company, A General Partnership D/B/A Rick Hendrick Dodge Chrysler Jeep, Plaintiff's Interrogatories and Request for Production of Documents in writing, pursuant to Rule 33 and Rule 34 of the South Carolina Rules of Civil

Procedure, which are attached hereto and made a part hereof. (Exhibits 1 and 2.)

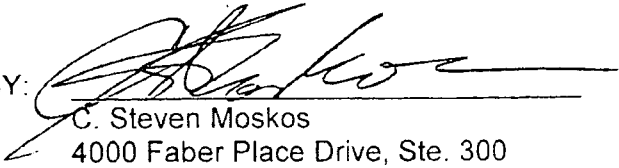
2. That on August 16, 2017, Defendant, Savannah Highway Automotive Company, A General Partnership D/B/A Rick Hendrick Dodge Chrysler Jeep, by and through its attorney requested a thirty day extension of time to respond to said discovery. (Exhibit 3.)
3. That on August 21, 2017, Defendant's attorney again made a request for an extension of time to respond to said discovery. (Exhibit 3.)
4. That on August 21, 2017, Plaintiff's counsel agreed to an extension of time to September 8, 2017 for Defendant Savannah Highway Automotive Company, A General Partnership D/B/A Rick Hendrick Dodge Chrysler Jeep to respond to Plaintiff's discovery.
5. That on September 7, 2017, Defendant Savannah Highway Automotive Company, A General Partnership D/B/A Rick Hendrick Dodge Chrysler Jeep filed a Motion to Compel Arbitration.
6. That Defendant Savannah Highway Automotive Company, A General Partnership D/B/A Rick Hendrick Dodge Chrysler Jeep, has failed and refused and still refuses to answer Plaintiff's Interrogatories and Request for Production.
7. That by reason of the Defendant's failure and refusal, Plaintiff asks the Court for an Order requiring Defendant to answer Plaintiff's Interrogatories to Defendant and provide the requested documents in Plaintiff's Request for Production of Documents and to award costs and attorney's fees to the Petitioner in seeking this Order.

The undersigned hereby certifies and affirms in accordance with Rule 11 of the South Carolina Rules of Civil Procedure that consultation with the opposing Parties would

serve no useful purpose.

PLEASE BE PRESENT TO OPPOSE SAID MOTION IF SO MINDED

**C. STEVEN MOSKOS, P.A.
Attorney for Plaintiff**

BY: 

C. Steven Moskos
4000 Faber Place Drive, Ste. 300
Charleston, SC 29405
Telephone: (843) 763-5297

Charleston, South Carolina
October 10, 2017

Certificate of Service

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on October 10, 2017.

C. STEVEN MOSKOS, P.A.

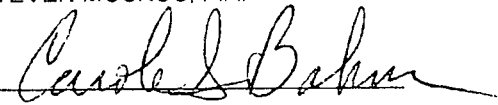
By: 

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 17-CP-10-2148
	)	
CLEO SANDERS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S INTERROGATORIES TO
	)	DEFENDANT SAVANNAH HIGHWAY
SAVANNAH HIGHWAY	)	AUTOMOTIVE COMPANY, A GENERAL
AUTOMOTIVE COMPANY, A	)	PARTNERSHIP D/B/A RICK HENDRICK
GENERAL PARTNERSHIP D/B/A	)	DODGE CHRYSLER
RICK HENDRICK DODGE CHRYSLER	)	JEEP RAM
JEEP RAM, SANTANDER	)	
CONSUMER USA HOLDINGS, INC.,	)	
ISIAH S. WHITE, DANNY ANDERSON,	)	
and PATRICK BACHRODT, JR.	)	
	)	
	)	
Defendants	)	

**TO: JOHN T. LAY, ATTORNEY FOR DEFENDANT SAVANNAH HIGHWAY
AUTOMOTIVE COMPANY, A GENERAL PARTNERSHIP D/B/A RICK HENDRICK
DODGE CHRYSLER JEEP RAM**

The Plaintiff, Cleo Sanders, through his undersigned attorney, propounds the following Set of Interrogatories to Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick Dodge Chrysler Jeep Ram, hereinafter Rick Hendrick, pursuant to Rule 33(b) of the South Carolina Rules of Civil Procedure, to be signed and returned within forty-five (45) days.

INSTRUCTIONS AND DEFINITIONS

Pursuant to Rules 26 through 33 of the South Carolina Rules of Civil Procedure, you shall answer each of the following Interrogatories under oath, in writing, separately, in the fullest detail possible, and in accordance with the definitions and instruction set forth below. The answers shall be signed by the person making them, and a copy of the answers shall

be signed by the person making them, and a copy of the answers, together with your objections, if any, shall be served, no later than forty-five (45) days after the service of these Interrogatories upon you.

The Plaintiff requests that the answer to each interrogatory be preceded by the identification and verbatim quotation of the interrogatory to which the answer responds.

Furthermore, you are under a duty to supplement seasonably your response with respect to any interrogatory directly addressed to (1) the identity and location of persons having knowledge of discoverable matters, and (2) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony. In addition, you are under a duty to amend a prior response which, although correct when made, is no longer true, and the circumstances are such that a failure to amend the response is, in substance, a knowing concealment.

DEFINITIONS

As used in Plaintiff's interrogatories and document production requests herein the terms "you" and "your", or "yourself" refer to you personally, each of your agents, representatives, and attorneys, and each person acting or purporting to act on your behalf. Unless the context otherwise requires, the terms "you", "your", or "yourself" refer to the particular corporate defendants, each of its parents, predecessors, subsidiaries, and affiliates, each of its present and former officers, employees, agents, representatives, and attorneys, and each person acting or purporting to act on its behalf.

1. **Representative.**

As used herein, the term "representative" means any and all agents, employees,

servants, officers, directors, attorneys, or other persons acting or purporting to act on behalf of the person in question.

2. Person.

As used herein, the term "person" means any natural individual in any capacity whatsoever or any entity or organization including divisions, departments, and other units therein, and shall include, but not be limited to, a public or private corporation, partnership, joint venture, voluntary or unincorporated association, organization proprietorship, trust, estate, governmental agency, commission, bureau, or department.

3. Document.

As used herein, the term "document" means any medium upon which intelligence or information can be recorded or retrieved, and includes without limitation, the original and each copy, regardless of origin and location, of any book, pamphlet, periodical, letter, memorandum (including any bill, order forms, receipt, financial statement, accounting entry, diary, calendar, telex, telegram, cable, report, record, contract, agreement, study, handwritten note, draft, working graph, index, list, tape, photograph, microfilm, data sheet or transcribed, punched, taped, filmed, or graphic matter, however produces or reproduced, which is in your possession, custody or control or which was, but is no longer, in your possession, custody, or control.

4. Communication.

As used herein, the term "communication" means any oral or written utterance, notation, or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations, dialogues, discussions, interview, consultations, agreements, and other understandings between or among two or more

persons.

5. Identification.

As used herein the terms "identification", "identity", or "identify", when used in reference to (a) a natural individual, requires you to state his or her full name and residential and business addresses; (b) a corporation requires you to state its full name or style under which the business is conducted, its business address or addresses, the types of businesses in which it is engages, the geographic areas in which it conducts those businesses, and the identity of the person or person who own, operate and control the business; (c) a document, require you to state the number of pages and the nature of the document (e.g., letter or memorandum), its title, its date, the name or names of its authors and recipients, and its date, the location and custodian; (d) a communication, requires you, if any part of the communication is written to identify the document or documents which refer to or evidence the communication, and, to the extent that the communication was non-written, to identify date, manner, place, and substance of the communication; (e) an act, require you to state each transaction or act constituting occurred; identify each document referring or relating thereto; and identify each person participating or engaging therein; (f) a meeting, require you to state the date, nature, and purpose of the meeting; the substance of the meeting; and the place of the meeting.

INSTRUCTIONS CONCERNING IDENTIFICATION OF DOCUMENTS

With respect to each interrogatory, in addition to supplying the information requested, you are to identify all documents that support, refer to, or evidence the subject matter of each interrogatory and your answer thereto.

If any or all documents identified herein are no longer in your possession, custody,

or control because of destruction, loss, or any other reasons, then do the following with respect to each and every document: (a) describe the nature of the document (e.g., letter or memorandum); (b) state the date of the document; (c) identify the persons who sent and received the original and a copy of the document; (d) state in as much detail as possible the contents of the document; and (e) state the manner and date of disposition of the document.

If you contend that you are entitled to withhold from production any or all documents identified herein on the basis of the attorney-client privilege, the work product doctrine, or other ground, then do the following with respect to each and every document: (a) describe the nature of the document (e.g., letter or memorandum); (b) state the date of the document; (c) identify the persons who sent and received the original and a copy of the document; (d) state the subject matter of the document; and (e) state the basis upon which you contend you are entitled to withhold the document from production.

THE WORD "OR"

As used herein, the word "or" appearing in an interrogatory should not be read so as to eliminate any part of the interrogatory, but, whenever applicable, it should have the same meaning as the word "and." For example, an interrogatory stating "supporting or refer" should be read as "supporting and refer" if an answer that does both can be made. The singular shall be taken to include the plural herein, and vice versa.

INTERROGATORIES

1. Please give me the following information concerning each person known to the party or counsel to be a witness concerning the facts of the case:
 - a. What are their names and addresses?

- b. Have written or recorded statements been taken from any of them?
 - c. If so, who is in possession of such statements?
 - d. Set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses.
2. Please set forth a list of photographs, plats, sketches or other prepared documents in possession of the party or counsel that relate to the claim or defense in this case.
3. State the name and address of each person you intend to call as an expert witness at the trial of this case; and as to such person, state the subject matter of the expert's expected testimony at trial; the substance of the facts, opinions, and conclusions about which the expert is expected to testify at trial; and a summary of the facts, basis, reasoning, and grounds for each opinion to which the expert is expected to testify.
4. Identify by title, author and edition or date of publication any and all treatises, manuals, textbooks or written publications of any kind which has been referenced in any manner or relied upon in developing or reaching an opinion in this case.
5. For each person identified by you as an expert witness in response to the preceding interrogatory, please furnish;
 - a. A summary of the expert's educational background and work experience. In lieu of such a summary, please forward a copy of the expert's most current *curriculum vitae*;
 - b. A list of all cases in which the expert has been involved as an expert witness and either testified by deposition or at trial as an expert witness. For each

case, please furnish the case caption, the jurisdiction and venue of the case, the party for whom the expert was retained as an expert witness, the names addresses of the attorneys for the parties in that case, and the approximate date of either the expert's deposition and/or the trial of each case; and

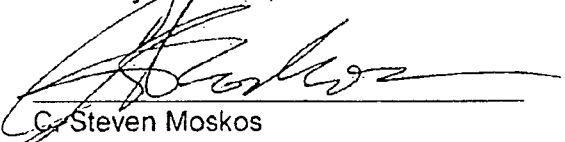
- c. For each case identified in (b) above, please furnish a summary of the facts in the case and opinion(s) to which the expert testified and the ground for the opinion(s).
6. State whether you or anyone acting on your behalf have communicated with Defendant Santander USA Holdings, Inc., or any of its agents, servants, or employees pertaining to the subject matter of the Plaintiff's Complaint. If so, state the date and place where each communication occurred, identify the individuals involved (with full name, address and phone number), and if the communication was written or reduced to writing, please identify the custodian thereof.
7. Is Defendant Rick Hendrick properly named? If not, what is the correct legal name of Defendant Rick Hendrick?
8. Identify any and all Rick Hendrick employees, including the named Defendants, that were fired, terminated, resigned, or left Rick Hendrick as a result of the allegations made against Defendant Rick Hendrick in Small, et al. vs Hendrick Corporation LLC, et al., Case Number 2013-CP-10-07388. Include their positions and last known addresses.
9. State any action, whether civil or criminal, taken against any Rick Hendrick employee who was involved in the events that led to Small, et al. vs Hendrick Corporation LLC, et al., Case Number 2013-CP-10-07388.

10. Was the 2012 Dodge Charger SE, which is the subject of this action, ever advertised with a purchase price of \$29,999? If so, where and when?
11. Were any 2012 Dodge Charger SEs ever advertised with a purchase price of \$29,999? If so, when?
12. When did Defendant Rick Hendrick first learn that its employees were falsifying customers' credit applications to assist Rick Hendrick in selling Retail Installment Sales Contracts to other financial institutions related to customers' purchases of various Chargers, Challengers, and possibly other vehicles.
13. Who does Rick Hendrick contend was the principal architect of the scam whereby Defendant Rick Hendrick's employees would falsify customers' credit applications to assist Rick Hendrick in selling Retail Installment Sales Contracts to other financial institutions?
14. When Rick Hendrick learned its employees were falsifying credit applications to help sell Retail Installment Sales Contracts to other financial institutions, how many transactions did Rick Hendrick review or audit to determine how many other transactions contained falsified credit applications?
15. Prior to this action being filed, did Defendant Rick Hendrick review Mr. Sanders transaction to determine if his credit application had been falsified by Rick Hendrick's employees? If so, state when said review happened, who reviewed the file, and that person's conclusions as to whether his credit application had been falsified.
16. State the facts which support Defendant's Third Defense of Comparative Negligence/Gross Negligence/Recklessness.

17. State the facts upon which Defendant relies to assert that Mr. Sanders assumed the risk that Defendant or its employees would falsify his credit application as set forth in Defendant's Fifth Defense.
18. State the facts upon which Defendant relies to assert that Mr. Sanders consented to or otherwise authorized Rick Hendrick and/or its agents to falsify his credit application as set forth in Defendant's Eleventh Defense.
19. State the facts upon which Defendant relies to assert Mr. Sanders failed to mitigate his damages as set forth in Defendant's Twelfth Defense.
20. State the facts upon which Defendant relies to assert Rick Hendrick is entitled to a set off and/or credit as set forth in its Thirteenth Defense.

These Interrogatories are deemed to be continuing throughout the pendency of this action.

C. STEVEN MOSKOS, P.A.
Attorney for Plaintiff

BY: 

C. Steven Moskos
4000 Faber Place Drive, Suite 300
North Charleston, SC 29405
Telephone: (843) 763-5297

Charleston, South Carolina
July 21, 2017

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper, properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on July 21, 2017

C. STEVEN MOSKOS, P.A.

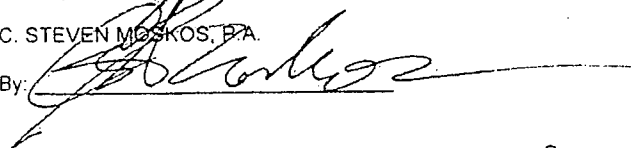
By: 

EXHIBIT 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 17-CP-10-2148
	)	
CLEO SANDERS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
SAVANNAH HIGHWAY	)	PLAINTIFF'S REQUEST FOR
AUTOMOTIVE COMPANY, A	)	PRODUCTION TO DEFENDANT
GENERAL PARTNERSHIP D/B/A	)	SAVANNAH HIGHWAY AUTOMOTIVE
RICK HENDRICK DODGE CHRYSLER	)	COMPANY, A GENERAL
JEEP RAM, SANTANDER	)	PARTNERSHIP D/B/A RICK HENDRICK
CONSUMER USA HOLDINGS, INC.,	)	DODGE CHRYSLER JEEP RAM
ISIAH S. WHITE, DANNY ANDERSON,	)	
and PATRICK BACHRODT, JR.	)	
	)	
	)	
Defendants	)	

**TO: JOHN T. LAY, ATTORNEY FOR DEFENDANT SAVANNAH HIGHWAY
AUTOMOTIVE COMPANY, A GENERAL PARTNERSHIP D/B/A RICK HENDRICK
DODGE CHRYSLER JEEP RAM**

Plaintiff, Cleo Sanders, through his undersigned attorney, requests Defendant produce for inspection and copying the following described documents and things in the possession, custody or control of the Defendant or its attorneys, pursuant to South Carolina Rules of Civil Procedure Rule 34:

INSTRUCTIONS AND DEFINITIONS

Comes now Plaintiff and pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, who propounds the following Request for Production of Documents to the above-named Defendants. Within thirty (30) days of the receipt of this request, you are hereby requested to make available to C. Steven Moskos, Attorney at Law, at his office at 4000 Faber Place Dr., Ste. 300, North Charleston, South Carolina 29405, for the purpose

of inspecting, photographing, copying, or otherwise reproducing or transcribing the documents, writings, and memoranda describe in the following enumerated requests. Said documentary evidence is alleged to be in Defendant's possession, custody, and control and is pertinent to the issues in this case.

DEFINITIONS

All references to "interrogatory" or "interrogatories" herein refer to the Plaintiff's Interrogatories to Defendant and reference herein to any such interrogatory by number shall be deemed to incorporate by reference herein any such interrogatory in its entirety.

As used in Plaintiff's interrogatories and document production requests herein, the terms "you" and "your", or "yourself" refer to you personally, each of your agents, representatives, and attorneys, and each person acting or purporting to act on your behalf. Unless the context otherwise requires, the terms "you", "your", or "yourself" refer to the particular corporate defendants, each of its parents predecessors, subsidiaries, and affiliates, each of its present and former officers, employees, agents, representatives, and attorneys, and each person acting or purporting to act on its behalf.

DOCUMENT

As used herein, the term "document" means any medium upon which intelligence or information can be recorded or retrieved, and includes, without limitation, the original and each copy, regardless of origin and location, of any book, pamphlet, periodical, letter, memoranda including any bill, order form, receipt, financial statement, accounting entry, contract, diary, calendar, telex, telegram, cable, report, record, contract, agreement, study, handwritten note, draft, working paper, chart, paper, print, laboratory record, drawing

sketch, graph, index, list, tape, photograph, microfilm, data sheet or data processing card, or any other written recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced, which is in your possession, custody, or control or which was, but is no longer, in your possession, custody or control.

COMMUNICATION

As used herein, the term "communication" means any oral or written utterance, notation, or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons.

INSTRUCTIONS CONCERNING PRODUCTION OF DOCUMENTS

If any and all documents identified herein are no longer in your possession, custody, or control because of destruction, loss, or any other reasons, then do the following with respect to each and every such document: (a) describe the nature of the document (e.g., letter or memorandum); (b) state the date of the document; (c) identify the persons who sent and received the original of the documents; (d) state in as much detail as possible the contents of the documents; and (e) state the manner and date of disposition of the document.

If you contend that you are entitled to withhold from production any or all documents identified herein on the basis of the attorney-client privilege, the work-product doctrine, or other grounds then do the following with respect to each and every document: (a) describe the nature of the document (e.g., letter or memorandum); (b) state the date of the document; (c) identify the persons who sent and received the original of the document; (d)

state the subject matter of the document; and (e) state the basis upon which you contend you are entitled to withhold the document from production.

THE WORD "OR"

As used herein, the word "or" appearing in a request should not be read so as to eliminate any part of the request but, whenever applicable, it should have the same meaning as the word "and", for example, an interrogatory stating "supporting or refer" should be read as "supporting and refer" if an answer that does both can be made. The singular shall be taken to include the plural herein, and vice versa.

REQUEST FOR PRODUCTION

1. Copies of all statements, written or recorded, of any persons, including parties hereto, who are or may be witnesses to any of the matters complained of in the Complaint.
2. Copies of all photographs and/or video tapes relating in any way to the matter referred to in the Complaint or to the damages claimed.
3. Any photographs and/or video tapes referring or relating to the vehicle which is the subject of this litigation, or otherwise relating to the defenses set forth in Defendant's Answer.
4. Copies of all diagrams, statements, memoranda, reports, policy and procedures manuals, or other documents relating to the matters in the suit.
5. Copies of the Defendant's Savannah Highway Automotive Company, A General Partnership D/B/A Rick Hendrick Dodge Chrysler Jeep Ram's, hereinafter Rick Hendrick, last three (3) financial statements showing Defendant's net worth.
6. Copies of all reports of experts which may pertain, in any way, to the issues involved

in this case.

7. Copies of all documents Defendant intends to use at the time of trial.
8. Any and all documents identified, contained, or referred to by Defendant in its responses to Plaintiff's Interrogatories to Defendant, and all such documents used in any way in preparing or which support such responses.
9. Copies of all documents in the deal jacket, and the deal jacket itself, related to Mr. Sanders' purchase of the subject vehicle.
10. Copies of all credit applications submitted by Cleo Sanders to Defendant Rick Hendrick.
11. Copies of all credit applications submitted by Defendant Rick Hendrick to any other financial institution related to the transaction involving Cleo Sanders which is the subject of this action.
12. Copies of any and all pay stubs provided to Rick Hendrick by Cleo Sanders related to the transaction which is the subject of this action.
13. All documents, including any statements or reports, concerning or relating to the matters set forth in the Plaintiff's Complaint made by an expert who may be a witness at trial, and all notes, memoranda, writings, and recordings concerning and/or relating to such statements or reports.
14. All documents, including but not limited to, textbooks, articles, studies, literature, videotapes, audiotapes, and depositions, that were reviewed, referred to, or relied upon in connection with the preparation of any reports, memoranda, or statements or the formulation of any opinions of any experts with whom the Defendant intends to call as a witness at trial.

15. Copies of any and all documents, letters, reports, faxes, or any other record, kept in any media, that relates to the problems the Plaintiff complains of in his Complaint.
16. Any and all policies and procedures manuals regarding Rick Hendrick's sales policies and procedures relating to the sale of vehicles.
17. Any and all records dealing with any and all advertising material or marketing information used by the Defendant to market or to help market the 2012 Dodge Charger in general and specifically the type of 2012 Dodge Charger which is the subject of this action. Included in the request would be publications, brochures, sales fliers, advertising layouts, especially the ad which listed the vehicle for sale at the price of approximately \$29,999.00, recorded spots for television and/or radio statements, and any other written or recorded material pursuant to this request.
18. Provide a copy of any and all notes, records, or other documents which support any of Defendant's defenses set forth in Defendant's Answer. Identify which defense is supported by which documents provided by Defendant.
19. Provide a copy of any and all documents Defendant has related to its defense in Small, et al. vs Hendrick Corporation LLC, et al., Case Number 2013-CP-10-07388. If Defendant claims any of the documents are privileged, provide a privilege log regarding the allegedly privileged documents and produce the remaining documents.
20. Provide a copy of the personnel file maintained by Rick Hendrick for Danny Anderson, Chris Summers, Isiah S. White, and Patrick Bachrodt, Jr. Plaintiff does not request the Social Security numbers for these men. If Defendant claims any of

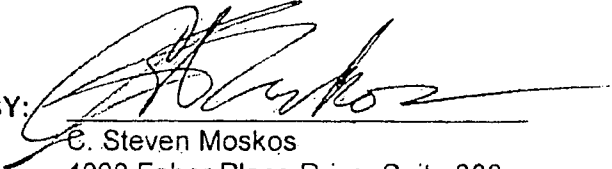
1

these documents are privileged, provide a privilege log for those documents and produce the remaining documents.

21. Provide a copy of the Rick Hendrick sales reports showing the number of new and used Charger's and Challengers sold by Rick Hendrick for each month from January 1, 2011 until December 2013.
22. Provide a copy of any and all communications between Rick Hendrick and Cleo Sanders regarding the subject vehicle.
23. Provide a copy of any and all communications between Rick Hendrick and Santander or Chrysler Credit regarding the subject vehicle.
24. Provide a copy of any phone logs in Rick Hendrick's possession, custody, or control related to Mr. Sanders or the vehicle which is the subject of this action.
25. Provide a copy of all documents which support Defendant's Third Defense of Comparative Negligence/Gross Negligence/Recklessness.
26. Provide a copy of all documents which Defendant relies on to assert that Mr. Sanders assumed the risk that Defendant or its employees would falsify his credit application as set forth in Defendant's Fifth Defense.
27. Provide a copy of all documents which Defendant relies on to assert that Mr. Sanders consented to or otherwise authorized Rick Hendrick and/or its agents to falsify his credit application as set forth in Defendant's Eleventh Defense.
28. Provide a copy of all documents which Defendant relies on to assert Mr. Sanders failed to mitigate his damages as set forth in Defendant's Twelfth Defense.
29. Provide a copy of all documents which Defendant relies on for a set off and/or credit as set forth in its Thirteenth Defense.

These Requests for Production are deemed continuing throughout the pendency of this matter.

C. STEVEN MOSKOS, P.A.
Attorney for the Plaintiff

BY: 
C. Steven Moskos
4000 Faber Place Drive, Suite 300
North Charleston, SC 29405
Telephone: (843) 763-5297
csmoskos@earthlink.net

Charleston, South Carolina
July 21, 2017

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper, properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 21st day of July, 2017.

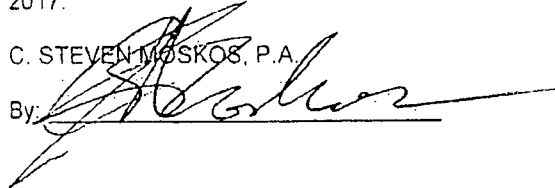
C. STEVEN MOSKOS, P.A.
By: 

EXHIBIT 3

C Steven Moskos

From: C Steven Moskos <csmoskos@earthlink.net>
Sent: Monday, August 21, 2017 10:04 AM
To: 'Jessica Waller'
Subject: RE: Cleo Sanders v. Hendrick - Discovery Responses [GWB-IMANMAIN.FID527816]

September 8 is fine.

C. Steven Moskos
4000 Faber Place Dr., Suite 300
North Charleston, SC 29405
843-763-5297 Office

From: Jessica Waller [<mailto:jwaller@gwblawfirm.com>]
Sent: Monday, August 21, 2017 10:02 AM
To: C Steven Moskos <csmoskos@earthlink.net>
Subject: Re: Cleo Sanders v. Hendrick - Discovery Responses [GWB-IMANMAIN.FID527816]

It's been a busy summer and I need time to have my folks review on several levels. I'd at least like an additional two weeks or so, so how about September 8 if you aren't willing to do 30 days?

Jessica A. Waller
Gallivan, White & Boyd, PA
jwaller@gwblawfirm.com
Direct: (803) 724-1722
Fax: (803) 779-1767

On Aug 21, 2017, at 9:55 AM, C Steven Moskos <csmoskos@earthlink.net> wrote:

Jessica,
What seems to be the problem?

C. Steven Moskos
4000 Faber Place Dr., Suite 300

North Charleston, SC 29405
843-763-5297 Office

From: Jessica Waller [<mailto:jwaller@gwblawfirm.com>]
Sent: Monday, August 21, 2017 8:54 AM
To: C Steven Moskos <csmoskos@earthlink.net>
Subject: Re: Cleo Sanders v. Hendrick - Discovery Responses [GWB-
IMANMAIN.FID527816]

Steve,

I'm following up on the below extension request. With the mail rule, my responses are technically due August 26 but I am requesting an extension until September 21 to respond. Please confirm if you are willing to grant me an extension.

Thanks,

Jessica A. Waller
Gallivan, White & Boyd, PA
jwaller@gwblawfirm.com
Direct: (803) 724-1722
Fax: (803) 779-1767

On Aug 16, 2017, at 10:11 AM, Jessica Waller <jwaller@gwblawfirm.com> wrote:

Steve,

I currently have our discovery responses calendared as due August 26. I'm requesting a 30 day extension to respond to your discovery requests, which would make our responses due September 21. Can you please confirm if that is acceptable?

Thanks,

Jessie Waller

Jessica A. Waller
Associate
jwaller@gwblawfirm.com

<image001.jpg> **Gallivan, White & Boyd P.A.**
Office 1201 Main Street | Suite 1200 | Columbia SC 29201
803 724 1722 Direct | 803 779 1833 Main | 803 779 1767 Fax
Mailing Post Office Box 7368 | Columbia SC 29202
vCard | BioURL | Website

This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

C. STEVEN MOSKOS, P.A.

Attorney and Counselor at Law

C. Steven Moskos
Board Certified Civil Trial Attorney
Board Certified Civil Pretrial Advocate
By the National Board of Trial Advocacy
Supreme Court of South Carolina Certified Mediator

M

4000 Faber Place Drive, Suite 300
North Charleston, SC 29405
Telephone: (843) 763-5297
www.moskoslawfirm.com
csmoskos@earthlink.net

October 10, 2017

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

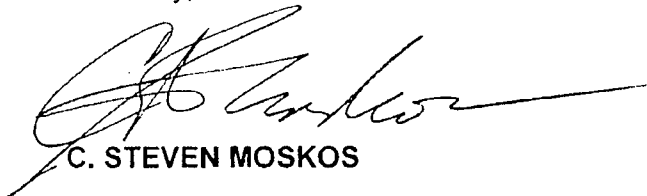
Re: Cleo Sanders vs. Savannah Highway Automotive Company, et. al.
Case No.: 17-CP-10-2148

Dear Madam Armstrong:

Enclosed for filing please find a Motion to Compel as to Savannah Highway Automotive Company, A General Partnership D/B/A Rick Hendrick Dodge Chrysler Jeep and a Motion to Compel as to Santander Consumer USA Holdings, Inc., in regards to the above referenced matter. Also enclosed is the Motion Cover Sheet for each motion and two escrow checks in the amount of \$25.00 each for the filing fee.

If you have any questions, please do not hesitate to contact me.

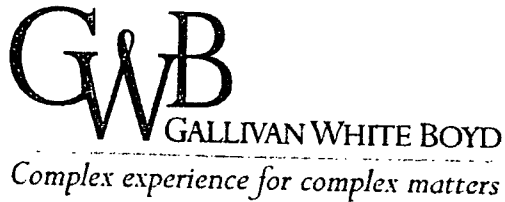
Sincerely,



C. STEVEN MOSKOS

CSM/csb
Enclosures

cc.: John T. Lay, Esq.
Graham H. Claybrook, Esq.
Cleo Sanders



JOHN T. LAY, JR.
A member of the South Carolina Bar
Direct Dial: 803.724.1800
jlay@GWBlawfirm.com

February 6, 2018

RECEIVED

FEB 06 2018

SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
SC Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: *Cleo Sanders v. Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick Chrysler Jeep Dodge Ram, Isiah S. White, Danny Anderson and Patrick Bachrodt, Jr.*
Charleston County Case No. 2017-CP-10-02148
GWB File No. 8493-6

Dear Ms. Kitchings:

Enclosed for filing are the following:

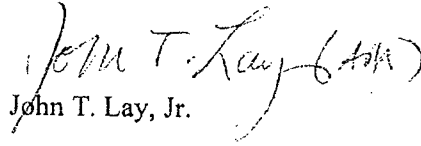
1. Notice of Appeal;
2. Proof of Service of the Notice of Appeal served on Respondent, Charleston County Clerk of Court, and The Honorable J. C. Nicholson, Jr.;
3. Copy of the Order to be challenged on appeal, which was signed by The Honorable J. C. Nicholson, Jr., dated January 8, 2018, filed on January 10, 2018 with the Charleston County Clerk of Court's Office, and received in our office on January 12, 2018; and
4. Filing fee check in the amount of \$100.00.

Appellants appeal all rulings related to denying Defendant Savannah Highway Automotive Company (Rick Hendrick) and Isiah S. White's Motion to Compel Arbitration.

By copy of this letter, I am providing a copy of the Notice of Appeal to The Honorable J. C. Nicholson, Jr. and Counsel for the Respondent, and am filing the Notice of Appeal with the Charleston County Clerk of Court's Office.

I would appreciate you returning clocked copies to me via our courier. Thank you for your assistance with this matter.

Sincerely,


John T. Lay, Jr.

JTL/kae

Enclosures

cc: The Honorable J. C. Nicholson, Jr.
Charleston County Clerk of Court's Office
C. Steven Moskos, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

FEB 06 2018

Case Tracking No. _____

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS

Civil Action No. 2017-CP-10-02148

J. C. Nicholson, Jr., Circuit Court Judge

SC Court of Appeals

Cleo Sanders Plaintiff

vs.

Savannah Highway Automotive Company,
a General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Isiah S. White,
Danny Anderson and Patrick Bachrodt, Jr. Defendants

Of whom, Savannah Automotive Company,
a General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram and Isiah S. White are Appellants

and

Of whom, Cleo Sanders is. Respondent

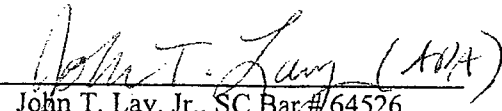
NOTICE OF APPEAL

John T. Lay, Jr.
Jessica A. Waller
Alice P. Adams
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
Columbia, SC 29202
(803) 779-1833

*Attorneys for Appellants Savannah Highway
Automotive Company, a General
Partnership d/b/a Rick Hendrick Dodge
Chrysler Jeep Ram and Isiah S. White*

Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick Dodge Chrysler Jeep Ram and Isiah S. White appeal the Order of the Honorable J. C. Nicholson, Jr. denying Defendant Savannah Highway Automotive Company (Rick Hendrick) and Isiah S. White's Motion to Compel Arbitration signed January 8, 2018, filed January 10, 2018 and received by Appellants on January 12, 2018.

GALLIVAN, WHITE & BOYD, P.A.

By:  (Att)
John T. Lay, Jr., SC Bar # 64526
Jessica A. Waller, SC Bar # 100256
Alice P. Adams, SC Bar # 6954
PO Box 7368
Columbia, SC 29202
jlay@gwblawfirm.com
jwaller@gwblawfirm.com
aadams@gwblawfirm.com
(803) 779-1833 Ofc
(803) 779-1767 Fax

*Attorneys for Appellants Savannah Highway
Automotive Company, a General Partnership
d/b/a Rick Hendrick Dodge Chrysler Jeep Ram
and Isiah S. White*

February 6, 2018

Other Counsel of Record:

C. Steven Moskos
4000 Faber Place Drive, Suite 300
North Charleston, SC 29405
(843) 763-5297

Attorney for Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
CLEO SANDERS,)
Plaintiff,)
vs.)
SAVANNAH HIGHWAY)
AUTOMOTIVE COMPANY, A)
GENERAL PARTNERSHIP D/B/A)
RICK HENDRICK DODGE)
CHRYSLER JEEP RAM,)
SANTANDER CONSUMER USA)
HOLDINGS, INC., ISIAH S.)
WHITE, DANNY ANDERSON, and)
PATRICK BACHRODT, JR.,)
Defendants)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10-2148

RECEIVED

FEB 06 2018

SC Court of Appeals

ORDER

2018 JAN 10 AM 11:09
FILED IN COURT
CLERK OF COURT
BY

This matter came before the Court on November 16, 2017, on Defendant Savannah Highway Automotive Company's (Rick Hendrick) and Mr. White's Motion to Compel Arbitration. Upon consideration of the materials submitted to the Court and the arguments presented by the parties, Defendants' Motion is denied for the reasons stated herein.

Factual Background

The contract at issue is a retail installment sales contract between the Plaintiff and Defendants for the sale of a motor vehicle. Imbedded within the contract is an arbitration clause. At the hearing, the Plaintiff contested the authenticity of the contract and arbitration clause because Defendants' failed to file an affidavit alongside their motion. Nevertheless, the Court provided Defendants with fifteen days to file a late affidavit. Plaintiff was also permitted to submit to the Court any other reasons to invalidate the alleged arbitration clause. Defendants

timely submitted an affidavit from Brandon Hackeloer, a finance and insurance manager for Defendant Rick Hendrick, stating he personally witnessed Plaintiff sign the retail installment sales contract attached to his affidavit. Despite portions appearing illegible, this Court finds that the contract attached to the affidavit is an accurate copy of the one signed by Plaintiff. The Plaintiff also contest the motion on the grounds that Defendants do not have a right to compel arbitration because the contract was assigned to Santander. This Court agrees.

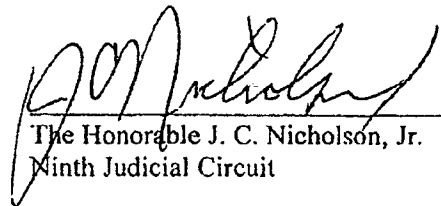
Legal Analysis

The Federal Arbitration Act applies to this dispute because the contract at issue evidences a transaction involving commerce. 9 U.S.C.A. § 2. However, State law governs the issue of assignment as it goes to the enforceability of the arbitration clause. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007) (“[g]eneral contract principles of state law apply in a court’s evaluation of the enforceability of an arbitration clause.”). Under South Carolina law, “[a]n assignment of a right is a manifestation of the assignor’s intention to transfer it by virtue of which the assignor’s right to performance by the obligor is extinguished in whole or in part and the assignee acquires a right to such performance.” *Moore v. Weinberg*, 373 S.C. 209, 219–20, 644 S.E.2d 740, 745 (Ct. App. 2007) (quoting Restatement (Second) of Contracts § 317(1) (1981)). Generally, once a contract is properly assigned the assignor retains no interest in the right transferred. *See BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 624, 731 S.E.2d 547, 549 (2012) (“[a]n assignee stands in the shoes of the assignor”); *see also duPont de-Bie v. Vredenburg*, 490 F.2d 1057, 1061 (4th Cir. 1974). It necessarily follows that an assignor’s right to compel arbitration is lost once it assigns a contract containing an arbitration clause. *See In re Wholesale Grocery Prod. Antitrust Litig.*, 97 F. Supp. 3d 1101, 1106 (D. Minn.

2015), *aff'd*, 850 F.3d 344 (8th Cir. 2017) (holding the assignment extinguished assignor's right to compel arbitration); *See also*, *HT of Highlands Ranch, Inc. v. Hollywood Tanning Sys., Inc.*, 590 F. Supp. 2d 677, 684 (D.N.J. 2008) (holding assignor could not compel arbitration in contracts it assigned).

In this case, Rick Hendrick purported to assign all of its interests in the retail installment sales contract to Santander. This is supported by the form contract submitted by Rick Hendrick, which states at the bottom of the front page, "Seller assigns its interest in this contract to Santander Consumer USA (Assignee) under the terms of the Seller's agreement(s) with Assignee." It also does not appear that Defendant retained any rights under the retail installment sales contract or the arbitration clause, specifically. As a result, Defendants' right to compel arbitration was extinguished when contract was assigned to Santander.

For the foregoing reasons, Defendants' motion to compel arbitration is **Denied**.


The Honorable J. C. Nicholson, Jr.
Ninth Judicial Circuit

Charleston, South Carolina

January 8, 2018

RECEIVED

FEB 06 2018

SC Court of Appeals

PROOF OF SERVICE

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the address(es) shown below.

1. Notice of Appeal;
2. Proof of Service of the Notice of Appeal served on Respondent, Charleston County Clerk of Court, and The Honorable J. C. Nicholson, Jr.;
3. Copy of the Order to be challenged on appeal, which was signed by The Honorable J. C. Nicholson, Jr., dated January 8, 2018, filed on January 10, 2018 with the Charleston County Clerk of Court's Office, and received in our office on January 12, 2018; and
4. Filing fee check in the amount of \$100.00.

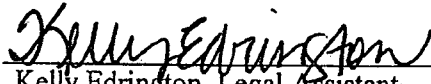
Parties of Record

The Honorable J. C. Nicholson, Jr.
Circuit Court Judge
100 Broad Street, Suite 106
Charleston, SC 29401

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

C. Steven Moskos, Esquire
C. Steven Moskos, P.A.
4000 Faber Place Drive, Suite 300
North Charleston, SC 29405

The Honorable Jenny Abbott Kitchings
SC Court of Appeals
1015 Sumter Street
Columbia, SC 29211
(via hand delivery)



Kelly Edrington, Legal Assistant

Date: February 6, 2018

March 21, 2018

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
SC Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: *Cleo Sanders v. Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick Chrysler Jeep Dodge Ram, Isiah S. White, Danny Anderson and Patrick Bachrodt, Jr.*
Charleston County Case No. 2017-CP-10-02148
GWB File No. 8493-6

Dear Ms. Kitchings:

Enclosed for filing are the following:

1. Notice of Appeal;
2. Proof of Service of the Notice of Appeal served on Respondent, Charleston County Clerk of Court, and The Honorable J. C. Nicholson, Jr.;
3. Copy of the Order to be challenged on appeal, which was signed by The Honorable J. C. Nicholson, Jr., dated February 16, 2018, filed on February 20, 2018 with the Charleston County Clerk of Court's Office, and received in our office on February 27, 2018;
4. Letter regarding request for transcript; and
5. Filing fee check in the amount of \$100.00.

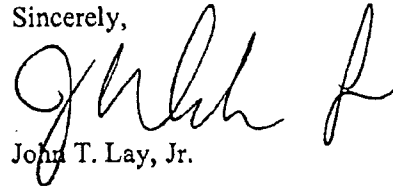
Appellants appeal all rulings related to granting Plaintiff's Motion to Compel.

By copy of this letter, I am providing a copy of the Notice of Appeal to The Honorable J. C. Nicholson, Jr. and Counsel for the Respondent, and am filing the Notice of Appeal with the Charleston County Clerk of Court's Office.

I would appreciate you returning clocked copies to me via our courier. Thank you for your assistance with this matter.

RECEIVED
MAR 21 2018
SC Court of Appeals

Sincerely,

A handwritten signature in cursive script, appearing to read "John T. Lay, Jr.", written in black ink.

John T. Lay, Jr.

JTL/kae

Enclosures

cc: The Honorable J. C. Nicholson, Jr.
Charleston County Clerk of Court's Office
C. Steven Moskos, Esquire

RECEIVED
MAR 21 2018
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Case Tracking No. _____

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS
Civil Action No. 2017-CP-10-02148
J. C. Nicholson, Jr., Circuit Court Judge

Cleo Sanders Plaintiff

vs.

Savannah Highway Automotive Company,
a General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Isiah S. White,
Danny Anderson and Patrick Bachrodt, Jr. Defendants

Of whom, Savannah Automotive Company,
a General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram and Isiah S. White are Appellants

and

Of whom, Cleo Sanders is. Respondent

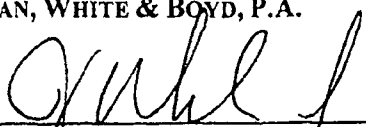
NOTICE OF APPEAL

John T. Lay, Jr.
Jessica A. Waller
Alice P. Adams
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
Columbia, SC 29202
(803) 779-1833

*Attorneys for Appellants Savannah Highway
Automotive Company, a General
Partnership d/b/a Rick Hendrick Dodge
Chrysler Jeep Ram and Isiah S. White*

Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick Dodge Chrysler Jeep Ram and Isiah S. White appeal the Order of the Honorable J. C. Nicholson, Jr. granting Plaintiff Cleo Sanders' Motion to Compel signed February 16, 2018, filed February 20, 2018 and received by Appellants on February 27, 2018.

GALLIVAN, WHITE & BOYD, P.A.

By: 

John F. Lay, Jr., SC Bar # 64526
Jessica A. Waller, SC Bar # 100256
Alice P. Adams, SC Bar # 6954
PO Box 7368
Columbia, SC 29202
jlay@gwblawfirm.com
jwaller@gwblawfirm.com
aadams@gwblawfirm.com
(803) 779-1833 Ofc
(803) 779-1767 Fax

*Attorneys for Appellants Savannah Highway
Automotive Company, a General Partnership
d/b/a Rick Hendrick Dodge Chrysler Jeep Ram
and Isiah S. White*

March 21, 2018

Other Counsel of Record:

C. Steven Moskos
4000 Faber Place Drive, Suite 300
North Charleston, SC 29405
(843) 763-5297

Attorney for Respondent

PROOF OF SERVICE

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the address(es) shown below.

1. Notice of Appeal;
2. Proof of Service of the Notice of Appeal served on Respondent, Charleston County Clerk of Court, and The Honorable J. C. Nicholson, Jr.;
3. Copy of the Order to be challenged on appeal, which was signed by The Honorable J. C. Nicholson, Jr., dated February 16, 2018, filed on February 20, 2018 with the Charleston County Clerk of Court's Office, and received in our office on February 27, 2018;
4. Letter regarding request for transcript; and
5. Filing fee check in the amount of \$100.00.

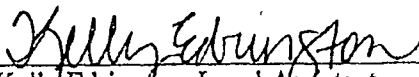
Parties of Record

The Honorable J. C. Nicholson, Jr.
Circuit Court Judge
100 Broad Street, Suite 106
Charleston, SC 29401

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

C. Steven Moskos, Esquire
C. Steven Moskos, P.A.
4000 Faber Place Drive, Suite 300
North Charleston, SC 29405

The Honorable Jenny Abbott Kitchings
SC Court of Appeals
1015 Sumter Street
Columbia, SC 29211
(via hand delivery)



Kelly Edrington, Legal Assistant

Date: March 21, 2018

RECEIVED
MAR 21 2018
SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Cleo Sanders,

Plaintiff,

vs.

Savannah Highway Automotive Co., a
General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander
Consumer USA Holdings, Inc., Isiah S.
White, Danny Anderson, and Patrick
Bachrodt, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A#: 2017-CP-10-02148

ORDER GRANTING PLAINTIFF'S
MOTION TO COMPEL

RECEIVED
MAR 21 2018
SC Court of Appeals

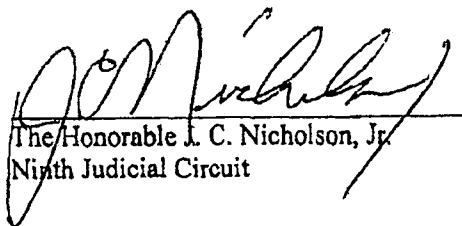
2018 FEB 20 PM 2:25
JULIE H. BROWN
CLERK OF COURT
BY [Signature]

This matter is before the Court on Plaintiff's Motion to Compel Defendant Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick Dodge Chrysler Jeep Ram (Hendrick) to respond to Plaintiff's Interrogatories and Request for Production, which were served on Hendrick on July 21, 2017. On January 9, 2018, a hearing was held at which time Plaintiff was represented by C. Steve Moskos, Esquire and Hendrick was represented by Alice Price Adams, Esquire.

At the motion hearing, Hendrick submitted it had not responded to discovery so as not to waive its position that the matter was subject to arbitration. Plaintiff had previously asserted that Hendrick's participation in discovery waived its right to compel and/or participate in arbitration. Further, Hendrick requested that in the event the Court compelled it to respond to discovery, that it be afforded the opportunity to object to specific discovery requests in light of the basis for its concern for waiving its position regarding arbitration. However, this Court previously denied Hendrick's Motion to Compel Arbitration.

Based upon the foregoing, it is ordered that Hendrick respond to Plaintiff's Interrogatories and Requests to Produce within 30 days of this hearing date. Further, Defendants, except Rick Hendrick, shall not waive its position regarding its right to compel and/or participate in arbitration by responding to said discovery. Further, this Order shall not preclude Hendrick from raising appropriate objections to specific discovery requests as permitted by law and the South Carolina Rules of Civil Procedure.

AND IT IS SO ORDERED.



The Honorable J. C. Nicholson, Jr.
Ninth Judicial Circuit

Charleston, South Carolina
February 16, 2018

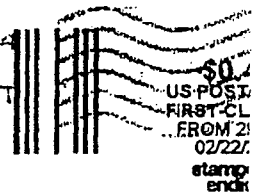
RECEIVED
MAR 21 2018
SC Court of Appeals

C. Steven Moksos
C. Steven Moskos, P.A.
4000 Faber Place Dr., Ste. 300
North Charleston SC 29405

CHARLESTON SC 294

23 FEB 2018 PM 1.1

FEB 27 2018



Gallivan White & Boyd
ATTN: John T. Lay
1201 Main Street, Suite 1200
Columbia SC 29201-3257

29201+3257



March 21, 2018

The Honorable Jenny Abbott Kitchings
SC Court of Appeals
1015 Sumter Street
Columbia, SC 29211

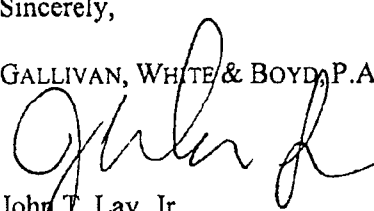
Re: *Cleo Sanders v. Savannah Highway Automotive Company, et al.*
C/A No. 2017-CP-10-02148
GWB File No. 8493-6

Dear Ms. Kitchings:

This letter is to advise the Court of Appeals that on February 7, 2018, our office requested a copy of the transcript from the hearing on Plaintiff's Motion to Compel, which took place on January 9, 2018 in Charleston County before Judge Nicholson. We received the transcript on February 13, 2018. By copy of this letter, we are notifying the appropriate parties of our request for and receipt of the transcript. Should you have any questions or need additional information, please do not hesitate to contact our office.

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.


John T. Lay, Jr.

JTL/kae

cc: Office of Court Administration
C. Steven Moskos, Esquire

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MAR 21 2018
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Case Tracking No. 2018-000171

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FEB 14 2019
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS

Civil Action No. 2017-CP-10-02148

J. C. Nicholson, Jr., Circuit Court Judge

Cleo Sanders Respondent

v.

Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander Consumer USA Holdings, Inc., Isiah S. White,
Danny Anderson and Patrick Bachrodt, Jr..... Defendants

Of whom, Savannah Highway Automotive Company, a General Partnership d/b/a Rick
Hendrick Dodge Chrysler Jeep Ram and Isiah S. White are the Appellants

CERTIFICATE OF COMPLIANCE

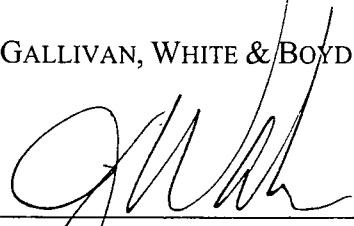
John T. Lay, Jr.
Jessica A. Waller
Alice P. Adams
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
Columbia, SC 29202
(803) 779-1833

*Attorneys for Appellants Savannah Highway
Automotive Company, a General Partnership
d/b/a Rick Hendrick Dodge Chrysler Jeep
Ram and Isiah S. White*

216999A TO HUGO JG
JAN 11 2019
The undersigned counsel hereby certifies that the Initial Reply Brief of Appellants Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick Dodge Chrysler Jeep Ram and Isiah S. White complies with Rule 208(a)(3), SCACR and the August 13, 2007, Order from the South Carolina Supreme Court titled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in the Appellate Court Filings."

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

By: 

John T. Lay, Jr.
Jessica A. Waller
Alice P. Adams
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
Columbia, SC 29202
(803) 779-1833

*Attorneys for Appellants Savannah
Highway Automotive Company, a
General Partnership d/b/a Rick
Hendrick Dodge Chrysler Jeep Ram
and Isiah S. White*

February 14, 2019